

URUGUAY ROUND AGREEMENTS ACT

J O I N T R E P O R T
OF THE
COMMITTEE ON FINANCE
COMMITTEE ON AGRICULTURE, NUTRITION,
AND FORESTRY
COMMITTEE ON GOVERNMENTAL AFFAIRS
OF THE
UNITED STATES SENATE
TO ACCOMPANY
S. 2467



NOVEMBER 22, 1994.—Ordered to be printed
Filed under authority of the order of the Senate of October 3 (legislative
day, September 12), 1994

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1994

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GLOSSARY OF ACRONYMS

ACTPN	Advisory Committee for Trade Policy Negotiations
ATPA	Andean Trade Preference Act
APO	Administrative Protective Order
BDA	Budget Deficit Assessment
CBERA	Caribbean Basin Economic Recovery Act
CBI	Caribbean Basin Initiative
CCC	Commodity Credit Corporation
CIT	United States Court of International Trade
Commerce	United States Department of Commerce
COPRA	Customs Overtime Pay Reform Act
COBRA	Consolidated Omnibus Budget Reconciliation Act of 1993
CFTA	Canada Free Trade Agreement
DEIP	Dairy Export Incentive Program
EC	European Community
EEP	Export Enhancement Program
EITC	Earned Income Tax Credit
ERISA	Employee Retirement Income Security Act of 1974, as amended
FDA	Food and Drug Administration
GAO	United States General Accounting Office
GATT	General Agreement on Tariffs and Trade
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
GNP	Gross National Product
GSP	Generalized System of Preferences
EPA	Environmental Protection Agency
FDIC	Federal Deposit Insurance Corporation
FEPA	Federal Employees' Pay Act
HTSUS	Harmonized Tariff Schedule of the United States
ILO	International Labor Organization
IRC	Internal Revenue Code
IRS	Internal Revenue Service
ITC	United States International Trade Commission
LASH	Lighter Aboard Ship
MFA	Multifiber Arrangement
MFN	Most-Favored-Nation
MMP	Market Promotion Program
NAFTA	North American Free Trade Agreement
NICs	Newly Industrialized Countries
NTE	National Trade Estimate
PBGC	Pension Benefit Guaranty Corporation
PIC	Production Incentive Certificate
PTO	Patent and Trademark Office
S&P	Sanitary and Phytosanitary

SEP	Simplified Employee Pension
SEPPAA	Single-Employer Pension Plan Amendments Act of 1986
SPD	Summary Plan Description
TPRM	Trade Policy Review Mechanism
TRIMs	Trade-Related Investment Measures
TRIPs	Trade-Related Aspects of Intellectual Property Rights
USDA	United States Department of Agriculture
USTR	United States Trade Representative
VRA	Voluntary Restraint Agreement
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

TRADE AGREEMENTS TO WHICH THIS BILL APPLIES

Agreement Establishing the World Trade Organization (*WTO Agreement*)
General Agreement on Tariffs and Trade 1994 (*GATT 1994*)
Agreement on Agriculture (*Agriculture Agreement*)
Agreement on the Application of Sanitary and Phytosanitary Measures
Agreement on Textiles and Clothing (*Textiles Agreement*)
Agreement on Technical Barriers to Trade
Agreement on Trade-Related Investment Measures (*TRIMs Agreement*)
Agreement on Implementation of Article VI of GATT 1994 (*Antidumping Agreement*)
Agreement on Implementation of Article VII of GATT 1994 (*Customs Valuation*)
Agreement on Preshipment Inspection (*Preshipment Inspection Agreement*)
Agreement on Rules of Origin (*Rules of Origin Agreement*)
Agreement on Import Licensing Procedures (*Import Licensing Agreement*)
Agreement on Subsidies and Countervailing Measures (*Subsidies Agreement*)
Agreement on Safeguards (*Safeguards Agreement*)
General Agreement on Trade in Services (*GATS Agreement*)
Agreement on Trade-Related Aspects of Intellectual Property Rights (*TRIPs Agreement*)
Understanding on Rules and Procedures Governing the Settlement of Disputes
(*Dispute Settlement Understanding*)
Agreement on Government Procurement (*Government Procurement Agreement*)
International Bovine Meat Agreement (*Bovine Meat Agreement*)

URUGUAY ROUND AGREEMENTS ACT

NOVEMBER 22, 1994.—Ordered to be printed

Filed under authority of the order of the Senate of October 3 (legislative day, September 12), 1994

Mr. MOYNIHAN, from the Committee on Finance and on behalf of Mr. LEAHY, from the Committee on Agriculture, Nutrition, and Forestry; and Mr. GLENN, from the Committee on Governmental Affairs, filed the following

J O I N T R E P O R T

[To accompany S. 2467]

The Committees on Finance; Agriculture, Nutrition, and Forestry; and Governmental Affairs, to which was jointly referred the bill (S. 2467) to approve and implement the trade agreements concluded in the Uruguay Round of multilateral trade negotiations, having considered the same, report thereon.

I. REPORTS AND OTHER MATERIALS OF THE COMMITTEES

PRELIMINARY STATEMENT

S. 2467, a bill to approve and implement the trade agreements concluded in the Uruguay Round of multilateral trade negotiations, was introduced on September 27, 1994 and, pursuant to 19 U.S.C. 2191(c)(1), referred jointly to the Committees on Finance; Agriculture, Nutrition, and Forestry; Commerce, Science, and Transportation; Governmental Affairs; the Judiciary; and Labor and Human Resources. Pursuant to an order of the Senate entered October 3, 1994, the Senate Committee on Finance compiles in this joint report the reports of the Committees to which S. 2467 was jointly referred. This document contains the reports of those Committees that chose to report, in addition to other materials provided by other Committees to which the bill was referred.

PART I. REPORT OF THE COMMITTEE ON FINANCE

The Committee on Finance, to which was referred the bill (S. 2467) to approve and implement the trade agreements concluded in the Uruguay Round of multilateral trade negotiations, having considered the same, reports favorably thereon and recommends that the bill do pass.

A. BACKGROUND

Overview of the Uruguay Round Negotiations and Trade Agreements

The Uruguay Round formally began in September 1986, when Trade Ministers from Contracting Parties to the General Agreement on Tariffs and Trade (GATT) agreed in a meeting in Punta del Este, Uruguay to launch the eighth round of multilateral trade negotiations to be conducted under the auspices of the GATT. The Ministers agreed to conclude the Round by the end of 1990. To further the negotiations, Ministers met in December 1988 in Montreal, Canada, for a Mid-Term Review of the negotiations. As a result of the Mid-Term Review, frameworks for completing the negotiations were outlined. The final package of agreements was to have been approved in Brussels, Belgium in December 1990.

The effort to reach final agreement in Brussels failed, however, primarily due to fundamental disagreement regarding agricultural trade reform. Although the parties agreed in February 1991 to resume negotiations, key differences in agriculture and other areas persisted. In December 1991, then-GATT Director General Arthur Dunkel tabled a "Draft Final Act" that covered all "textual" areas of the negotiations, but did not include any specific market access commitments.

After months of impasse, the negotiations received new impetus in November 1992 when the United States and the European Community (EC) concluded the "Blair House" Agreement covering agricultural export subsidies and domestic support programs, and in July 1993 when the "Quad" countries (the United States, Canada, Japan, and members of the EC) reached a partial market access agreement in Tokyo. Broad-based negotiations—covering both market access issues and provisions in the Dunkel Draft Final Act—resumed in Geneva in September 1993, and were concluded on December 15, 1993.

The President notified the Congress on December 15, 1993 of his intent to enter into the Uruguay Round agreements, as required by section 1102 of the Omnibus Trade and Competitiveness Act of 1988 (1988 Trade Act). The private sector advisory committees, established under section 135 of the Trade Act of 1974 (1974 Trade Act), submitted their required reports on the agreements on January 14, 1994. Between Congressional notification and the signing

of the agreements in Marrakesh, Morocco on April 15, 1994, participating countries completed negotiation of the product-by-product, country-by-country market access schedules, covering industrial goods, textiles and apparel, agriculture, and certain services sectors, which were not included in the December 15 Uruguay Round Final Act. Ministers agreed at the April meeting in Marrakesh that member countries would aim to have the Uruguay Round agreements enter into force by January 1, 1995, or as early as possible thereafter.

The Uruguay Round of multilateral trade negotiations is by far the most ambitious and comprehensive round of multilateral trade negotiations in the history of the GATT. In addition to updating and further developing the codes on non-tariff measures negotiated in the previous two rounds of multilateral trade negotiations—making most of them multilateral agreements instead of limited membership agreements as negotiated in the Kennedy and Tokyo Rounds—the Uruguay Round tackled new areas, such as services, intellectual property rights, and investment, reflecting the growing complexity of the world trading system. It also brought agriculture under internationally-agreed rules for the first time and, at the urging of the United States, undertook the unprecedented initiative of seeking duty-free trade or multilateral harmonization of tariffs for a wide range of products. Furthermore, the Uruguay Round overhauled the mechanism for settling disputes among signatory countries and established the World Trade Organization (WTO), which will provide a permanent arena for member governments to address issues affecting their multilateral trade relations as well as to oversee the implementation of the trade agreements negotiated in the Uruguay Round.

The Uruguay Round Final Act encompasses several agreements: (1) the agreement establishing the new WTO; (2) 13 different agreements covering trade in goods, including GATT 1994 (the provisions of the original GATT 1947, texts and understandings reached in the Uruguay Round with respect to certain GATT Articles, and the Marrakesh Protocol to GATT 1947 containing rules for implementation of the schedules of specific commitments by each country covering tariffs, non-tariff measures, and domestic support and export subsidies for agricultural goods), and agreements on agriculture, application of sanitary and phytosanitary measures, textiles and clothing, technical barriers to trade (standards), trade-related investment measures (TRIMs), antidumping, customs valuation, preshipment inspection, rules of origin, import licensing procedures, subsidies and countervailing measures, and safeguards; (3) the General Agreement on Trade in Services (GATS); (4) the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs); (5) the Dispute Settlement Understanding (setting out the rules and procedures in that area); (6) the Trade Policy Review Mechanism (TPRM), providing for periodic review of each member's trade policies; and (7) four plurilateral trade agreements (those not involving all members), covering government procurement, civil aircraft, dairy, and bovine meat. In addition, the Final Act includes 12 ministerial decisions and declarations, covering areas such as treatment of least-developed countries, future negotiations on financial services and basic telecommunications serv-

ices, and certain issues pertaining to implementation of the anti-dumping and countervailing duty agreements.

As U.S. law is already largely in compliance with the provisions of most of the Uruguay Round agreements, the implementing bill does not reflect all of the provisions of those agreements. Additionally, while a number of provisions require legislative action, others will be given effect through administrative action, as described in the Statement of Administrative Action submitted by the President to the Congress with the bill to implement the Uruguay Round agreements on September 27, 1994.

Congressional Consideration of the Uruguay Round Agreements

The Committee on Finance has followed closely the progress of the Uruguay Round negotiations since their inception in 1986. Between 1986 and 1994, the Committee held 25 hearings discussing the Round, including developments in specific areas of the negotiations and the effect of the negotiations on U.S. competitiveness abroad. In those hearings, the Committee heard testimony or received communications for the public record from the United States Trade Representative (USTR), other officials of the Executive Branch, representatives of U.S. business, labor, agriculture, environmental, and consumer groups, and academics concerning the Uruguay Round agreements. In addition, the Committee held numerous executive sessions with the USTR and other Executive Branch officials, in which the Committee was briefed extensively on specific provisions of the Uruguay Round trade agreements. A useful dialogue between Members of the Committee and Executive Branch officials continued throughout the negotiations and helped to ensure a mutual commitment to the U.S. negotiating objectives as set forth in section 1101 of the 1988 Trade Act.

Members and staff of the Committee were present at key moments in the Uruguay Round negotiations, such as during the Mid-Term Review in Montreal in December 1988, the effort to complete the negotiations in Brussels in December 1990, and, finally, during the actual close of the negotiations in Geneva in December 1993. These on-site visits were invaluable in ensuring proper Congressional oversight of the negotiations.

Congress is following expedited procedures—known as “fast track”—in considering the Uruguay Round agreements. These procedures are set forth in sections 1102 and 1103 of the 1988 Trade Act and section 151 of the 1974 Trade Act. In order to have the Uruguay Round agreements considered under these procedures, the President requested a new grant of fast track authority, as the authority originally granted under the 1988 Trade Act expired on June 1, 1993.

On April 27, 1993, the USTR, on behalf of the President, transmitted legislation to the Congress that would extend fast track procedures until April 16, 1994 in order to complete the Uruguay Round. On June 22, 1993, the House of Representatives, by a vote of 295-to-126, approved H.R. 1876, extending fast track procedures for the Uruguay Round.

On June 23, 1993, the Committee on Finance approved by a vote of 18 to 2 the bill S. 1003, the Senate companion measure to H.R. 1876. On the same date, the Committee wrote to the President to

reaffirm the principal negotiating objectives for the Uruguay Round set forth in section 1101 of the 1988 Trade Act, and to update these negotiating objectives in light of the Draft Final Act tabled by Director General Dunkel in December 1991. The letter also served to notify the President that the Committee would judge the outcome of the negotiations on the basis of these objectives. On June 30, 1993, the Senate, by a vote of 76-to-16, approved H.R. 1876, granting the President negotiating authority in order to complete the Uruguay Round and providing fast track procedures to a bill implementing the agreements.

Under section 1102(e) of the 1988 Trade Act, as amended by H.R. 1876, the President was required to notify the Congress of his intent to enter into the Uruguay Round agreements at least 120 calendar days before doing so (but not later than December 15, 1993). The President did so on December 15, 1993, and submitted the required advisory committee reports—due to Congress no later than 30 days after Presidential notification—on January 14, 1994. On April 15, 1994, the United States and 110 other countries signed the Final Act of the Uruguay Round at a ministerial meeting in Marrakesh.

The President's notification launched a period of formal consultations with Congressional committees required under section 1102(d) on the proposed agreements and on the domestic implementation of those agreements. Starting in January 1994, Congress and the Administration also began working together to produce the legislation to implement the Uruguay Round agreements. The drafting by the Committees of jurisdiction was done in close consultation with the Administration to ensure that the legislation would faithfully implement the agreements and that the Administration's subsequent formal submission was, to the greatest degree possible, supported by the Congress. The Committee held hearings on February 8, March 9, March 16, and March 23, 1994 on the results of the negotiations and on proposals for the implementing legislation. On July 19, 21, 27, 29, and August 2, 1994, the Committee held a series of informal mark-up sessions that were open to the public. At the August 2 session, the Committee completed and approved its recommendations for the implementing legislation. On August 19, 1994, the Committee convened a conference with the House Committee on Ways and Means to resolve differences in the recommendations of the two Committees. The conference was concluded on September 20, 1994. Other committees of the Senate and House also considered provisions of the implementing legislation within their respective jurisdictions.

The process produced one bill, containing the recommendations of the various committees of jurisdiction to implement the Uruguay Round agreements, that was transmitted to the President on September 23, 1994 by the Majority Leader of the Senate and the Speaker of the House. On September 27, 1994, the President transmitted to the Congress the final text of the Uruguay Round agreements, the draft implementing legislation for the agreements, a Statement of Administrative Action (describing regulatory and other changes that are to implement the agreements), and other supporting information, as required by section 1103(a) of the 1988 Trade Act. The legislation was introduced the same day in both the

House and the Senate. The implementing bill reported here, which approves the Uruguay Round agreements and the Statement of Administrative Action, and contains provisions necessary or appropriate to implement the Uruguay Round agreements into U.S. law, was referred to six Senate committees of jurisdiction. The Committee on Finance ordered S. 2467 favorably reported by a vote of 19-0 on September 29, 1994.

B. SUMMARY OF THE BILL

TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO THE URUGUAY ROUND AGREEMENTS

Title I contains general provisions (1) on approval and entry into force of the Uruguay Round agreements, and the relationship of the agreements to Federal and State laws; (2) authorities to implement the results of the tariff negotiations; (3) procedures regarding implementation of dispute settlement proceedings affecting the United States and oversight of activities of the World Trade Organization (WTO); and (4) objectives regarding extended Uruguay Round negotiations and other related provisions.

Congress approves the Uruguay Round agreements and the Statement of Administrative Action accompanying the implementing bill, submitted by the President to the Congress on September 27, 1994. Subtitle A includes conditions for the entry into force of the agreements for the United States.

Subtitle A also sets forth the relationship of the agreements to U.S. Federal and State laws and establishes extensive Federal-State consultation procedures regarding Agreement obligations and dispute settlement proceedings affecting State laws. Subtitle B authorizes the President to proclaim the tariff modifications necessary or appropriate to implement the U.S. Uruguay Round Schedule XX.

Subtitle C sets forth consultation, notice, and reporting requirements with congressional committees, private sector advisory committees, and the public throughout WTO dispute settlement proceedings affecting the United States, and detailed procedures concerning implementation of dispute settlement findings. Subtitle C also requires an annual report to Congress on WTO activities and establishes procedures for Congressional review every five years of U.S. participation in the WTO.

Subtitle D sets forth U.S. objectives for extended negotiations on financial services, basic telecommunications, and civil aircraft; a requirement to seek the establishment of, and objectives for, a working party on internationally-recognized worker rights; and various other provisions related to implementation of agreement obligations.

TITLE II—ANTIDUMPING AND COUNTERVAILING DUTY PROVISIONS

Title II amends U.S. antidumping and countervailing duty laws to implement the Uruguay Round Antidumping and Subsidies/Countervailing Measures Agreements. In addition, it establishes mechanisms for the enforcement of U.S. rights under the Subsidies Agreement.

Antidumping provisions.—Subtitle A amends U.S. antidumping law to:

- establish a new fair comparison methodology that deducts an amount for the importer's profit from the U.S. price and provides for level of trade adjustments in the foreign market;
- require a revocation of antidumping or countervailing duties after five years unless a determination is made (in a "sunset" review) that revocation would likely lead to a continuation or recurrence of dumping or subsidization and injury;
- require an examination of duty absorption in the context of sunset reviews, on request;
- require in general that U.S. and foreign market prices be compared on an average-to-average basis in investigations, while providing a preference for average-to-individual comparisons in reviews;
- establish a special adjustment for start-up production costs;
- establish a special provision for captive production;
- improve existing anticircumvention provisions; and
- make other technical and conforming amendments to bring U.S. antidumping law into conformity with the Agreement.

Countervailing duty/subsidies provisions.—Subtitle B amends U.S. countervailing duty law and establishes procedures to enforce U.S. rights concerning foreign subsidies to:

- incorporate the Agreement's definitions of countervailable subsidy and specificity, which largely reflect existing U.S. law;
- establish rules for injury investigations in cases where such investigations were not previously required;
- implement the Agreement's stricter disciplines on subsidies that, by their nature, are presumed to cause harm to other countries' industries;
- implement the Agreement's three categories of non-actionable ("green light") subsidies: for research, regional development, and certain environmental improvements;
- provide for the automatic expiration after 5½ years of the green light provisions of U.S. countervailing duty law, unless extended by Congress; and
- provide a specific opportunity for action under section 301 to address instances where green light subsidies are found to cause "serious adverse effects."

TITLE III—ADDITIONAL IMPLEMENTATION OF AGREEMENTS

Title III implements in U.S. domestic law various provisions of the Uruguay Round agreements relating to import safeguard measures; foreign trade barriers and unfair trade practices; unfair practices in import trade, textiles and apparel trade; government procurement; and technical barriers to trade (product standards).

Safeguards provisions.—Subtitle A amends the safeguards provisions of U.S. law to: (1) provide more rapid and effective relief to a U.S. industry in "critical circumstances" cases; (2) revise the period of relief available to an initial period of no more than four years, with possible extensions for a total period of relief of eight years; (3) establish guidelines for imposition of quantitative re-

straints (QRs); (4) ban orderly marketing agreements; and (5) conform U.S. law to the procedural and due process requirements of the Safeguards Agreement.

Foreign trade barriers and unfair trade practices.—Subtitle B amends section 301 of the Trade Act of 1974, “special 301,” and “Super 301” authorities under U.S. domestic law to enforce U.S. rights against foreign violations of trade agreements and other unfair foreign trade practices to (1) conform to time limits under WTO dispute settlement procedures; and (2) clarify the scope of section 301 authority and its application to intellectual property rights protection and foreign anticompetitive practices. Subtitle B also codifies, through 1995, the provisions of the President’s March 3, 1994 Executive Order on “Super 301” by (1) requiring initiation of section 301 on foreign practices identified by September 30, 1995 as priorities for elimination to expand U.S. exports; and (2) requiring consultations with congressional committees on action with respect to foreign trade barriers identified in the annual National Trade Estimates report. Subtitle B also sets forth U.S. objectives on intellectual property and amplifies the bases for identifying priority foreign countries that lack adequate intellectual property protection.

Section 337 provisions.—Subtitle C amends section 337 of the Tariff Act of 1930, which provides remedies against imports that infringe valid and enforceable U.S. intellectual property rights, to: (1) preserve the overall efficacy of the section 337 remedy; (2) delete statutory timeframes for completion of ITC investigations, but require that ITC set a target date for completing each investigation at the earliest practicable time; (3) minimize duplication of proceedings between the ITC and Federal district courts; and (4) limit the circumstances under which general exclusion orders may be granted.

Textiles and clothing.—Subtitle D sets forth requirements regarding the process for determining the list of products to be integrated into the GATT during the transition phaseout period of the Multifiber Arrangement; extends the President’s existing authority to regulate imports from countries not parties to a multilateral agreement on textile or agricultural products to cover imports from countries which are not parties to, or to whom the United States does not apply the WTO Agreement; establishes procedures regarding importation of products illegally transshipped; and requires the Secretary of the Treasury to issue regulations by July 1, 1995 establishing an “assembly” rule of origin for textile and apparel products as of July 1, 1996, with existing contracts entered into before July 20, 1994 “grandfathered” for goods imported before January 1, 1998.

Government procurement.—Subtitle E amends Title III of the Trade Agreements Act of 1979: (1) to conform to time limits and criteria for identifying, and imposing sanctions against, countries which maintain significant and persistent discrimination in their government procurement of U.S. goods or services; (2) to authorize the President to waive the prohibition on procurement of foreign products from non-signatory countries which apply transparent and competitive procurement procedures and maintain and enforce effective prohibitions on bribery and other corrupt practices in their procurement, and to waive the prohibition when supplies are un-

available; and (3) to authorize restrictions to be waived on expanded procurement coverage under the U.S.-Israel Free Trade Agreement and under the Rural Electrification Act. [This Subtitle is in the jurisdiction of the Committee on Governmental Affairs.]

Product standards.—Subtitle F amends Title IV of the Trade Agreements Act of 1979 to clarify the ability of Federal agencies to issue standards-related measures and to determine the appropriate level of safety or protection of standards measures. [This Subtitle is in the jurisdiction of the Committee on Commerce, Science, and Transportation.]

TITLE IV—AGRICULTURE-RELATED PROVISIONS

Title IV, Subtitle A (Agriculture), as well as the tariff modifications under section 111 in Title I, implement the Agreement on Agriculture.

Section 111 provides the general authority for (1) the conversion of U.S. quantitative import restrictions to tariff-rate quotas; and (2) the staged reduction of tariffs on imported agricultural products.

Part I (Market Access) of Subtitle A makes changes to Federal law to (1) reflect the conversion of quantitative restrictions, authorized under section 22 of the Agricultural Adjustment Act of 1933 and the Meat Import Act of 1979, to tariff-rate quotas; (2) authorize the President to take certain actions in administering tariff-rate quotas; and (3) establish a special safeguard for agricultural imports pursuant to Article 5 of the Agreement on Agriculture and provide the President with the authority to administer this safeguard with the advice of the Secretary of Agriculture.

Part II (Exports) makes changes to export-related provisions in agricultural trade law to ensure that U.S. export programs operate consistently with U.S. commitments on export subsidies under the Agreement. [This Part is in the jurisdiction of the Committee on Agriculture, Nutrition, and Forestry.]

Part III (Other Provisions) contains provisions that (1) provide authority for the President to establish tariff-rate quotas on certain tobacco and tobacco-product imports; (2) amend tobacco-related provisions in the Omnibus Budget Reconciliation Act (OBRA) of 1993; and (3) provide authority for the President to reduce or eliminate tariffs on cigar binder and filler, wrapper, or oriental tobacco. Part III also mandates reports on (1) the extent to which Canada is complying with its obligations under the Uruguay Round agreements and with its related obligations under the North American Free Trade Agreement with respect to dairy and poultry products; and (2) the effects of the Uruguay Round agreements on the Federal milk marketing order system.

Subtitle B (Sanitary and Phytosanitary Measures) amends Federal law to bring programs administered by the U.S. Department of Agriculture within the disciplines of the Agreement on the Application of Sanitary and Phytosanitary Measures. Subtitle C (Standards) provides for certain changes to Federal laws relating to agriculture products to implement the Agreement on Technical Barriers to Trade. [This Subtitle is in the jurisdiction of the Committee on Agriculture, Nutrition, and Forestry.]

TITLE V—INTELLECTUAL PROPERTY

[This Title is in the jurisdiction of the Committee on the Judiciary.]

Title V implements the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). Title V consists of subtitles making changes in Federal law with respect to copyrights, trademarks, and patents.

Copyright provisions.—The copyright subtitle eliminates the sunset provision on rental rights in computer programs; protects against the unauthorized fixation in a sound recording or music video of a live performance or the communication to the public of the sounds of a live performance (the “antibootlegging” provision); and restores copyright protection to works already in the public domain in the United States but still under protection in a WTO Member that is the source of the work.

Trademark provisions.—The trademark subtitle amends the definition of “abandonment” to extend from two to three years the time of non-use before there is prima facie evidence of abandonment; and prohibits registration of a misleading geographic indication identifying wines or spirits.

Patent provisions.—The patent subtitle provides NAFTA-consistent treatment of inventive activity occurring in WTO Member countries for purposes of establishing the date of invention; amends the definition of infringing activity to include offers for sale and importation of a patented good; modifies the term of patent protection to 20 years from filing; and establishes a provisional patent application system and a right of internal priority for patent applications filed originally in the United States, as well as enabling a patent applicant to extend the term of patents that are delayed by interference proceedings, secrecy orders, or successful appeals to the Board of Patent Appeals or a Federal court.

Other areas of U.S. intellectual property law are unaffected by the Agreement.

TITLE VI—RELATED PROVISIONS

Title VI contains provisions extending expiring programs and amendments to certain customs laws related to the Uruguay Round agreements, as well as conforming amendments to various laws to reflect the implementation of the agreements.

Expiring programs.—Subtitle A extends the existing Generalized System of Preferences (GSP) program under Title V of the Trade Act of 1974, which expired on September 30, 1994, for a 10-month period, until July 31, 1995. The production incentive certificate program for watch assemblers in the U.S. insular possessions, which expires on January 1, 1995, is extended for 12 years.

Customs provisions.—Subtitle B contains a technical correction to the Customs User Fee Account allowing Customs to reimburse its salaries and expenses appropriation for the enhanced Sunday and holiday customs inspector premium pay which was authorized in the Customs Overtime Pay Reform Act last year. Subtitle B also provides for an increase in the current customs merchandise processing fee rate for formal entries to .21 percent ad valorem and increases by one dollar the flat-rate fee on certain informal entries.

TITLE VII—REVENUE PROVISIONS

Title VII contains timing and compliance provisions, outlay reduction, and other provisions to assist in offsetting the projected cost of the implementing legislation.

The outlay reductions in Title VII derive from reforming the operation of the earned income tax credit and from reducing the interest rate that the Federal Government pays with respect to large corporate tax overpayments. In addition, the Treasury Department would be allowed to set investment yields for savings bonds according to market conditions, without the present-law constraint of a minimum investment yield of four percent.

Other provisions in Title VII are designed to improve taxpayer compliance and the timing of receipts to the Federal Government. For instance, taxpayers would be given the option to request voluntary withholding on certain Federal Government benefits and unemployment compensation. Certain income from foreign corporations would be subject to estimated tax throughout the year, like other types of income. Collections of certain excise taxes would be accelerated. A tax loophole would be closed by ensuring that partnerships cannot avoid gain to their partners by distributing marketable securities instead of cash.

Title VII also contains pension reforms that would increase the variable rate Pension Benefit Guaranty Corporation (PBGC) insurance premium paid by underfunded plans. These pension reforms are also designed to improve funding in current underfunded defined benefit plans guaranteed by PBGC and to improve participant protections.

TITLE VIII—PIONEER PREFERENCES

Title VIII amends the Communications Act to require that the three companies that have been awarded "Pioneer Preferences" by the Federal Communications Commission pay the Government for their licenses to provide personal communications services. The provision requires these companies to pay an amount equal to 85 percent of the average amount that is paid for comparable licenses in the 20 largest markets in the United States, calculated on a per capita basis. The provision also codifies the Commission's decision to designate these companies as "pioneers," and establishes a five-year schedule for the payments. [This Title is in the jurisdiction of the Committee on Commerce, Science, and Transportation.]

C. GENERAL DESCRIPTION OF THE BILL

*Short Title and Table of Contents**(Section 1)*

Section 1 entitles the bill the "Uruguay Round Agreements Act" and lists the Table of Contents.

*Definitions**(Section 2)*

Section 2 defines key terms used throughout the bill.

**TITLE I—APPROVAL OF, AND GENERAL PROVISIONS
RELATING TO, THE URUGUAY ROUND AGREEMENTS**

Title I of the bill contains four subtitles encompassing general U.S. obligations under the Uruguay Round agreements and procedures for implementing the agreements. These cover: (1) approval and entry into force of the agreements and their relationship to Federal and State law; (2) authority for tariff modifications to implement the agreements; (3) domestic procedures concerning dispute settlement panel reports and implementation of the Agreement Establishing the World Trade Organization (WTO Agreement); and (4) provisions related to other U.S. obligations and specific parts of the future WTO work program.

SUBTITLE A—APPROVAL OF AGREEMENTS AND RELATED PROVISIONS

Approval and Entry into Force of the Uruguay Round Agreements

(Section 101)

Approval.—Section 101(a) provides that, pursuant to section 1103 of the Omnibus Trade and Competitiveness Act of 1988 (1988 Trade Act) and section 151 of the Trade Act of 1974 (1974 Trade Act), the Congress approves (1) the trade agreements (as listed in section 101(d)) resulting from the Uruguay Round negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT), entered into on April 15, 1994 and submitted to the Congress on September 27, 1994, and (2) the Statement of Administrative Action proposed by the Executive Branch to implement the agreements and submitted to the Congress on September 27, 1994. The agreements approved include the WTO Agreement, 16 “multilateral” trade agreements listed in Annexes 1 and 2 to that Agreement, and two of the four “plurilateral” agreements in Annex 4. They do not include the International Dairy Arrangement (to which the United States is not a party); the Agreement on Trade in Civil Aircraft (approved by Congress in 1979); or the Trade Policy Review Mechanism in Annex 3 (a procedural mechanism in place since 1989 that does not require Congressional approval).

Entry into force.—Section 101(b) of the bill establishes procedures for the Uruguay Round agreements’ entry into force. It provides that, 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 (which provides that current GATT Contracting Parties may become parties to the WTO Agreement), so as to ensure effective operation of the agreements and adequate benefits for the United States under them, he may accept the agreements and implement Article VIII of the WTO Agreement (which provides for the extension of privileges and immunities in connection with the WTO). The Committee believes that member countries of the European Union, Japan, Canada, and Mexico should be among those countries that the President determines are accepting the Uruguay Round obligations at such time as he accepts the agreements. The Committee considers the participation of these countries, at a minimum, to be necessary in order to ensure the effec-

tive operation of the Uruguay Round agreements and adequate benefits for the United States under them, and expects to consult with the Administration before the President determines that the conditions have been met for entry into force of the agreements for the United States.

Authorization of appropriations.—Section 101(c) authorizes annual appropriations of such sums as may be necessary for the payment by the United States of its share of WTO expenses. This provision tracks section 121 of the 1974 Trade Act, which authorizes an annual appropriation of such sums as may be necessary for U.S. payment of its share of GATT expenses.

Applicable agreements.—Section 101(d) lists the 19 agreements (including the WTO Agreement) covered by section 101(a); as noted above, these include all of the Uruguay Round agreements with the exception of the Trade Policy Review Mechanism and the Civil Aircraft Agreement and Dairy Arrangement.

Relationship of the Agreements to U.S. Law and State Law

(Section 102)

Relationship to U.S. law.—Section 102(a) provides that no provision of any of the Uruguay Round agreements, nor its application to any person or circumstance, which is inconsistent with any U.S. law shall have effect. Nothing in this bill shall be construed to amend or modify any U.S. law, including any law relating to the protection of human, animal, or plant life or health, the protection of the environment, or worker safety, or to limit any authority conferred under any U.S. law, including section 301 of the 1974 Trade Act, unless specifically provided in this bill.

These provisions conform with and reflect the Committee's understanding that any necessary changes to Federal laws must be enacted specifically by the Congress. The WTO Agreement and other Uruguay Round agreements, like previous trade agreements including the North American Free Trade Agreement (NAFTA), U.S.-Canada Free Trade Agreement (CFTA), and the Tokyo Round agreements, are not self-executing and thus their legal effect in the United States is governed by implementing legislation. If, at any time in the future, a dispute settlement panel or the Appellate Body established pursuant to the Uruguay Round Understanding on Rules and Procedures Governing the Settlement of Disputes (the Dispute Settlement Understanding) were to determine that a particular Federal statute was inconsistent with any of the Uruguay Round agreements, the Congress would retain full authority to determine whether to amend, modify, or repeal that law. The panel or Appellate Body does not have any authority to order the United States, or any other country, to change its laws, regulations, or practices when those are found inconsistent with a Uruguay Round agreement.

In providing further that nothing in the bill shall be construed to limit any authority conferred under section 301 of the 1974 Trade Act, section 102(a) comports with the Committee's view that the Uruguay Round agreements do not amend or restrict the remedies available to the U.S. Government under section 301. In this regard, the Committee notes the Administration's expectation, set

out in the Statement of Administrative Action, that section 301 will be even more effective than in the past in addressing foreign unfair trade barriers. (See additional discussion of section 301 under Title III of this bill.)

Relationship to state law.—Section 102(b) of the bill sets out a series of provisions defining the relationship of the Uruguay Round agreements to State law (covering States and their political subdivisions) and the process for carrying out U.S. obligations under the agreements with respect to the States. These provisions were developed in close consultation with representatives of State governments, in particular the National Governors Association and the National Association of Attorneys General. They make precise the means for both Federal-State consultation and cooperation in determining how to conform with dispute panel findings that a State measure is inconsistent with a Uruguay Round agreement.

First, section 102(b) provides a mechanism for consultation with the States to achieve conformity of State laws and practices with the Uruguay Round agreements and to address issues relating to the agreements that directly relate to, or potentially will have a direct impact on, the States. USTR, on a continuing basis, will inform the States (including by providing relevant WTO documents) and provide them opportunity to submit information and advice concerning such issues. The Committee expects that this process will be especially important in those areas, such as services and standards-related measures, where States exercise exclusive or concurrent legislative, regulatory, or enforcement authority. It will also be important for purposes of identifying State measures with respect to the Subsidies Agreement.

This Federal-State consultation mechanism builds on that established in section 102 of the NAFTA Implementation Act, which itself represented a significant expansion from prior law. The Committee welcomes USTR's intended designation of a single WTO Coordinator for State Matters, which it expects will facilitate the dissemination of information and advice between the States and the Administration.

Second, the bill establishes a detailed process for Federal-State cooperation with respect to WTO dispute settlement proceedings. When a WTO Member requests consultations with the United States concerning whether a State law is inconsistent with U.S. obligations under a Uruguay Round agreement, within seven days USTR will notify the Governor and chief legal officer of such State (or other relevant jurisdiction). Not later than 30 days after receiving such a request, USTR will consult with representatives of the State. USTR shall make every effort to ensure that the State is involved in the development of the U.S. position at each stage of consultations and dispute settlement, and shall notify the State within seven days after a request to establish a dispute settlement panel or decision to appeal a panel report regarding the State's law. If a State measure is found inconsistent with a Uruguay Round agreement, USTR shall consult with the State in an effort to develop a mutually agreeable response.

In addition, at least 30 days before requesting consultations concerning a sub-central (e.g., provincial or State) measure of another WTO Member, USTR shall notify and seek the views of appropriate

State representatives concerning the matter. In exigent circumstances, notification may occur within three days after the request for consultations. The Committee believes that this process will not interfere with USTR's ability to conduct section 301 investigations within the required statutory time periods. These notification and consultation requirements, including the provision of documents to State officials and inclusion of such officials in the official U.S. delegation when panel proceedings concern a State measure, are detailed further in the Statement of Administrative Action.

Third, the bill makes explicit that no State law, nor its application, may be declared invalid as to any person or circumstance on the ground that such law is inconsistent with any Uruguay Round agreement, except in an action brought by the United States for such purpose. This provision makes clear that the Uruguay Round agreements do not automatically preempt State laws that do not conform to their provisions, even if a WTO dispute settlement panel or the Appellate Body were to determine that a particular State measure was inconsistent with one or more of the Uruguay Round agreements.

The Committee anticipates that only in rare instances will State laws be found to be inconsistent with provisions of Uruguay Round agreements. Should that occur, however, the bill ensures that the Federal Government will proceed with caution in considering whether to challenge the inconsistent measure, doing everything possible to encourage voluntary compliance by the States. In any action brought by the United States against a State: (1) any panel or Appellate Body report on the State law shall not be considered binding or otherwise accorded deference, (2) the United States shall have the burden of proving the law is inconsistent with the relevant Uruguay Round agreement, (3) any State whose interests may be impaired shall be entitled to intervene as a party, and (4) any State law declared invalid shall not be treated as such until the date on which the court's judgment becomes final and the time for appeals has ended.

At least 30 days before the United States brings such an action, USTR shall report to the Committees on Finance and Ways and Means on the proposed action and efforts to resolve the matter, and to certify compliance with the statute's procedural requirements. Following the report's submission, USTR shall consult with the Committees concerning the matter. The Statement of Administrative Action clarifies further that WTO panel and Appellate Body reports have no binding effect under U.S. law and do not represent an expression of U.S. foreign or trade policy, and amplifies on the treatment of panel reports in a U.S. court proceeding, the right of a State to intervene, and other procedural requirements in the bill.

In the view of the Committee, these provisions, taken together, should ensure that court actions to compel State adherence to the obligations of the Uruguay Round agreements would be brought by the United States only in limited circumstances and only as a last resort. It is the hope and expectation of the Committee that, accordingly, these provisions will provide a substantial degree of reassurance to those who, in the course of consideration of the Uruguay Round agreements, raised serious concerns about the agreements' potential impact upon State sovereignty.

Finally, section 102(b)(3) defines "State law," including through a specific reference to any such law regulating or taxing the business of insurance. This is intended to address section 2 of the McCarran-Ferguson Act, which provides that no Federal statute is to be construed to supersede any State law regulating or taxing insurance unless the Federal statute specifically relates to that business.

Effect on private remedies.—Section 102(c) clarifies that no person other than the United States shall have any cause of action or defense under the Uruguay Round agreements, or may challenge any action or inaction by either the United States or a State on the grounds that it is inconsistent with the agreements. Section 102(c)(2) clarifies Congress' intention to preclude expressly and completely any person other than the United States from bringing any action against a State, or raising any defense to the application of State law, under or in connection with any Uruguay Round agreement, including based on a judgment obtained by the United States against a State in an action brought under such agreement, or based on Congress' authority under the Commerce Clause of the U.S. Constitution.

Treatment of the Statement of Administrative Action.—Section 102(d) provides that the Statement of Administrative Action shall be regarded as an authoritative expression by the United States concerning the interpretation and application of the Uruguay Round agreements. The Committee expects that future Administrations will observe and apply the Statement's interpretations and commitments. Because the Congress approves the Statement, interpretations set forth in the Statement carry particular authority.

*Implementing Actions in Anticipation of Entry into
Force; Regulations*

(Section 103)

Section 103 authorizes the President, after the enactment of this bill, to proclaim such actions, and appropriate U.S. officials to issue such regulations, as may be necessary to ensure that the provisions of the bill take effect upon entry into force of the Uruguay Round agreements with respect to the United States, but not prior to that date. This reflects the fact that certain actions that must be undertaken to implement the Uruguay Round agreements pursuant to the bill are authorized to be proclaimed by the President, rather than enacted directly. Any interim regulation necessary or appropriate to carry out any action proposed in the Statement of Administrative Action relating to implementation of the Agreements on Safeguards, Antidumping, and Subsidies and Countervailing Measures shall be issued not later than one year after the agreement enters into force for the United States. Timely issuance of regulations is especially important for these agreements, the implementation of which may involve substantial changes in existing regulations.

SUBTITLE B—TARIFF MODIFICATIONS

*Tariff Modifications**(Section 111)*

Section 111(a) provides that, in addition to the tariff proclamation authority already provided by section 1102(a) of the 1988 Trade Act, the President also is authorized to proclaim such other modification of any duty, such other staged tariff rate reduction, or such additional duties, as he determines to be necessary or appropriate to carry out U.S. Schedule XX annexed to the Marrakesh Protocol to GATT 1994 (i.e., the U.S. schedule of tariff concessions). Additional authority is necessary because the tariff reductions under certain parts of Schedule XX exceed the tariff authority provided in the 1988 Trade Act; in particular, additional authority is needed to implement the reciprocal elimination of tariffs where duties exceed five percent ad valorem. In most cases, this authority will be used to lower U.S. duties; however, authority to increase duties also is necessary because Schedule XX provides for higher tariffs on agricultural products whose importation currently is subject to quotas or other non-tariff restrictions. The new, higher duty rates replace those quantitative restrictions as part of the general "tariffication" process under the Uruguay Round.

Section 111(b) provides that, subject to the consultation and lay-over requirements set forth in section 115, the President may proclaim a modification of a duty or staged rate reduction of a duty in U.S. Schedule XX, if the United States agrees to such modification in a multilateral negotiation under the auspices of the WTO and the modification applies to articles in a sector that was the subject of reciprocal duty elimination or harmonization negotiations during the Uruguay Round. This covers what, in view of the objective of complete tariff elimination, were called the "zero-for-zero" sectors. These include: (1) products for which the United States sought the reciprocal elimination of duties among major trading countries but was unable to negotiate complete duty elimination: wood products, electronics, distilled spirits, non-ferrous metals, soda ash, and oilseeds and oilseed products; and (2) products for which reciprocal duty elimination was achieved but the United States intends to seek to accelerate the phase-out of duties: paper and paper products, furniture, medical equipment, steel, agricultural equipment, construction equipment, scientific equipment, and toys. The Committee believes that obtaining further reductions and elimination of foreign tariffs, as well as accelerated staging of reductions, in these sectors should be a priority objective in all future U.S. trade negotiations, whether multilateral, regional, or bilateral.

For example, the Committee notes that the United States failed to achieve the elimination of tariffs on wood products with our major trading partners, in particular Japan, whereas the United States now maintains virtually no tariff or non-tariff barriers on imports of those products. The resumption of market access negotiations on wood products therefore should be a high priority in coming months. Similarly, the Committee believes that special attention should be given to negotiating additional tariff reductions on high-value oilseed products (e.g., soy protein concentrates, and

crude and refined soybean oil, corn oil, and sunflowerseed oil)—either multilaterally through resumption of the “zero-for-zero” process or, if that is not successful, through bilateral negotiations with countries that are key export markets (as well as in negotiations with countries in the process of applying for accession to the WTO). Where the United States achieved duty elimination, acceleration of the phase-out would enable competitive U.S. industries to gain improved access to key markets. For example, the more rapid phase-out of European Union tariffs on paper and paper products warrants priority consideration in future negotiations.

Section 111(b) also pertains to the chemicals sector, in which the United States intends to continue efforts to expand country participation in the harmonization of tariffs. During the Uruguay Round negotiations, the United States agreed to eliminate tariffs on a number of chemical products; in some instances, key trading partners did not reciprocate. The Committee notes the importance of expanding the participation of countries—especially newly-industrializing countries in Latin America and Asia and other developing countries—in the chemical tariff harmonization process, toward the objective of establishing tariff rates on chemical products at or below the levels already agreed to by the United States, European Union, Japan, and Canada. Special attention should be paid to those products, such as cyclohexane, where the Uruguay Round resulted in a disparity between U.S. tariff levels and those of many other countries. Finally, the authority granted also may be used to grant duty-free treatment to new pharmaceutical products, consistent with an agreement reached among the United States, members of the European Union, and 10 other countries during the Uruguay Round negotiations on reciprocal tariff elimination on existing pharmaceutical products and not to impose duties on new products as they are developed in the future.

Section 111(b) also authorizes such modifications as are necessary to correct technical errors or make other rectifications to Schedule XX. The term “rectifications” is intended to be construed narrowly to mean technical adjustments to Schedule XX that are necessary to incorporate U.S. commitments made in the Uruguay Round negotiations; it is not intended to allow an expansion of the scope of Schedule XX commitments.

Section 111(c) provides that, if the President determines, after entry into force of the WTO for the United States, that a non-WTO Member country is not according adequate trade benefits to the United States (including substantially equal competitive opportunities for U.S. commerce), and following consultations with the Committees on Finance and Ways and Means, the President may proclaim increased rates of duty with respect to any article of such non-WTO Member country.

This provision is intended to address the longstanding problem for the United States of “free riders” under the GATT system; it provides an incentive for other countries to become members of the WTO in a timely manner by providing authority to deny them certain tariff benefits if they do not do so. The additional duties shall equal the higher of the base rate of duty or bound rate of duty set forth in U.S. Schedule XX; in other words, the President, after consulting with the Committees on Finance and Ways and Means,

could deny a non-WTO Member the benefit of the lower tariff rates made available to WTO Members, but the rate he proclaimed could not exceed the currently applicable MFN rate—unless the Uruguay Round rate actually was higher, as in cases of “tariffication” of current non-tariff barriers. A proclamation imposing increased duties shall terminate on the earlier of the date set out in the President’s proclamation or the date the WTO enters into force for such country. Notice of such determinations and terminations shall be published in the *Federal Register*.

Section 111(d) authorizes the President to proclaim the higher rates under column 2 of the HTSUS (i.e., those applicable to products of countries not eligible for MFN treatment) specifically listed for the tariff subheadings set forth in this section. These rates generally will apply in situations where the current column 2 rate of duty otherwise would be equal to or lower than the column 1 rate that was negotiated in the Uruguay Round, as with agricultural products for which non-tariff restrictions were “tariffied” during the Uruguay Round.

Under section 111(e), the President also is authorized, subject to Congressional consultation and layover requirements, to proclaim the highest applicable column 2 rate of duty when merging tariff schedule subheadings. The consolidation of subheadings and modification of column 2 rates are intended to simplify the structure of the tariff schedule where there otherwise would be more than one column 2 subheading applicable to the same column 1 rate of duty.

Implementation of Schedule XX Provisions on Ship Repairs

(Section 112)

Section 112 makes permanent the exemption, provided under section 484E of the Customs and Trade Act of 1990 (1990 Trade Act), for LASH (Lighter Aboard Ship) barge repairs, and spare repair parts for all cargo vessels, from the 50 percent duty on non-emergency foreign repairs of U.S. vessels imposed under section 466 of the Tariff Act of 1930 (1930 Tariff Act). Under this exemption, which expired December 31, 1992, no duty was imposed on the repair parts and the costs of the repairs, while spare parts entered at the applicable duty rates under the HTSUS, rather than at the 50 percent rate. This provision is required to carry out the U.S. commitments in Schedule XX not to impose duties on the foreign repair of LASH barges and on the cost of foreign spare parts used to repair such vessels. Unlike the other commitments in Schedule XX, these cannot be implemented simply through Presidential proclamation because the terms of the duty are contained in statute.

Liquidation or Reliquidation and Refund of Duty Paid on Certain Entries

(Section 113)

Section 113 provides for the liquidation or reliquidation, and refund of duties, with respect to certain entries. The provision addresses mistakes made by the U.S. Customs Service in classifying

certain items under the HTSUS, which were corrected only prospectively in Schedule XX. In so doing, it is intended to ensure that the affected private parties receive the tariff treatment to which they would have been entitled had such errors not occurred.

Modifications to the HTSUS

(Section 114)

Section 114 consists of three provisions that address errors made by Executive Branch officials in developing the U.S. Uruguay Round tariff offer that became Schedule XX. In one of these cases, it corrects a misclassification; in the other two, it provides authority to the President to proclaim duty-free entry of products that were inadvertently omitted from Schedule XX.

Consultation and Layover Requirements for, and Effective Date of, Proclaimed Actions

(Section 115)

Section 115 sets out the consultation and layover requirements applicable to certain actions authorized to be proclaimed by the President. If an action is subject to consultation and layover, it may be proclaimed only after (1) the President obtains advice from the appropriate private sector advisory committees established under section 135 of the 1974 Trade Act and the ITC, and then submits a report to the Committees on Finance and Ways and Means setting forth the proposed action and advice received, and (2) 60 calendar days then elapse, during which time the President consults with the Committees concerning the proposed action. These consultation and layover procedures are intended to ensure adequate consultation with and input from the Congress and the private sector before an action is taken by Presidential proclamation.

Effective Date

(Section 116)

Section 116 provides that the provisions in Subtitle B (sections 111 through 115) take effect on the date on which the WTO Agreement enters into force for the United States, except for the tariff schedule modifications in section 114 (effective on the date of the Presidential proclamation carrying out Schedule XX) and the consultation and layover requirements in section 115 (effective on the date of enactment of this bill).

SUBTITLE C—URUGUAY ROUND IMPLEMENTATION AND DISPUTE SETTLEMENT

Definitions

(Section 121)

Section 121 defines key terms used in Subtitle C.

*Implementation of Uruguay Round Agreements**(Section 122)*

Section 122 includes a series of provisions intended to ensure adequate consultations with the Congress concerning WTO decisionmaking procedures. The Committee believes that these provisions will help afford a greater understanding of the functioning of the Ministerial Conference, General Council, and other subsidiary bodies of the WTO.

Section 122(a) provides that, in the implementation of the Uruguay Round agreements and functioning of the WTO, it is the U.S. objective to ensure that the Ministerial Conference and General Council continue the GATT practice of decisionmaking by consensus, as required under Article IX of the WTO Agreement. The Committee notes in this regard that the Administration repeatedly has reaffirmed the U.S. objective to ensure that this practice of decisionmaking by consensus continues to be the norm in the WTO.

Section 122(b) provides that, in furtherance of this objective, USTR shall consult with the appropriate Congressional Committees (the Committees on Finance and Ways and Means, and any other Committees with jurisdiction over a particular matter) before any Conference or Council vote relating to the adoption of an interpretation or amendment of a Uruguay Round agreement, granting of a waiver of an agreement obligation, adoption of an amendment to the rules or procedures of the Conference or Council, accession to the WTO, or adoption of any other decision, if such action would affect substantially U.S. rights or obligations under an agreement or potentially entails a change in Federal or State law.

Sections 122(c) and (d) require USTR to submit a report to the Congress, not later than 30 days after the end of any year in which the Conference or Council adopts by vote any decision involving an interpretation, amendment, or waiver, and then to consult with the appropriate Congressional Committees concerning the report. The report shall describe the decision, any U.S. efforts to seek consensus rather than a vote (and why those proved unsuccessful), the votes on the decision, how the decision affects U.S. rights or obligations (including any change in Federal or State law), and whether and how the President intends to respond to the decision.

*Dispute Settlement Panels and Procedures**(Section 123)*

Section 123 includes several notification and consultation procedures intended to make the WTO dispute settlement process more open and accessible to the Congress and the American public.

Dispute settlement panelists.—The first three subsections of section 123 concern the appointment of panelists in dispute settlement proceedings. Section 123(a) provides that the President shall review annually the WTO panel roster and include the list of persons serving on the Appellate Body in the annual Trade Policy Agenda report submitted under section 163(a) of the 1974 Trade Act. Under section 123(b), USTR shall seek to ensure that those on the panel roster are well-qualified and expert in the relevant subject areas.

The Committee expects that senior Executive Branch officials will regularly review the roster which is maintained by the WTO Secretariat to ensure that those appointed are well-qualified and objective. The Committee believes that the failure to maintain a roster of such caliber would undermine confidence in the WTO dispute settlement system on the part of the Congress and the American public.

Section 123(c) provides that USTR shall seek the establishment of WTO rules governing conflicts of interest by persons serving on panels and the Appellate Body and include in the annual report to the Congress required under section 124 of this bill a description of any progress toward that end. The Committee considers the establishment of such protections to be critically important in order to provide the necessary confidence that the dispute settlement panelists will be impartial and objective in their determinations; conversely, evidence of conflicts of interest on the part of panelists or Appellate Body members would undermine significantly the credibility of the WTO dispute settlement system.

Panel process.—Three additional subsections of section 123 address the panel process itself, requiring USTR to consult with the relevant Congressional Committees whenever a U.S. law is challenged by another WTO Member country.

Section 123(d) provides that, promptly after establishment of a dispute settlement panel that will consider whether a U.S. Federal or State law is consistent with a Uruguay Round agreement, USTR shall notify the appropriate Congressional Committees concerning the nature of the dispute and the laws cited in the request for establishment of the panel, the identity of the panelists, and whether the panelists were selected by consensus or otherwise. Section 123(e) provides that, if an appeal is taken from a panel report in such a case, USTR shall notify the Committees of the issues under appeal and which Appellate Body members are reviewing the panel report. Finally, section 123(f) requires USTR to notify and consult with the Committees promptly after a panel or Appellate Body report is circulated to the WTO Members, including concerning whether and how to implement panel recommendations where the report is adverse to the United States. The Committee considers it especially important to conduct prompt and complete consultations with respect to any proposed implementation of an adverse report.

Changes in agency regulations or practice.—Section 123(g) provides that, where a dispute settlement panel or Appellate Body report finds a U.S. regulation or an administrative practice (consisting of written policy guidance of general application, as specified in the Statement of Administrative Action) inconsistent with a Uruguay Round agreement, several procedural requirements must be met before USTR or the relevant department or agency may implement any change to the rule or practice. This provision does not apply to a regulation or practice of the ITC, which is covered under section 129 of the bill.

The required steps under section 123(g) are: (1) the appropriate Congressional Committees have been consulted; (2) the President has obtained advice regarding the proposed change from the appropriate advisory committees established under section 135 of the 1974 Trade Act; (3) the head of the relevant department or agency

has provided an opportunity for public comment by publishing in the *Federal Register* the proposed change along with an explanation of how the change would implement the panel or appellate report; (4) USTR has submitted a report to the Committees on Finance and Ways and Means, and other appropriate Committees, setting forth the change(s) proposed to be made to address the panel or Appellate Body finding, the reasons for such changes, and a summary of the advice received under (2) above; and (5) USTR has consulted with the appropriate Committees on the proposed contents of the final rule or other modification; and (6) the final rule or other modification has been published in the *Federal Register*.

Such a final rule or other modification may not go into effect before the end of the 60-day period that begins on the date on which the consultations under (5) above begin, unless the President determines that an earlier effective date is in the national interest. During such 60-day period, the Committees on Finance and/or Ways and Means may vote to indicate that Committee's agreement or disagreement with the proposed final rule or other modification. While such a vote would not be binding on the department or agency which is implementing the rule or other modification, it would serve to make clear the Committee's perspective on the intended change and put the implementing department or agency on notice of the Committee's views, advice, and potential concerns with respect to such plans. Careful consideration by the Administration of such views and concerns prior to implementation of the intended action will be important to the maintenance of Congressional support for the WTO dispute settlement process. The Committee intends to fulfill its responsibilities in this regard with great care, and expects that it normally would vote where Committee Members express an interest in doing so.

Pursuant to the Decision on the Application and Review of the Understanding on Rules and Procedures Governing the Settlement of Disputes (part of the Ministerial Declarations and Decisions adopted April 15, 1994 at Marrakesh), the WTO Ministerial Conference will complete a full review of dispute settlement procedures, and decide whether to continue, modify, or terminate those procedures, within four years after the entry into force of the WTO Agreement. Section 123(h) requires consultations with the Committees on Finance and Ways and Means prior to this review; the Committee fully expects that USTR will use the input provided during this consultation process in formulating the U.S. position concerning the WTO review. As with the above, thorough consultations will be critical to maintaining support for WTO dispute settlement and WTO institutions as a whole.

Annual Report on the WTO

(Section 124)

Section 124 requires USTR, not later than March 1 of each year beginning in 1996, to submit a report to the Congress describing for the preceding year the major activities and work programs of the WTO, and the expenditures made in connection with those activities and programs. The report shall include the shares of the

WTO budget paid by each Member country, total personnel of the WTO Secretariat and information on the citizenship and salary for each personnel category, a list of each dispute settlement panel or Appellate Body report in a proceeding involving a U.S. Federal or State law and USTR efforts to implement recommendations in a report that was adverse to the United States, the status of and issues in each proceeding initiated concerning such a law, the status of consultations with any States whose laws were the subject of an adverse panel or Appellate Body report, and any progress made (pursuant to section 126 of this bill) in increasing the openness of Ministerial Conference, General Council, and dispute settlement proceedings.

Review of Participation in the WTO

(Section 125)

Section 125 establishes a mechanism through which the Congress may withdraw the approval of U.S. participation in the WTO granted under section 101(a) of the bill.

Section 125(a) provides that the annual report required under section 124 shall include, at the end of the fifth year after the WTO's entry into force for the United States and every fifth year thereafter, additional information concerning the effects of the WTO Agreement on U.S. interests and the costs and benefits of U.S. participation in the WTO.

Section 125(b) provides that, subsequent to the receipt of the report in those years, Congress may consider and adopt a joint resolution providing for withdrawal of U.S. approval of the WTO Agreement, the effect of which would be to end U.S. participation in the WTO. Such a resolution may be introduced by any Member once the above report is transmitted to the Congress. Congress has 90 legislative days from the date of receipt of the report to adopt and transmit the resolution to the President; the Committees on Finance and Ways and Means (the committees of referral) have up to 45 of those days to report the resolution or they are automatically discharged. If the President then vetoes the resolution, each House has 15 legislative days to vote to override the veto. Under section 125(c), the resolution would be subject to the "fast track" rules in section 152 of the 1974 Trade Act.

Increased Transparency

(Section 126)

Section 126 provides that USTR shall seek Ministerial Conference and General Council adoption of more open and transparent procedures with respect to the Conference, the Council, dispute settlement panels and the Appellate Body.

The Committee believes strongly that greater public access to WTO information and decisionmaking procedures is critical to the long-term U.S. support for the WTO. In this regard, the Committee welcomes and endorses the position of the Administration, as set out in the Statement of Administrative Action, that greater openness in WTO operations will continue to be a high priority for the United States with respect to both dispute settlement and institu-

tional arrangements under the WTO. U.S. objectives should include seeking to have meetings of the major WTO bodies open to the public, whenever appropriate, as well as to make available non-confidential summaries of issues discussed in closed meetings. Section 127 below addresses key interests and concerns with respect to the WTO dispute settlement process.

Access to the WTO Dispute Settlement Process

(Section 127)

Section 127 includes several provisions intended to ensure that the Congress, the private sector, and the public are kept informed of, and able to provide greater input concerning, WTO dispute settlement proceedings.

Consultations.—Section 127(a) provides that, whenever the United States is a party in a WTO dispute settlement proceeding, USTR shall, at each stage of the proceeding, consult with the appropriate Congressional Committees, relevant private sector advisory committees, and petitioner (if any) in a section 301 action with respect to the matter that is the subject of the proceeding, and shall also consider the views of representatives of interested private sector and non-governmental organizations. Section 127(f) makes a conforming amendment to the statute governing the private sector advisory committees to implement this provision.

Notice/advice.—Section 127(b) provides that, promptly after a request to establish a dispute settlement panel in such a case, USTR shall publish notice in the *Federal Register* describing the dispute and the parties and seeking written comments concerning the issues raised. USTR shall take into account such comments received, and any advice from the appropriate Congressional Committees and relevant private sector advisory committees in preparing U.S. submissions to the panel or Appellate Body.

Treatment of submissions.—Section 127(c) requires USTR, in each such proceeding, to make written U.S. submissions available to the public promptly after their submission; USTR may withhold from disclosure any information identified as proprietary or treated as confidential by a foreign government. USTR also shall request each other party to the dispute to permit it to make that party's written submissions available to the public. The Committee notes that the failure of other countries to do so would be likely to diminish public confidence in WTO dispute settlement. USTR shall make each panel or Appellate Body report available to the public promptly after it is circulated to WTO Members. In addition, under section 127(d), USTR shall request each party to any dispute settlement proceeding (whether or not the United States is a party) to provide non-confidential summaries of its submissions; USTR then shall make those available to the public promptly after receiving them.

Public file.—Section 127(e) requires USTR to maintain a public file on each dispute settlement proceeding to which the United States is a party; this shall include all U.S. submissions in the proceeding, a listing of any public submissions to USTR, and the report of the panel and Appellate Body.

*Advisory Committee Participation**(Section 128)*

Section 128 amends section 135 of the 1974 Trade Act to provide expressly for inclusion of one or more representatives of environmental and conservation organizations on the Advisory Committee for Trade Policy Negotiations (ACTPN), the President's senior trade policy advisory committee.

*Administrative Action Following WTO Panel Reports**(Section 129)*

Section 129 establishes procedures to enhance the ability of the ITC and the Department of Commerce (Commerce) to respond, at the request of USTR, to WTO dispute settlement panel findings that their actions are not in conformity with U.S. obligations under the Uruguay Round Antidumping Agreement, Safeguards Agreement, or Subsidies Agreement.

ITC action.—Section 129(a) creates a new mechanism for ITC action in response to such a report by a dispute settlement panel or the Appellate Body. USTR may request the ITC to issue an advisory report on whether Title VII of the 1930 Tariff Act (antidumping and countervailing duty investigations) or Title II of the 1974 Trade Act (safeguard actions) permits the ITC to take steps in connection with a particular proceeding that would render its action “not inconsistent with” the findings of the panel or Appellate Body. USTR shall notify the Committees on Finance and Ways and Means of any such request. Because the ITC report is advisory only, it is not subject to judicial review. The provision establishes specific time limits for transmittal of the advisory report to USTR (30 days after the USTR request in the case of a panel decision, 21 days after the request in the case of an Appellate Body decision). These time periods are intended to ensure that USTR will receive the advice with adequate time remaining (under the timeframes in the Dispute Settlement Understanding) to decide whether to appeal or implement an adverse panel report.

If a majority of the ITC then issues an affirmative report, USTR shall consult with the Committees on Finance and Ways and Means concerning the matter, and decide whether to request the ITC to issue a determination to render its action not inconsistent with the findings of the panel or Appellate Body. The ITC has 120 days, from the date of the USTR request, to issue such a determination. USTR shall consult with the Committees on Finance and Ways and Means before the ITC's determination is implemented. If, as a result of the ITC's determination, an antidumping or countervailing duty order with respect to some or all of the subject imports is no longer supported, USTR may direct the Department of Commerce to revoke the order with respect to some or all of the imports.

With respect to safeguard actions under Title II, the President is authorized to reduce, modify, or terminate action under section 203 of the 1974 Trade Act after receiving the ITC determination and consulting with the Committees on Finance and Ways and Means.

Department of Commerce action.—Section 129(b) pertains to cases in which a Department of Commerce action in a Title VII proceeding is found by a panel or the Appellate Body to be inconsistent with U.S. obligations under the Antidumping or the Subsidies Agreement. USTR shall consult with Commerce and the Committees on Finance and Ways and Means promptly after such a report. USTR then may direct Commerce to make a determination “not inconsistent with” the report. Within 180 days of a USTR request, Commerce shall act to render its actions not inconsistent with the panel or Appellate Body findings. USTR shall consult again with Commerce and the Committees before the Commerce implements any action.

The Committee expects that USTR will consult closely with Commerce in order to ensure that it benefits from Commerce’s expertise with respect to both the panel or Appellate Body report and the appropriate implementing action (if any), including the implications of any such action on the administration of the antidumping or countervailing duty law. The Committee expects to be consulted closely by the Administration throughout this process, and to be informed and provided an explanation should USTR decide to implement an adverse panel or Appellate Body decision notwithstanding a contrary recommendation by Commerce.

Effects of determination.—Section 129(c) makes clear that ITC or Department of Commerce determinations under this section concerning Title VII apply prospectively only. This is consistent with the general principle in the GATT, and in the future WTO, that panel decisions do not have retroactive effect, i.e., they apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date on which USTR directs implementation. If implementation of a WTO panel or Appellate Body report results in revocation of an antidumping or countervailing duty order, entries made prior to USTR’s direction would still be subject to potential duty liability.

General provisions.—Section 129(c) also requires Commerce or USTR to publish notice in the Federal Register of the implementation of determinations pursuant to this provision; this is intended to ensure that private parties are aware of the effective date of an implemented determination. Section 129(d) provides that, prior to issuing a second determination, the ITC or Commerce will provide interested parties with an opportunity to submit written comments. Under section 129(e), which amends section 516A of the 1930 Tariff Act, an implemented ITC or Commerce determination is subject to review by a U.S. court or binational panel under the NAFTA to the same extent and subject to the same procedures as the original action under Title VII or Title II.

Effective Date

(Section 130)

Section 130 provides that Subtitle C and the amendments under it take effect on the date that the WTO Agreement enters into force for the United States.

SUBTITLE D—RELATED PROVISIONS

*Working Party on Worker Rights**(Section 131)*

Section 131 directs the President to seek the establishment in the GATT, and upon entry into force for the United States, in the WTO of a working party to examine the relationship of internationally recognized worker rights (as defined in the GSP statute, at section 502(a)(4) of the 1974 Trade Act) to the articles, objectives, and related instruments of the GATT and the WTO.

The objectives of the United States for the working party are to explore the linkage between international trade and internationally recognized worker rights, taking into account differences in the level of development among countries; to examine the international trade effects of the systematic denial of such rights; to consider ways to address such effects; and to develop methods to coordinate the working party's work program with the activities of the ILO. The President shall report to Congress, not later than one year after enactment of the bill, on the progress made in establishing the working party, and on U.S. objectives for the work program. The Committee expects that the working party, in examining the relationship between trade and worker rights, would seek to develop a consensus among the WTO Members on the nature of that relationship.

*Implementation of Rules of Origin Work Program**(Section 132)*

Section 132 provides that, if the President enters into an agreement pursuant to the work program described in Article 9 of the Rules of Origin Agreement, the President may implement U.S. obligations under U.S. law only pursuant to authority granted to the President for such purpose by law enacted after the effective date of this title. Article 9 establishes a three-year work program to harmonize the rules of origin for non-preferential trade, and sets forth the basic principles that will guide the negotiations. After the work program is completed, the WTO Ministerial Conference will establish the results of the work program in an Annex to the Agreement, along with a timeframe for the entry into force of the Annex. The approval of the Annex, and its incorporation into the Agreement on Rules of Origin, will require an amendment to that Agreement.

The Committee believes that, given the increasing importance and complexity of rules of origin, it will be important in the course of the harmonization work program to seek the advice of all interested parties in the United States, including exporters, importers, and producers. The Committee expects the negotiators to rely as well on all relevant U.S. Government agencies with technical expertise, including the ITC. The Committee also expects to be kept fully informed of the progress of the negotiations.

Since the results of the work program could significantly affect individual business decisions as well as broad trade patterns, the Committee does not believe that the new rules should enter into force for the United States under the existing rule-making author-

ity of the Department of the Treasury. Rather, section 132 provides that the results of the work program may become effective only pursuant to authority enacted at some point in the future. The Committee does not intend at this time to prescribe the exact nature of the authority; that determination should be made by the Congress after the work program has begun, in light of such considerations as the course of the negotiations and the adequacy of consultations with the private sector and with the Committee.

Membership in WTO of Boycotting Countries

(Section 133)

Section 133 states the sense of the Congress that USTR should vigorously oppose the admission into the WTO of any country which, through its laws, regulations, official policies, or governmental practices, fosters, imposes, complies with, furthers, or supports any boycott of Israel, as described in section 8(a) of the Export Administration Act of 1979 (as in effect on August 20, 1994; the statute lapsed on that date and an extension was not enacted prior to Congress' recessing on October 7, 1994). It is the understanding of the Committee that such conduct includes either 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 the above provision. The Committee strongly supports the efforts of the Administration, as set out in the Statement of Administrative Action, to eliminate the Arab boycott of Israel—which clearly is inconsistent with the fundamental principles of the GATT and the WTO—and oppose the admission into the WTO of countries that foster or impose such a boycott.

Africa Trade and Development Policy

(Section 134)

Section 134(a) provides that the President should develop and implement a comprehensive trade and development policy for Africa. Not later than 12 months after the date of enactment of this bill, and annually for the next four years thereafter, the President shall submit reports to the House Ways and Means and Foreign Affairs Committees and the Senate Finance and Foreign Relations Committees on the steps taken to carry out such a policy. The Committee recognizes that the Uruguay Round Agreements, particularly the Agreement on Agriculture, will likely have an effect on the ability of African countries to export and to meet food needs through imports. That is why the Committee supports the timely development and implementation of a comprehensive Africa trade and development policy and believes that it is in the economic and national security interests of the United States.

Objectives for Extended Negotiations

(Section 135)

Section 135 sets out the U.S. objectives for extended negotiations under the auspices of the WTO in three critical areas: (1) trade in

financial services; (2) trade in basic telecommunications services; and (3) trade in civil aircraft. In each of these areas, important trade issues remained outstanding at the conclusion of the Uruguay Round negotiations; in the cases of financial services and basic telecommunications services, Ministerial Decisions agreed to April 15, 1994 at Marrakesh and included in the Final Text signed there expressly reference additional negotiations.

Section 135(a) provides that, in the negotiations on financial services, the United States should seek to secure commitments from a wide range of commercially important countries to reduce or eliminate barriers to the supply of financial services. These include barriers that deny national treatment or market access by restricting the establishment or operation of U.S. financial services providers. Securing such commitments is the condition for the United States continuing to offer national treatment as well as market access commitments on an MFN basis. The Committee views this as necessary in view of the disparity between the open U.S. financial services sector and the continued unwillingness of key trading partners to remove important restrictions on access to and national treatment in their financial services markets. The objectives set forth in section 135, in the Committee's view, will provide the basis for determining whether future negotiations prove successful, or whether the United States instead will invoke an "MFN exemption" covering on key financial services sectors.

Section 135(b) provides that, in the extended negotiations on basic telecommunications services (covering local, long-distance, and international basic services), the United States should seek to obtain the opening on non-discriminatory terms of foreign markets for such services through both facilities-based competition (relating to the right to build, own, and operate domestic and international network facilities) or the resale of services on existing networks. The Committee believes that U.S. companies should be able to compete in foreign markets on non-discriminatory rates, terms, and conditions. As with financial services, there currently is a substantial disparity in market access between that provided in the United States and other key countries—a disparity that the extended negotiations are intended to address.

Section 135(c) provides that, in extended civil aircraft negotiations, the United States should seek to obtain competitive opportunities for U.S. exports in foreign markets substantially equivalent to those afforded to foreign products in the United States, as well as the reduction or elimination of specific tariff and non-tariff barriers (including through expanded membership in the 1979 Civil Aircraft Agreement and the July 1992 U.S.-European Community bilateral agreement on large civil aircraft). The objectives also include maintenance of effective disciplines under the Subsidies Agreement on foreign subsidy practices with respect to civil aircraft products, maintenance of the scope and coverage on indirect support as specified in the 1992 bilateral agreement, and obtaining increased transparency for foreign subsidy programs in the civil aircraft sector. The Committee expects to be consulted closely with respect to all of the above. It is essential that the disciplines under the Subsidies Agreement be applied in full; any future renegotiation of the 1979 Civil Aircraft Agreement must not undermine

such application. Similarly, any future negotiations on indirect supports should not weaken the terms of the 1992 bilateral agreement. Finally, it will be important to expand the coverage of the 1979 Agreement to include additional countries involved in the production and development of products subject to that Agreement.

Repeal of Tax on Imported Perfumes; Drawback of Tax on Distilled Spirits Used in Perfume Manufacture

(Section 136)

Section 136 repeals the Federal excise tax imposed under section 5001(a)(3) of the Internal Revenue Code on imported perfumes containing distilled spirits. This repeal is effective January 1, 1995. Under GATT 1947, this tax was exempted from GATT national treatment (i.e., non-discrimination) requirements under a "grandfather" provision in the Protocol of Provisional Application. This will no longer be available under the revised GATT rules negotiated during the Uruguay Round, thus requiring the repeal in order to conform to U.S. obligations under the Uruguay Round agreements.

Certain Nonrubber Footwear

(Section 137)

Section 137 provides for the assessment of countervailing duties on certain unliquidated entries of nonrubber footwear from Brazil at rates equal to the estimated duties required at the time of importation. The intent of this provision is to bring the United States into conformity with a GATT dispute settlement panel decision that U.S. collection of countervailing duties on imports of nonrubber footwear from Brazil from January 1, 1980 to October 28, 1981 was inconsistent with U.S. obligations under the GATT.

Effective Date

(Section 138)

Section 138 provides that Subtitle D and the amendments made under it take effect on the date of enactment of this bill, except that sections 132 (rules of origin program) and 135 (objectives for extended negotiations) take effect on the date the WTO Agreement enters into force for the United States, and section 136 (repealing the perfume tax) takes effect on January 1, 1995.

TITLE II—ANTIDUMPING AND COUNTERVAILING DUTY PROVISIONS

Overview of Title II

Title II of S. 2467 amends United States antidumping and countervailing duty laws to bring them into compliance with the Agreement on Implementation of Article VI (Antidumping Agreement) and the Agreement on Subsidies and Countervailing Measures (Subsidies Agreement) negotiated in the Uruguay Round. These new Agreements incorporate and expand upon the existing Anti-

dumping and Subsidies Agreements negotiated during the Tokyo Round of Multilateral Trade Negotiations, which entered into force January 1, 1980.

Subtitle A of Title II includes amendments to both the antidumping and countervailing duty laws to implement the procedural and evidentiary provisions common to both Agreements. Each of the Agreements sets forth in considerable detail a number of due process and transparency requirements that had been one of the principal negotiating objectives of the United States. These procedural improvements were sought by the United States to enable U.S. exporters better to defend themselves against the increasing use of antidumping and countervailing duty actions by other countries. Subtitle A also includes a number of amendments specific to the antidumping law that are designed to implement the new Antidumping Agreement.

Subtitle B amends the countervailing duty laws to conform them with the new Subsidies Agreement, sets forth special transitional rules for certain countervailing duty orders that were imposed under current law without an injury determination, and includes a number of provisions designed to enforce United States rights under the Agreement.

Subtitle C sets forth the effective dates for the provisions in Title II.

SUBTITLE A—GENERAL PROVISIONS

Background on the Antidumping Agreement.—GATT Article VI provides that “dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products, is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry.” More detailed rules governing the application of antidumping measures were first negotiated during the Kennedy Round of multilateral negotiations in 1967; these rules, incorporated in the Agreement on Implementation of GATT Article VI (also known as the GATT Antidumping Code), came into force on July 1, 1968. During the Tokyo Round, the 1968 Antidumping Code was renegotiated and replaced with a new Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. Changes to U.S. law necessary and appropriate to implement the revised Antidumping Code were enacted as part of the Trade Agreements Act of 1979 (1979 Trade Act), and became effective January 1, 1980.

The Uruguay Round negotiations have resulted in a third revision of the Antidumping Agreement; thus Subtitle A of Title II of this bill implements the required changes to U.S. law. In a number of respects, the new Antidumping Agreement is much more detailed than the 1979 Agreement. For example, the provisions of Article 2 on the determination of dumping provide far more detailed requirements than the 1979 Agreement as to the methodology that administering authorities may use to determine the margin of dumping. Similarly, the procedural and evidentiary rules are much more detailed than in the prior Agreement. (As noted above, a number of these procedural and evidentiary requirements are com-

mon to both the Antidumping and Subsidies Agreements; where applicable, amendments to both the antidumping and countervailing duty laws are set forth in Subtitle A to implement these new requirements.)

A number of the provisions in the revised Antidumping Agreement simply reflect current U.S. law or practice. For example, the new Agreement expressly recognizes the U.S. practice of cumulatively assessing the impact on the domestic industry of dumped or subsidized imports. Any many of the procedural and evidentiary requirements set forth in both the Antidumping and Subsidies Agreements mirror current U.S. law or practice.

In other cases, modifications to U.S. antidumping law or practice are required to implement the new Agreement, and these modifications are set forth in this Subtitle. For example, the new Antidumping Agreement provides that, normally, in investigations, average normal values will be compared with average export prices or comparisons will be made on a transaction-to-transaction basis, in contrast to current Department of Commerce (Commerce Department) practice. Similarly, the new Agreement requires the use of actual data when computing profits and selling, general and administrative expenses, and does not permit the use of statutory minima as provided in current law. The Antidumping and Subsidies Agreements set forth definitions of *de minimis* dumping margins and net subsidies, and the Antidumping Agreement includes a definition of negligible imports, which must be incorporated into U.S. law. Both Agreements require the termination of antidumping and countervailing duty orders after five years, unless the authorities determine that revocation of an order would be likely to lead to continuation or recurrence of dumping or subsidization and injury. These changes are described in detail in the section-by-section analysis below.

As a preliminary matter, a number of sections in Title II change the terminology used in existing law to conform to the terminology used in the Agreements. Thus, in the antidumping provisions, the term "export price" replaces the term "purchase price," the term "constructed export price" replaces the term "exporter's sales price," and the term "normal value" replaces the term "foreign market value." In addition, because the Agreements use the term "like product" to refer to both foreign and domestic merchandise, the bill distinguishes between "foreign like product," which replaces the term "such or similar merchandise" (referring to merchandise produced in the foreign country whose exports to the United States are subject to investigation), and "domestic like product," which replaces the term "like product" (which, under U.S. law, refers to U.S. production). And, for ease of reference, in both the antidumping and countervailing duty provisions, what formerly was referred to as the "class or kind" of merchandise subject to investigation or covered by an order is now referred to as the "subject merchandise."

*Reference**(Section 201)*

Section 201 provides that references in this Title are to the Tariff Act of 1930 (1930 Tariff Act) unless otherwise expressly provided.

*Action with Respect to Petitions**(Section 211)*

Section 211 implements the provisions of the Subsidies and Antidumping Agreements relating to the period before a countervailing duty or antidumping investigation is initiated. Article 11.5 of the Subsidies Agreement and Article 5.5 of the Antidumping Agreement require the authorities to avoid publicizing petitions before investigations are actually initiated. Article 5.5 of the Antidumping Agreement further requires that, once an investigation has been initiated, the government of the exporting country must be notified. Article 13.1 of the Subsidies Agreement also requires that countries whose exports may be subject to a countervailing duty investigation must be invited to consult with the country considering the countervailing duty action.

To implement these requirements, which are consistent with current Commerce Department and ITC practice, section 211 amends sections 702(b) and 732(b) of the 1930 Tariff Act by adding new paragraphs generally prohibiting the Commerce Department from accepting communications from persons other than domestic interested parties before its initiation decision (except for information relating to the domestic industry's support for a petition and inquiries regarding the status of a proceeding), prohibiting Commerce and the ITC from disclosing information with respect to draft petitions, and requiring that countries named in petitions be notified when a petition is filed. In the case of countervailing duty petitions, section 211(a) also requires the Commerce Department, when a petition is received, to provide the exporting country with an opportunity to consult.

*Petition and Preliminary Determination**(Section 212)*

Section 212 makes a number of substantive and conforming amendments to sections 702(c) and 732(c) of the 1930 Tariff Act regarding the Commerce Department's review of antidumping and countervailing duty petitions and its determination whether to initiate an investigation.

Accuracy and adequacy of evidence.—Articles 11.3 of the Subsidies Agreement and 5.3 of the Antidumping Agreement require the authorities to examine the accuracy and adequacy of the evidence provided in a petition to determine whether it is sufficient to justify initiation of an investigation. Largely codifying current Commerce practice, the revisions to sections 702(c) and 732(c) implement these articles by requiring the Commerce Department to examine, on the basis of readily available sources, the accuracy and adequacy of the evidence set forth in a petition. Commerce will

complete this examination before it determines, as required under current law, whether the petition otherwise alleges the elements necessary for the imposition of a countervailing or antidumping duty, and contains information reasonably available to petitioners supporting the allegation.

Determination of industry support for petition.—Section 212(a) amends sections 702(c) and 732(c) to reflect the new requirement, set forth in Article 11.4 of the Subsidies Agreement and Article 5.4 of the Antidumping Agreement that antidumping and countervailing duty investigations may not be initiated unless the authorities have determined that a petition has been filed “by or on behalf of a domestic industry.” Under the Agreements, this test is met if the authorities determine that domestic producers accounting for more than 25 percent of total domestic production of the like product expressly support the petition and that, of those producers expressing a view, more producers support than oppose the petition.

Amended sections 702(c) and 732(c) enact the Agreements’ industry support requirements as statutory provisions. New subsections 702(c)(4)(A) and 732(c)(4)(A) provide that Commerce will determine that a petition has been filed by or on behalf of a domestic industry if producers or workers supporting the petition account for at least 25 percent of total production and that, of those producers or workers expressing a view, more than half support the petition. In regional industry cases, Commerce will determine support for a petition based on production in the region concerned. These provisions also clarify that workers and management will have equal voice with respect to the initiation of an antidumping or countervailing duty investigation; workers, as well as companies, may file and support petitions. The Committee intends that, if workers and management of the same firm express opposing views with respect to a petition, the firm and the production it represents would not be counted as expressing either support for or opposition to the petition.

In determining the degree of industry support, amended subsections 702(c)(4)(B) and 732(c)(4)(B) require the Commerce Department to disregard the position of domestic producers opposed to the petition if such producers are related to a foreign producer of the merchandise that would be subject to investigation, unless the domestic producers can demonstrate to the Commerce Department that their interests as domestic producers would be adversely affected by the imposition of an antidumping or countervailing duty order. The Committee believes that this provision is necessary to ensure that foreign producers, who would not normally be expected to support a petition, are not allowed to prevent investigations from going forward simply by directing or encouraging (implicitly or explicitly) their affiliates in the United States to oppose a petition. At the same time, the Committee recognizes that there may be circumstances in which a domestic producer related to a foreign producer nonetheless assesses its interests principally from the viewpoint of its U.S. operations. In such cases, it would be appropriate for the Commerce Department to take into account the views of that domestic producer, even if that producer opposes the petition. The Committee would expect that related domestic producers demonstrate to the Commerce Department how an order resulting

from an investigation would damage the domestic production operations of the producer. Since it would normally be expected that an order would benefit domestic producers at the expense of foreign producers, when there is a relationship between the two producers and the domestic producer opposes an investigation, the Commerce Department needs to be satisfied that the opposition is based on the effect of an order on domestic rather than foreign production interests.

These amendments also give the Commerce Department the discretion to disregard the position of domestic producers who are also importers of the subject merchandise. The Committee does not intend that the Commerce Department establish a "bright-line" test for determining whether it is appropriate to exclude importers who are also domestic producers. Rather, the Committee expects Commerce to look at the relevant facts in each case, examining, for example, the volume and value of the producer's imports, the percentage of that producer's production accounted for by imports, and other relevant factors.

Under new subsections 702(c)(4)(D) and 732(c)(4)(D), if the petition on its face does not establish that it is supported by domestic producers or workers accounting for more than 50 percent of total domestic production, Commerce will poll the industry or otherwise determine whether the support requirements have been met. Commerce may use sampling techniques where the number of producers is too large to make the polling of each one practicable. Interested parties will be allowed to comment and provide information on the question of industry support, but once Commerce makes its initiation determination, the question of industry support shall not be reconsidered. (The Committee notes, however, that Commerce's authority to terminate an investigation or suspended investigation or revoke an order in cases where producers accounting for substantially all production of the domestic like product express a lack of interest in the continuation of the investigation or order is unaffected by this provision; that authority is codified in section 231 of this implementing bill, which creates new section 782(h) of the 1930 Tariff Act.)

Amended subsections 702(c)(1) and 732(c)(1) provide that Commerce's normal 20-day deadline for initiation may be extended by up to 20 additional days in exceptional circumstances if Commerce is unable to determine industry support within the initial 20-day period. However, the Committee expects that, in the vast majority of cases, Commerce will be able to make its support determination within the initial period. Where that deadline cannot be met, the Committee expects that the determination will be made as soon thereafter as possible. The Committee expects that Commerce will seldom require the full 40-day period to make its support determination.

As provided in amended sections 702(c)(2) and 732(c)(2), once Commerce has determined that the petition meets the standards set forth in amended sections 702(c)(1) and 732(c)(1) and that the industry support requirements have been met, Commerce will initiate an antidumping or countervailing duty investigation. The Committee expects that, except in exceptional circumstances, investiga-

tions arising from petitions that have been filed on the same day will be initiated on the same day.

To ensure that Commerce and the ITC will have as much time as allowed under current law for their preliminary investigations, section 212(b) of the implementing bill also amends subsections (a), (b), and (c) of sections 703 and 733 to extend the statutory deadlines for preliminary determinations in cases where Commerce has extended the time period for its initiation determination, as provided above. In order to provide the ITC with sufficient time to prepare its opinion in preliminary investigations, section 212 also amends existing sections 703(f) and 733(f) to permit the ITC to transmit its preliminary determination to Commerce not more than five working days after the date on which the ITC's determination is due.

Expedited investigations following revocation of an order or termination of a suspended investigation.—With respect to the time periods for investigations, section 212(a) of the implementing bill also requires Commerce and the ITC to expedite, to the maximum extent practicable, any investigation that is initiated within two years after an antidumping or countervailing duty order has been revoked or a suspended investigation terminated. The Committee believes that this mandate for an accelerated investigation is particularly appropriate where an order has been revoked or a suspended investigation terminated as a result of a five-year (“sunset”) review conducted under new section 751(c), established in section 220 of this bill. The Committee recognizes that the determination required in these sunset investigations is inherently speculative. Thus, it is the Committee's belief that the agencies should, whenever practicable, accelerate new investigations filed with respect to such products.

Termination of investigation if imports are negligible.—Section 212 of the bill also implements Articles 11.9 of the Subsidies Agreement and 5.8 of the Antidumping Agreement, which require immediate termination of an investigation if the authorities determine that imports of the subject merchandise are negligible. Accordingly, the bill amends sections 703(a), 705(b), 733(a), and 735(b) to require the termination of an investigation if the ITC finds, in its preliminary or final determinations, that imports are negligible. The term “negligible” is defined in section 222 of the implementing bill.

In preliminary determinations, amended sections 703(a) and 733(a) require the ITC to base its finding on a determination as to whether there is a reasonable indication that imports are not negligible. The Committee intends that the standard to be used by the ITC in making this determination is the same standard the ITC uses for material injury determinations in preliminary investigations, as set forth in *American Lamb Co. v. United States*, 785 F.2d 994 (Fed. Cir. 1986). The Committee intends that the ITC will be able to use reasonable estimates in calculating import volumes. The Committee does not intend, however, for the ITC to terminate based on negligibility in a preliminary investigation where, for example, appropriate like product designations and thus corresponding import volumes are unclear or uncertain, or imports are close

to the relevant thresholds and data obtained in a final investigation may establish that imports exceed the quantitative threshold.

De Minimis Dumping Margin

(Section 213)

Article 5.8 of the Antidumping Agreement requires the termination of antidumping investigations if dumping margins are found to be *de minimis*, which the Agreement defines as less than two percent. Current Commerce Department regulations regard any margin as *de minimis* if it is less than 0.5 percent. To implement the Agreement's requirement, section 213 adds a new paragraph to sections 733(b) and 735(a) requiring Commerce to disregard (*i.e.*, treat as zero) any weighted average dumping margin that is *de minimis*, defined as less than two percent *ad valorem* or the equivalent specific rate for the subject merchandise. The Committee understands that exporters or producers with *de minimis* margins will be excluded from any affirmative determination.

Consistent with the Agreement, this provision applies only to antidumping investigations, and not to reviews. It is the Committee's expectation that Commerce will continue its present practice of waiving the collection of estimated cash deposits in reviews where the deposit rate is below 0.5 percent *ad valorem*.

Critical Circumstances

(Section 214)

Article 20.6 of the Subsidies Agreement and Article 10.6 of the Antidumping Agreement establish conditions for the retroactive imposition of duties where injury is caused by massive imports of the product under investigation over a relatively short period of time. These provisions are designed to address situations where imports have surged as a result of the initiation of an antidumping or countervailing duty investigation, as exporters and importers seek to increase shipments of the merchandise subject to investigation into the importing country before an antidumping or countervailing duty order is imposed.

Under current law, critical circumstances exist if: (1) Commerce determines that there have been massive imports of the subject merchandise within a relatively short period prior to the suspension of liquidation; and (2) in countervailing duty cases, that the alleged subsidy is inconsistent with the Subsidies Agreement or, in antidumping investigations, that there is a history of dumping or that the importer knew or should have known that the exporter was selling the merchandise at dumped prices. If Commerce determines that critical circumstances exist, the ITC then determines whether retroactive duties are necessary to prevent the recurrence of material injury.

The Subsidies Agreement does not require significant changes in the Commerce Department's determinations in cases where critical circumstances are alleged in countervailing duty cases. However, for antidumping investigations, section 214 of the implementing bill amends section 735(a) of the 1930 Tariff Act to add the requirement that Commerce, consistent with the Antidumping Agreement,

determine whether there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere or whether the importer 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. Section 214 also makes technical changes and other modifications to both the countervailing duty and antidumping duty provisions to conform to the new terminology adopted in this Title.

Section 214 also amends sections 705(b) and 735(b) of the 1930 Tariff Act to clarify that the ITC's final determination, in cases where Commerce has found critical circumstances, will include a finding as to whether the import surge (rather than the failure to provide retroactive relief) is likely to undermine seriously the remedial effects of an antidumping or countervailing duty order. Section 214 also eliminates the references in sections 705(b) and 735(b) to "recurrence of material injury" to avoid confusion with changed circumstances and sunset reviews under section 751 of the 1930 Tariff Act (as amended in section 220 of this implementing legislation), which are fundamentally different inquiries than the critical circumstances determination. In addition, section 214 amends the list of factors, set forth in sections 705(b) and 735(b), that the ITC is to consider in making its critical circumstances determinations. The new factors track more closely the language of the Antidumping Agreement. The Committee notes that the list of factors is illustrative, and not exclusive. The Committee intends that the ITC continue to take into account all relevant factors, including those set forth in current law, where such factors are applicable.

Provisional Measures

(Section 215)

Articles 17.3 of the Subsidies Agreement and 7.3 of the Antidumping Agreement provide that provisional measures (such as the suspension of liquidation and requirements for the posting of a cash deposit or bond) may not be applied earlier than 60 days from the date of initiation of an investigation. Under current law, Commerce must order that liquidation be suspended on all entries of the subject merchandise after the date on which notice of the Commerce Department's affirmative preliminary determination is published in the *Federal Register*. Section 215 amends sections 703(d) and 733(d) of the 1930 Tariff Act to provide that Commerce shall order the suspension of liquidation on or after *the later of* the date on which notice of the preliminary determination is published or the date that is 60 days after the notice of initiation is published in the *Federal Register*.

Section 215 also amends section 703(d) to provide that, as required by Article 17.4 of the Subsidies Agreement, provisional measures may not remain in effect for more than four months. Similarly, section 215 of the implementing bill amends section 733(d), as required by Article 7.4 of the Antidumping Agreement, to provide that provisional measures may not exceed four months; however, as Article 7.4 allows, if exporters representing a significant proportion of exports of the subject merchandise request an

extension, provisional measures in antidumping investigations may be in effect for up to six months.

Finally, section 215 implements Article 10.8 of the Antidumping Agreement, which prohibits the assessment of duties, pursuant to a finding of critical circumstances, on entries made before an antidumping investigation has been initiated. Although the Subsidies Agreement does not include a similar requirement, the Committee believes it is appropriate to provide parallel treatment in this regard to antidumping and countervailing duty investigations. Accordingly, both sections 703(e) and 733(e) are amended to prohibit the retroactive assessment of duties on merchandise entered before an antidumping or countervailing duty investigation is initiated.

Conditions on Acceptance of Suspension Agreements

(Section 216)

Article 18 of the Subsidies Agreement and Article 8 of the Antidumping Agreement set forth specific principles and requirements with respect to "price undertakings," which are called "suspension agreements" under U.S. law. (Under current law, Commerce may suspend an antidumping or countervailing duty investigation if certain conditions, set forth in sections 704 and 734 of the 1930 Tariff Act, are met.)

Current law complies with the requirements of Articles 18 and 8, except in one respect. Articles 18.3 of the Subsidies Agreement and 8.3 of the Antidumping Agreement both state that price undertakings need not be accepted. In such cases, both Articles provide that, where practicable, the authorities should explain to the exporter the reasons for not accepting the undertaking and, to the extent possible, give the exporter an opportunity to comment. Section 216 implements these requirements by amending sections 704(d) and 734(d) of the 1930 Tariff Act to require explanations and an opportunity for comment, to the extent possible, where Commerce has declined to accept a suspension agreement.

Termination of Investigation

(Section 217)

The new Agreements expressly authorize the longstanding ITC practice of cumulating the impact of imports from multiple countries when determining whether or not a domestic industry has been injured or is threatened with material injury. Articles 15.3 of the Subsidies Agreement and 3.3 of the Antidumping Agreement set forth the specific principles and requirements for cumulation. Implementation of these articles requires substantive changes to U.S. law, which are provided for in section 222 of this implementing bill.

One of the requirements is that imports may be cumulated only if they are simultaneously subject to investigation. Accordingly, section 222 provides for cumulation of imports from all countries with respect to which antidumping or countervailing duty petitions were filed on the same day, if certain conditions are met.

Section 217 complements section 222. If a petitioner decides, after an investigation has been initiated, that it wants to file peti-

tions against other countries and seek cumulation of those imports with imports subject to a pending investigation, the petitioner may withdraw the petition in the pending investigation and then file a new petition that includes imports from additional countries. This option to withdraw and refile is already allowed under current law.

Section 217 amends sections 704(a) and 734(a) to authorize Commerce and the ITC to use the record compiled in the initial investigation in the second investigation. To prevent abuse, however, this provision applies only to the first withdrawal of the initial petition and only to new petitions refiled within three months of the withdrawal of the initial petition.

Special Rules for Regional Industries

(Section 218)

Article 16.2 of the Subsidies Agreement and Article 4.1 of the Antidumping Agreement permit the term “domestic industry” to be defined, in exceptional circumstances, as the production within a specific region of a country, if certain conditions are met. So-called “regional industry” cases are otherwise generally subject to the same rules that apply to investigations involving domestic producers as a whole. Section 218 clarifies the application of certain rules—relating to suspension agreements and to new shippers to a region—in regional industry cases.

Suspension agreements in regional industry cases.—Section 218(a) amends sections 704 and 734 of the 1930 Tariff Act to clarify that, as required by Articles 16.3 of the Subsidies Agreement and 4.2 of the Antidumping Agreement, exporters to the region in question must be given an opportunity to enter into suspension agreements if, because of the constitutional law of a WTO Member, duties cannot be applied solely on imports that enter the region concerned. The United States Constitution does not allow differential duty treatment based on ports. Accordingly, the amendments to sections 704 and 734 require Commerce to offer exporters who account for substantially all exports of the subject merchandise for sale in the region concerned an opportunity to enter into a suspension agreement. This requirement parallels the requirements for suspension agreements that apply in all other cases.

Regional suspension agreements are subject to all of the requirements imposed under sections 704 and 734 with respect to suspension agreements in general, with one exception. New subsections 704(l) and 734(m) provide that, if the ITC does not find that a regional industry exists until its final determination, exporters to the region may enter into a suspension agreement within 60 days after an antidumping or countervailing duty order has been issued. In such cases, Commerce must rescind the order, refund any cash deposits, release any bond or other security that has been deposited, and order the Customs Service to liquidate all entries of the merchandise made while the order was in effect without regard to antidumping duties.

Assessment of duties in regional industry cases.—In addition, section 218(b) amends sections 706 and 736 of the 1930 Tariff Act to provide that, to the maximum extent possible, duties shall be assessed only on the merchandise of the specific exporters or produc-

ers that exported to the region in question during the period of investigation. If new shippers enter the regional market after an antidumping duty has been imposed, new sections 706(c) and 736(c) require the deposit of estimated duties on the merchandise of the new shipper. However, the procedures set forth in new section 751(a)(2)(B), created in section 222 of this bill, will enable the shipper concerned to request an accelerated administrative review.

Determination of Weighted Average Dumping Margin

(Section 219)

Article 6.10 of the Antidumping Agreement sets forth a general rule that individual dumping margins should be calculated for each known exporter or producer. If, however, the number of producers, exporters, importers, or products is so large that an individual determination would not be practicable, Article 6.10 allows the authorities to limit their examination to a reasonable number of parties or products or to the largest percentage of exports that can reasonably be investigated. In such cases, an "all others" rate, based on the individual rates that have been calculated, will apply to the parties for which individual dumping margins have not been calculated.

Section 219 amends sections 733 and 735 of the 1930 Tariff Act, adding new paragraphs that require the Commerce Department, consistent with its current practice, to determine an estimated weighted average dumping margin for producers and exporters individually investigated and an estimated "all others" rate for those not individually investigated, and to order the posting of a cash deposit, bond or other security for each entry of the subject merchandise in the amount of the individual dumping margin or the all-others rate, whichever applies.

Article 9.4 of the Antidumping Agreement provides that the "all others" rate may not exceed the weighted average dumping margin of the producers for which margins were individually calculated, and provides that, in determining the "all others" rate, any zero and *de minimis* margins, as well as margins established using the facts available (sometimes referred to as "best information available") must be disregarded. To implement this requirement, section 219(b) amends section 735(c) by adding a new paragraph 735(c)(5) setting forth the prescribed method for calculating the "all others" rate. In the event, however, that all of the individual dumping margins are zero, *de minimis*, or entirely determined using "best information available," new paragraph 735(c)(5) permits Commerce to use any other reasonable method to establish the "all others" rate.

Review of Determinations

(Section 220)

Section 220 makes a number of amendments to section 751 of the 1930 Tariff Act, which governs reviews of outstanding antidumping and countervailing duty orders and suspension agreements.

Administrative Reviews

Under section 751(a), the Commerce Department conducts administrative reviews for the purpose of examining prior entries to establish the final liability for antidumping and countervailing duties on each entry of merchandise subject to an antidumping or countervailing duty order. Section 220(a) of this bill amends section 751(a) in three major respects.

Deadlines for administrative reviews.—First, Article 9.3.1 of the Antidumping Agreement establishes deadlines for administrative reviews (normally 12 months, and in no case more than 18 months), and requires prompt refunds after final liability is determined. Accordingly, section 220(a) of this implementing bill amends section 751(a) to provide that Commerce must make a preliminary determination in an administrative review within 245 days of the order and a final determination within 120 days after such preliminary determination. If it is not practicable to complete the review within those time limits, the date for the preliminary determination may be extended by 120 days and the date for the final determination by 60 days.

The Committee intends that Commerce complete its administrative reviews as quickly as possible, so that final liability for antidumping and countervailing duties can be promptly determined. The Committee does not intend that Commerce extend the deadlines for its administrative review determinations in every case. Rather, the Committee believes that the agency should extend the deadlines only in the most pressing circumstances, taking into account the complexity of the review in question and such external factors as the agency's workload. Where an extension is necessary, the Committee does not expect that Commerce will consume the full six additional months in every case. Rather, it is the Committee's intent that Commerce complete its reviews at the earliest possible time, while still ensuring that the results are accurate.

Section 220 further provides that any liquidation of entries ordered after a review will be made promptly (to the greatest extent practicable, within 90 days). If not made within 90 days, the Secretary of the Treasury must provide an explanation if requested. If a final determination is under litigation, Commerce must publish notice in the *Federal Register* of the final disposition of the review within 10 days after final disposition of the case and issue appropriate liquidation instructions to Customs. In such cases, the 90-day period for refunds will begin on the day such instructions are issued. Section 220(c) of the implementing bill makes conforming changes to section 504 of the 1930 Tariff Act, which establishes the general rules governing the liquidation of entries.

Accelerated reviews of new shippers.—Section 220(a) also implements Article 9.5 of the Antidumping Agreement, which calls for an accelerated review of new shippers who did not export the subject merchandise to the importing country during the period of investigation. Section 220(a) amends section 751(a)(2)(B) of the 1930 Tariff Act to require Commerce, if requested by a new producer or exporter unaffiliated with any producer or exporter that has exported merchandise to the United States (or, in regional industry cases, to the region concerned), to initiate a review to determine an individual dumping margin or countervailing duty rate for that

new shipper. The review will begin promptly after the six-month anniversary of the order, or at the end of the next six-month period thereafter, depending on when the request for the review was made. The Committee believes that this schedule should permit Commerce to consolidate new shipper reviews, thus conserving resources.

Amended section 751(a)(2)(B) further requires that cash deposits, bonds, or other security, at the importer's option, be posted until the review is completed. The preliminary determination in a review of a new shipper must be made within 180 days, and the final within 90 days after the preliminary; these dates may be extended by 120 days for the preliminary and by 60 days for the final determination in extraordinarily complicated cases.

Examination of duty absorption in administrative reviews.—Finally, section 220(a) mandates special determinations regarding the absorption of antidumping duties. Duty absorption may occur when a foreign producer or exporter and its affiliated importer elect to continue past sales practices and pay the consequent dumping duty rather than reduce or eliminate the dumping. In such circumstances, the remedial effect of an antidumping order may be undermined, compared to the effect obtained when sales are to unaffiliated importers. Section 220(a) amends section 751(a) to require Commerce, if requested, during the second and fourth administrative reviews, to determine whether antidumping duties have been absorbed by a foreign producer or exporter whose merchandise is sold in the United States through a related importer. Commerce will then notify the ITC of its findings and the ITC will be required to take these findings into account when conducting its five-year (“sunset”) review, as described below.

Changed Circumstances Reviews

Articles 21.2 of the Subsidies Agreement and 11.2 of the Anti-dumping Agreement call for a review, upon request providing positive information substantiating the need for review, of outstanding antidumping and countervailing duty orders or suspension agreements. The administering authorities are to determine whether dumping or subsidization and injury would be likely to continue or recur if the duty were revoked or the suspended investigation terminated. These “changed circumstances” reviews are implemented in U.S. law by section 751(b) of the 1930 Tariff Act. Section 751(b) provides that, whenever Commerce or the ITC receives information that shows changed circumstances sufficient to warrant a review of affirmative final determinations, the agency shall conduct such a review.

Section 220 amends section 751(b) to clarify the types of determinations and suspension agreements that are subject to these changed circumstances reviews. In addition, to implement Articles 21.2 and 11.2 of the Subsidies and Antidumping Agreements, respectively, amended section 751(b) incorporates a new substantive standard for ITC reviews. The amendment, which the Committee understands is consistent with current ITC practice, requires the ITC to determine whether revocation of an antidumping or countervailing duty order or termination of a suspended investigation would be likely to lead to continuation or recurrence of material in-

jury. With respect to suspension agreements, the ITC will, as under current law, determine whether a suspension agreement continues to eliminate completely the injurious effects of imports of the subject merchandise. As under current law, the party seeking revocation of an order or termination of a suspended investigation bears the burden of persuasion with respect to whether there are changed circumstances sufficient to warrant revocation or termination, as the case may be. Amended section 751(b) retains the provision in current law preventing changed circumstances reviews less than 24 months after notice of an order or a suspension agreement is published.

Sunset Reviews

Articles 21.3 of the Subsidies Agreement and 11.3 of the Anti-dumping Agreement provide for the termination of countervailing duty or antidumping duty orders after five years, unless the authorities determine that revocation of the duty would be likely to lead to continuation or recurrence of subsidization or dumping and injury. Section 220(a) implements these requirements by amending section 751 of the 1930 Tariff Act to establish procedures for these new five-year ("sunset") reviews.

New section 751(d)(2) requires Commerce to revoke an order or terminate a suspended investigation after five years unless Commerce determines that dumping or a countervailable subsidy would be likely to continue or recur and the ITC determines that injury would be likely to continue or recur. Amended section 751(c) establishes the procedures for ITC and Commerce sunset reviews. These provisions are described below.

Automatic initiation of sunset reviews.—Amended section 751(c) requires Commerce and the ITC to conduct a "sunset" review every five years after the date of publication of: an antidumping or countervailing duty order; an injury determination in a countervailing duty proceeding under new section 753 (as established in section 271 of this bill); notice of acceptance of a suspension agreement; or a determination to continue an order or suspension agreement following a prior sunset review or changed circumstances review. The substantive standards for ITC and Commerce reviews are set forth in new section 752 of the 1930 Tariff Act, enacted in section 221 of this bill, as described below.

Under amended section 751(c), Commerce will publish, at least 30 days before the end of the fifth anniversary of the order, agreement or determination, a notice of initiation in the Federal Register requesting interested parties to provide a statement of their willingness to participate in a sunset review by providing information requested by Commerce and the ITC, a statement of the likely effects of revocation or termination, and industry data or other information requested by the agencies. The Committee expects that, normally, Commerce will initiate reviews shortly before the 30-day period begins. However, the Committee intends that, under this provision, Commerce will have the discretion to initiate reviews earlier if requested to do so by the petitioner. It is the Committee's view that this should provide a mechanism for consolidating the reviews of orders or suspended investigations that would not other-

wise be grouped together, in the interests of minimizing the costs to all interested parties and promoting administrative efficiency.

Revocation or termination for non-response or inadequate response to notice of initiation.—Amended section 751(c) further provides that, if no domestic interested parties respond to the notice, Commerce will issue, within 90 days, a final determination revoking the order or terminating the suspended investigation in question. If the responses to the notice are inadequate, Commerce and the ITC may issue a final determination based on the facts available. In such cases, Commerce's determination is due within 120 days after the initiation of a review and the ITC's determination within 150 days after initiation. The Committee intends that the two agencies evaluate independently the adequacy of responses and whether to issue a determination based on the facts available without further fact-gathering, since each agency will be relying on different information from different sources to conduct its reviews. Moreover, it is the Committee's expectation that the agencies will approach these expedited reviews with caution. The standard for judging the adequacy of information should not be so high as to lead the agencies to disregard fairly complete information submitted by parties clearly willing to participate. In cases where some, but not all, interested parties respond to the notice of initiation, the Committee intends that Commerce and the ITC carefully evaluate the shares of the market represented by the responding parties in deciding whether the responses are adequate to warrant a full-fledged review. The Committee does not intend to establish a strict numerical test for determining adequacy. Rather, the agencies should evaluate the responses on a case-by-case basis. In sunset reviews of countervailing duty proceedings, the Committee notes that the participation of the foreign government in question is essential. If that government does not indicate a willingness to participate and provide requested information, the Committee intends that the Commerce Department should make its determination based on the evidence provided by the domestic industry.

Waiver of participation in Commerce sunset reviews.—Amended section 751(c) allows certain parties (foreign producers, importers, the exporting country) to elect to participate in the ITC's review, but not in Commerce's review. If any party exercises this waiver option, Commerce will conclude, with respect to that party, that revocation of an order or termination of a suspended investigation would be likely to lead to continuation or recurrence of dumping or subsidization, as the case may be. The Committee has made this option available in an effort to reduce the burden on all parties.

Time limits for standard sunset reviews.—In cases other than those in which a sunset review has been truncated for lack of response or inadequate response or in which a party has exercised the waiver option described above, Commerce must make its determination within 240 days of initiation. If Commerce's determination is affirmative, the ITC must make its final determination within 360 days after initiation. These periods may be extended by up to 90 days in extraordinarily complicated reviews, which, as defined in revised section 751(c), include those involving a large number of issues or firms, complex issues, "grouped" reviews, or "transition" orders (as described below).

The implementing bill authorizes the ITC, in consultation with Commerce, to group orders together if grouping is appropriate and will promote administrative efficiency. It is the Committee's view that the ITC, where appropriate, should group together reviews of the same domestic like products. The Committee believes that the ITC should also have the discretion to group together reviews involving related like products or the same or related producers. With respect to the first sunset review conducted after the WTO enters into force for the United States, the Committee expects the ITC, given the vast number of orders to be reviewed, to group orders together to the maximum extent possible. Where reviews have been grouped, the ITC's final determination will be made not later than 120 days from the date that Commerce has issued its final determinations with respect to the last order or agreement in that group; a 90-day extension is permitted in extraordinarily complicated reviews.

Transition period.—Section 220 establishes, in new section 751(c)(6) of the 1930 Tariff Act, a special procedure for reviews of orders that are in effect as of the date of entry into force for the United States of the WTO. Such orders are deemed, pursuant to this new section, to be imposed on that date. Section 751(c)(6) provides that these transition reviews shall be initiated no earlier than 18 months before their fifth year anniversary and completed no later than 18 months after that anniversary, and that no such order shall be terminated before the end of the fifth year. Commerce, in consultation with the ITC, will determine the sequence of transition reviews. Section 220 of the implementing bill provides that, normally, older orders will be reviewed first.

Judicial review of sunset determinations.—Section 220(b) of this bill amends section 516A of the 1930 Tariff Act to provide that final determinations in sunset reviews based on no or inadequate responses from interested parties will be subject to judicial review (or, in the case of goods from Canada or Mexico, binational panel review) under an "arbitrary or capricious" standard. (Reviews based on a full investigation are reviewable under the "substantial evidence" standard.)

Review Determinations

(Section 221)

Section 221 creates new section 752 of the 1930 Tariff Act, as amended, which sets forth the standards to be applied by Commerce and the ITC in conducting changed circumstances reviews under section 751(b) and sunset reviews under section 751(c). These sections set forth the substantive standards that each agency will apply in conducting the reviews required by Articles 21.2 and 21.3 of the Subsidies Agreement and Articles 11.2 and 11.3 of the Antidumping Agreement.

Standards for ITC Sunset Reviews

General considerations.—New section 752(a) establishes the standards that the ITC will apply in conducting its sunset and changed circumstances reviews. The Committee recognizes that these inquiries are inherently speculative and acknowledges that

such predictive inquiries may suggest a number of possible outcomes. Accordingly, the possibility that there are other likely outcomes does not mean that an ITC determination that revocation or termination would be likely to lead to continuation or recurrence of injury is erroneous, as long as the determination is reasonable in light of the facts in each review.

Under new section 752(a), the ITC is required to determine whether the revocation of an antidumping or countervailing duty order or the termination of a suspended investigation would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Committee intends that this standard apply in all reviews, regardless of the nature of the ITC's original determination. That is, whether the original determination is based on a finding of material injury, threat of material injury, or material retardation of an industry, the same standard—the likelihood of material injury—will apply in sunset and changed circumstances reviews. The Committee intends that this same standard apply as well to investigations that were suspended because of the acceptance of a suspension agreement and never completed.

The Committee notes that the standard set forth in new section 752(a) for sunset and changed circumstances reviews is not the same standard as that employed by the ITC in making its determinations of material injury or threat of material injury. In the material injury analysis, the ITC is required to look at whether there is current material injury by reason of the subject imports. In its threat analysis, the ITC examines whether, given the status quo, material injury is imminent. Under the likelihood of continuation or recurrence of material injury standard that will be employed in sunset and changed circumstances reviews, the ITC must decide the likely impact, in the reasonably foreseeable future, of an important change in the status quo—the revocation of an antidumping or countervailing duty order or the termination of a suspended investigation.

Consideration of prior injury determinations.—In making its determination, section 752(a)(1) requires the ITC to consider the likely volume, price effects, and impact of imports on the domestic industry if the order is revoked or the suspended investigation terminated. In doing so, the ITC must take into account a number of considerations. Section 752(a)(1)(A) requires the ITC to consider its prior injury determinations, if any, including the volume, price effect, and impact of imports on the industry before the order was issued or the suspension agreement accepted. The Committee believes that this is an important consideration since this is the most recent period in which imports of the merchandise under review competed in the U.S. market free of the discipline of an order or a suspension agreement. The Committee intends that, if the ITC finds that the conditions that led to the initial finding of material injury, threat, or material retardation are likely to recur, it would be reasonable for the ITC to conclude, in its sunset or changed circumstances reviews, that there is a likelihood of continuation or recurrence of material injury. The Committee notes that another provision of this bill, included in section 226, should assist the ITC in its analysis; that provision expressly allows certain proprietary information originally submitted to the ITC in connection with an in-

vestigation or review to be used in connection with sunset or changed circumstances reviews involving the same merchandise.

Improvements in the state of the industry.—Section 752(a)(1)(B) requires the ITC to consider whether any improvement in the state of the industry is related to the existence of the order or the suspension agreement. The Committee believes that this is an important inquiry. An antidumping or countervailing duty order or suspension agreement is expected to have a beneficial effect on the domestic industry. The Committee does not, therefore, believe that the ITC should find that there is no likelihood of continuation or recurrence of material injury simply because the industry has improved after an order was imposed or a suspension agreement accepted. Moreover, an improvement in the condition of the industry after an order is imposed or a suspension agreement is accepted may indicate that the industry is likely to deteriorate if the order is revoked or the suspended investigation terminated.

Industry vulnerability.—Under section 752(a)(1)(C), the ITC is instructed to consider whether the industry is vulnerable to material injury if the order is revoked or the suspended investigation terminated. The term “vulnerable” relates to susceptibility to material injury by reason of dumped or subsidized imports. The Committee notes that the concept of “vulnerability” is derived from existing standards for material injury and threat of material injury. In material injury determinations, the ITC considers other factors, in addition to imports, that may be contributing to overall injury. These other factors may account for the injury, but they may also demonstrate that an industry is facing difficulties from a number of sources and is vulnerable to dumped or subsidized imports. In threat determinations, the ITC assesses current trends and competitive conditions in the marketplace to determine the probable future impact of imports on the domestic industry and whether it is vulnerable to future harm.

Similarly, under new section 752(a)(1)(C), if an industry is in a weakened state at the time of a changed circumstances or sunset review, the Committee intends that the ITC should consider whether the condition of the industry will deteriorate further upon revocation of an order or termination of a suspended investigation. The ITC should also consider whether the industry’s weakened state could be due to the ineffectiveness or circumvention of an antidumping or countervailing duty order or suspension agreement.

Consideration of duty absorption.—New section 752(a)(1)(D) requires the ITC, in sunset reviews of orders or suspension agreements arising out of antidumping investigations, to take into account certain findings of the Commerce Department regarding the absorption of antidumping duties. This requirement arises out of the concern that, in some cases, importers affiliated with exporters or producers of dumped merchandise, may pay the antidumping duty after imposition of an order rather than eliminate the dumping, thus insulating the first unrelated buyer in the United States from the effects of an antidumping order. The Committee notes that current Commerce Department regulations prohibit exporters or producers from paying directly or reimbursing unrelated importers for antidumping duties.

Section 220(a), described above, requires the Commerce Department, if requested to do so in its second and fourth administrative reviews, to determine whether antidumping duties have been absorbed by a foreign producer or exporter whose merchandise is sold in the United States through a related importer. Commerce must then notify the ITC of its findings.

Under new section 752(a)(1)(D), established in section 221 of the implementing bill, the ITC must take these findings into account. The Committee believes that the extent of duty absorption is relevant to both the Commerce Department's and the ITC's analysis in sunset reviews. With respect to the Commerce Department's analysis, duty absorption is a strong indicator that current dumping margins may not be indicative of the margins that would exist if an order were lifted. Similarly, with respect to the ITC's analysis, duty absorption may indicate that a producer or exporter may be able to market more aggressively if an order is lifted as a result of a sunset review. The Committee believes that it would be helpful to the ITC's analysis for the Commerce Department's findings on duty absorption to include, to the extent practicable, some indication of the magnitude of the absorption.

This provision is intended to deter absorption of antidumping duties. Those exporters or producers who absorb duties will encounter an additional hurdle in sunset reviews that will make it more difficult to obtain revocation of an order or termination of a suspended investigation.

Evaluation of import volume, price effects and impact on domestic industry.—New section 752(a)(2) sets forth the factors that the ITC will consider in evaluating the likely volume of imports if an order is revoked or a suspension agreement terminated. These, as well as the factors set forth in new sections 752(a)(3) and (4) relating to the price effects and impact of imports on the domestic industry, parallel the factors that the ITC considers in its standard material injury analysis. In evaluating whether the likely volume of imports would be significant if the order were revoked, new section 752(a)(2) requires the ITC to consider all relevant economic factors, including any likely increase in production capacity or existing unused capacity in the exporting country; existing inventories of the product or likely increases in such inventories; the existence of barriers to importation of the product into other countries; and the potential for product-shifting if facilities in the foreign country that can be used to make the product are currently being used for other products.

As set forth in new section 752(a)(3), in evaluating the likely price effects of imports, the ITC will consider whether there is likely to be significant price underselling by imports of the product and whether such imports are likely to have significant price depressing or price suppressing effects on domestic like products. In evaluating the likely impact of imports on the domestic industry, new section 752(a)(4) requires the ITC to consider all relevant economic factors likely to have a bearing on the state of the industry, including likely declines in output, sales, market share, profits, productivity, return on investments, and capacity utilization; likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and likely negative effects

on existing development and production efforts. The ITC must evaluate all relevant economic factors within the context of the business cycle and the conditions of competition distinctive to the affected industry.

New section 752(a)(5) provides that the presence or absence of any factor shall not necessarily give decisive guidance with respect to whether material injury is likely to continue or recur. In making a determination whether material injury is likely to continue or recur within a reasonably foreseeable time, the ITC is to consider that the effects of revocation may not be imminent, but may only manifest themselves over a longer period.

Magnitude of the margins of dumping or subsidization.—Under new section 752(a)(6), the ITC is also authorized to consider the magnitude of the dumping or subsidy margin and information regarding the nature of the subsidy in determining whether injury is likely to continue or recur in the event of revocation of an order or termination of a suspended investigation. Because the expertise with respect to the determination of the margins of dumping and subsidization resides with the Commerce Department, and not the ITC, the Committee intends that the ITC, if it chooses to consider the margins, use only those provided to it by Commerce, as provided in new sections 752(b) and (c).

Cumulation in sunset reviews.—New section 752(a)(7) allows the ITC to assess cumulatively the volume and effects of imports of the product from all countries as to which sunset reviews were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the U.S. market. However, the ITC may not cumulatively assess imports if it determines that they are likely to have no discernible adverse impact on the industry. The Committee believes that it is appropriate to preclude cumulation where imports are likely to be negligible. However, the Committee does not believe that it is appropriate to adopt a strict numerical test for determining negligibility because of the extraordinary difficulty in projecting import volumes into the future with precision. Accordingly, the Committee believes that the “no discernible adverse impact” standard is appropriate in sunset reviews. The Committee recognizes that the Commerce Department will control the date of initiation of sunset reviews, and hence could preclude cumulation simply by initiating reviews of the same products from different countries on different days where there are no legitimate reasons for doing so. The Committee intends to monitor Commerce Department practice closely to ensure that such manipulation does not occur.

Sunset reviews in regional industry cases.—In regional industry cases, new section 752(a)(8) allows the ITC to base its determination on the regional industry in the original investigation, on another region that satisfies the statutory criteria, or on the United States as a whole. The ITC is not bound by any determination it may have made in its original investigation regarding the existence of a regional industry. The Committee believes that this flexibility is required because the imposition of an antidumping or countervailing duty order or acceptance of a suspension agreement may have affected the marketing and distribution of the product in question.

Standards for Commerce Reviews

Likelihood of continuation or recurrence of subsidies.—New section 752(b) sets forth the standards Commerce will apply in determining the likelihood of continuation or recurrence of a countervailable subsidy after revocation of a countervailing duty order or termination of a suspended investigation. In conducting its reviews, Commerce will consider: (1) the net countervailable subsidy margin determined in the investigation and subsequent reviews; and (2) whether there has been any change in the subsidy program that is likely to affect the magnitude of the net countervailable subsidy. If good cause is shown, Commerce will also consider: (1) programs found countervailable in other proceedings to the extent those programs potentially can be used by the companies subject to review, and they did not exist at the time the order was issued; and (2) newly alleged subsidy programs, but only to the extent Commerce makes an affirmative subsidy determination concerning such programs and the producers subject to review.

It is the view of the Committee that Commerce should give significant weight to the continuation of a subsidy program. In most cases, Commerce should find that, where such programs continue, countervailable subsidies would be likely to continue or recur if an order is revoked. Commerce should also give significant weight to the temporary suspension or partial termination of a subsidy program absent significant evidence to the contrary. Normally, these circumstances would support a determination that subsidization is likely to continue or recur in the absence of the discipline of an order.

Likelihood of continuation or recurrence of dumping.—In sunset reviews of antidumping duty orders or suspension agreements, section 752(c) directs Commerce to consider the relationship between dumping margins and import volumes both before and after an antidumping order was issued or a suspension agreement accepted. It is the view of the Committee that declining import volumes, accompanied by the continued existence of dumping margins after the issuance of an order, may provide a strong indication that, if the order is revoked, dumping would be likely to continue. In contrast, the Committee notes that where dumping margins have declined or no dumping margins are found and imports are steady or increasing, dumping might be less likely to continue or recur if the order were revoked. In addition, section 752(c) provides that, if good cause is shown, Commerce must also consider other relevant price, cost, market, or economic factors.

Submission to ITC of dumping and subsidy margins.—Under new sections 752(b)(3) and (c)(3), Commerce must provide the ITC with the margins of dumping or net subsidies that are likely to prevail if an order is revoked or a suspended investigation terminated. Normally, Commerce will choose a dumping margin or net countervailable subsidy that was found in the final determination, in the original investigation, or in an administrative review.

Zero or de minimis margins.—New sections 752(b)(4) and (c)(4) provide that a subsidy or dumping margin that is zero or *de minimis* shall not by itself require Commerce to determine that there is no likelihood of continuation or recurrence of dumping.

*Definitions**(Section 222)*

Section 222 sets forth a number of new definitions applicable to Title VII proceedings. Some of the definitions reflect substantive requirements of the Subsidies and Antidumping Agreements. Others clarify terms used throughout Title VII. The key terms are described in detail below.

Industry; related parties.—Section 222(a) modifies the definitions of “industry” and “related party” in several respects. Of greatest significance, this section amends section 771(4)(B) of the 1930 Tariff Act to conform the definition of “related parties” to Article 16.1 (note 48) of the Subsidies Agreement and Article 4.1 (note 11) of the Antidumping Agreement.

Under current law, Commerce and the ITC have the discretion to exclude related parties from the domestic industry. Domestic producers that are related to exporters or importers or are themselves importers of the allegedly dumped or subsidized merchandise are considered “related” under current law. Section 222(a) amends current law to codify the definition of related parties provided in Articles 16.1 and 4.1 of the Subsidies and Antidumping Agreements. Section 771(4)(B) as amended provides that a producer and an exporter or importer are related if the producer directly or indirectly controls either the exporter or the importer; the exporter or the importer directly or indirectly controls the producer; a third party directly or indirectly controls the producer and exporter or importer; or 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 an unrelated producer would act. As provided in the Agreements, direct or indirect control is established if a party is legally or operationally in a position to exercise restraint or direction over the other party.

Section 222(a) also amends the definition of “industry” to strike the special reference to wine and grape products which, by its terms, expired October 1, 1986.

Regional industries.—As noted above, Articles 16.2 of the Subsidies Agreement and 4.1 of the Antidumping Agreement permit the authorities to base their analyses on regional industries, rather than an industry in the country as a whole, if, among other things, there is a concentration of dumped or subsidized imports into an isolated market. These provisions are implemented in U.S. law by section 771(4)(C) of the 1930 Tariff Act. Section 222(a)(2) amends section 771(4)(C) by defining the term “regional industry” to mean the domestic producers within a region who are treated as a separate industry under section 771(4)(C).

With respect to the concentration of dumped or subsidized imports, the Committee expects that concentration will be found to exist if the ratio of the subject imports to consumption is clearly higher in the regional market than in the rest of the U.S. market and if such imports into the region account for a substantial proportion of total subject imports entering the United States. In this regard, the Committee does not intend that there be a “benchmark” proportion of imports that enter the region relative to imports that

enter the United States, either eighty percent or any other percentage, which is applicable in every case, and below which the ITC cannot determine that imports are concentrated. *Mitsubishi Materials Corp. v. United States*, 820 F. Supp. 608, 614–615 (Ct. Int'l Trade 1993). Rather, concentration should be assessed on a case-by-case basis, and no “precise mathematical formula [is] reliable in determining the minimum percentage which constitutes sufficient concentration because cases before the [ITC] are likely to involve different factual circumstances.” *Id.*, (quoting *Certain Steel Wire Nails from the Republic of Korea*, Inv. No. 731–TA–26 (Final), USITC Pub. 1088 (Aug. 1980) at 11 (citations omitted).)

ITC consideration of the magnitude of the margin of dumping.—Article 3.4 of the Antidumping Agreement requires the authorities, in making their injury determinations in antidumping investigations, to consider all relevant economic factors, including the magnitude of the margin of dumping. Section 222(b)(1) amends section 771(7)(C)(iii), which sets forth the factors the ITC must evaluate in examining the impact of imports on the domestic industry. The amendment modifies the list of factors to incorporate the magnitude of the margin of dumping. This amendment is not intended to alter the requirement in current law that none of the factors the ITC evaluates is necessarily dispositive in its material injury analysis.

Captive production.—Section 222(b)(2) of the implementing bill further amends section 771(7)(C)(iii) by replacing clause (iv) relating to cumulation with a special provision regarding captive production. (The standards and conditions for cumulation are set forth in section 222(e) of this bill.)

Under current law, the ITC is directed to evaluate all relevant economic factors within the context of the business cycle and conditions of competition that are distinctive to the domestic industry. In that connection, section 222(b)(2) adds a new provision to section 771(7)(C) to address situations in which vertically integrated U.S. producers sell a significant volume of their domestic production to U.S. customers (*i.e.*, the merchant market) and internally transfer a significant volume of their production of that same product for further internal processing into a distinct downstream article (*i.e.*, captive production). In such circumstances, amended section 771(7)(C)(iv) directs the ITC, in determining market share and the factors affecting financial performance of the domestic industry, to focus primarily on the merchant market for the product in question if certain conditions are met. These conditions are that: (1) the domestic like product produced that is internally transferred for processing into the downstream article does not enter the merchant market for the domestic like product; (2) the domestic like product is the predominant material input in the production of the downstream article; and (3) the production of the domestic like product sold in the merchant market is not generally used in the production of that downstream article.

Where the captive production provision applies, the Committee intends that the ITC focus primarily on the merchant market in analyzing the market share and various factors relating to the financial performance of the domestic industry. This does not require the ITC to focus exclusively on the merchant market in its analysis

of market share and financial performance. In the view of the Committee, the basis for this analysis is the recognition that, in such a captive production situation, the imports compete primarily with sales of the domestic like product in the merchant market, not with the inventory internally transferred for processing into a separate downstream article. The Committee believes that this provision is fully consistent with the Antidumping and Subsidies Agreements.

The Committee intends that the terms "captive production," "merchant market" sales, and "downstream article" be defined in the following manner. "Captive production" refers to production of the domestic like product that is not sold in the merchant market and that is processed into a higher-valued downstream article by the same producer. Selling in the "merchant market" refers to sales of the domestic like product to unrelated customers. A "downstream article" is an article distinct from the domestic like product but is produced from that product; it is not necessarily a "downstream product" within the meaning of section 780(d). The Committee expects the ITC to determine on a case-by-case basis whether the volume sold in the merchant market and internally transferred is significant. Captive production and merchant sales are significant if they are of such magnitude that a more focused analysis of market share and financial performance is needed for the ITC to obtain a complete picture of the competitive impact of imports on the domestic industry.

As amended section 777(7)(C)(iv) states, the captive production provision is applicable if the ITC, in addition to finding that the volumes of the domestic like product sold in the merchant market and transferred internally for processing into a distinct downstream article are significant, also finds that three other conditions, as described above, are met.

With respect to the second condition, the domestic like product should be considered "predominant" only where it is the primary material used in the production of a downstream article. Under the third condition, the production of the domestic like product sold in the merchant market will be considered "generally used in the production of that downstream article" if a significant portion of the production that enters the merchant market is actually processed into the same downstream article as that produced from the internally-transferred captive production. Whether the domestic like product sold in the merchant market is physically capable of being processed into the same downstream article (or some other downstream article) is not relevant. Rather, the ITC should consider whether the production sold in the merchant market is actually used in the production of the same downstream article.

In cases in which this captive production provision applies, the ITC must determine the extent to which the imports of the subject merchandise by a related party are sold in the merchant market or captively consumed by the related-party importer in the production of a downstream article. Imports which are sold in the merchant market should be included in the import penetration ratio for the merchant market. Imports which are captively consumed by the related-party importer for processing into a downstream article should be included in the import penetration ratio for the merchant market only if the imports compete with sales of the domestic like

product. If such imports do not compete with sales of the domestic upstream like product in the merchant market, the ITC shall include such imports in the total import share of the industry's total production, but not in the import penetration ratio for the merchant market or in any other calculation in which captive domestic production is excluded.

The Committee intends that this captive production analysis have no effect on the ITC's like product analysis. The ITC retains its discretion, in appropriate circumstances, to find that upstream and downstream articles constitute a single like product, and that integrated producers participate in a single industry. In such circumstances, the captive production provision would have no application.

Treat of material injury.—Articles 15.7 of the Subsidies Agreement and 3.7 of the Antidumping Agreement set forth the standards for analyzing whether a domestic industry is threatened with material injury by reason of dumped or subsidized imports and a number of specific factors the investigating authorities should take into account. Section 222(c) of the implementing bill amends section 771(7)(F) of the 1930 Tariff Act to conform U.S. law to the Agreements' requirements.

Amended section 771(7)(F)(i) revises and expands the list of factors the ITC must consider in its threat analysis. Several factors in existing law are amended slightly to track more closely the language of Articles 15.7 and 3.7. For example, the provision regarding inventories, in amended section 771(7)(F)(i)(V), requires the ITC to consider "inventories of the subject merchandise," in contrast with the requirement in current law referring solely to inventories in the United States. This change is intended to make it clear that the ITC will consider inventories of the subject merchandise, wherever they are located. The Agreements' lists of threat factors are illustrative, and not exclusive. Accordingly, amended section 771(7)(F)(i) retains additional factors currently set forth in the law that are not expressly mentioned in the Agreements. The Committee intends that the ITC take all of these factors into account in making its determination of threat of material injury.

Section 222(c) also amends section 777(7)(F)(ii) to revise the general standards governing the ITC's threat analysis; these changes have been made to parallel the language of the Agreements. No substantive change in the ITC's analysis is intended. The amendments merely clarify that the ITC must consider the factors noted above as a whole in making its determination 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 accepted. Further, as the Agreements require, the presence or absence of any factor the ITC is required to consider shall not necessarily give decisive guidance. And, as under current law, the ITC's threat determinations must not be made on the basis of mere conjecture or supposition.

Negligible imports.—Articles 11.9 and 27.10 of the Subsidies Agreement and Article 5.8 of the Antidumping Agreement require immediate termination of antidumping or countervailing duty investigations if imports are found to be negligible, as defined in those Articles. Section 222(d) of the implementing bill amends sec-

tion 771 to add the definitions of “negligible” imports prescribed in the Agreements.

First, section 222(d) repeals the definition of “negligible imports” found in section 771(7)(C)(v). Under current law, the inquiry as to whether imports are negligible arises only when the ITC cumulatively assesses the impact of imports from two or more countries whose products are subject to investigation at the same time. This limitation in current law is not consistent with the new Agreements.

Second, section 222(d) amends the 1930 Tariff Act to add a new section, 771(24), which incorporates the Agreements’ definitions of negligible imports in antidumping and countervailing duty investigations. New section 771(24) establishes the general rule, as set forth in Article 5.8 of the Antidumping Agreement, that imports from a particular country are negligible if they account for less than three percent of total imports of the product in question. The Committee notes that, although the Subsidies Agreement does not include the numerical tests for negligible imports set forth in the Antidumping Agreement, the Committee nonetheless believes it is appropriate, for administrative consistency, to apply the tests in both antidumping and countervailing duty investigations.

The new provision requires the ITC to measure negligibility based on import data available for the most recent 12-month period preceding the filing of a petition or the self-initiation of an investigation. In computing import volumes, new section 771(24)(C) recognizes that data presented in questionnaire responses may be incomplete or that official import statistics may not conform precisely to the domestic like product. Accordingly, this new section expressly permits the ITC to make reasonable estimates on the basis of available statistics. The Committee does not intend to mandate any particular method for estimating the share of total imports held by each subject country. If official statistics concern a basket tariff provision broader than the like product, the ITC may make estimates that are, for example, derived from import data obtained from importers of the foreign like product from countries that are subject to investigation. While the ITC may choose, where appropriate, to seek data from importers that import from countries not subject to investigation, it is not required to do so.

Consistent with the Agreements, new section 771(24)(A)(ii) provides an exception to the general rule for negligibility: Imports from countries that, individually, account for less than three percent of total imports, but collectively account for more than seven percent of total imports, will not be considered negligible. New section 771(24)(A)(iii) requires the ITC, when aggregating imports from the countries under investigation, to disregard imports from countries whose imports may not be cumulatively assessed, as provided in section 222(e) of the implementing bill.

New section 771(24)(A)(iv) addresses the issue of imports that may “potentially” exceed the negligibility thresholds. Under this new provision, the ITC may not treat imports as negligible if it determines that there is a potential that imports from a country will imminently account for more than three percent (or that aggregate volumes of imports from all such countries will imminently exceed seven percent) of total imports. The ITC may consider such imports only for purposes of determining threat of material injury. Accord-

ingly, if the ITC finds that imports are negligible during the 12-month period examined, but are increasing at such a rate as to indicate that they are likely to exceed imminently the negligibility threshold, the ITC must not find that such imports are negligible. The ITC may not make a material injury determination on the basis of such imports, but shall consider them only in the context of an inquiry as to whether a domestic industry is threatened with material injury.

Article 27.10 of the Subsidies Agreement provides for more liberal treatment for imports from developing countries. Imports from an individual developing country are considered negligible if they are less than four percent of total imports (rather than three percent). But if imports from developing countries individually accounting for less than four percent are collectively more than nine percent (rather than seven percent), they will not be considered negligible. New section 771(24)(B), which will apply to countervailing duty investigations, implements these requirements. The Committee intends that the Trade Representative will designate the countries that are to be considered "developing countries" for purposes of this subsection.

Finally, new section 771(24) clarifies that, in regional industry cases, the basis for determining negligibility will be the volume of merchandise exported for sale in the region.

Cumulation.—Articles 15.3 of the Subsidies Agreement and 3.3 of the Antidumping Agreement explicitly recognize that investigating authorities may cumulatively assess the impact on the domestic industry of imports that are the subject of different antidumping or countervailing duty petitions if certain conditions are met. Cumulation is authorized only if imports are simultaneously subject to investigation, the margins of dumping or subsidization determined with respect to the imports are greater than *de minimis*, and a determination is made that cumulative assessment is appropriate in light of the conditions of competition between the imported products and between the imported products and the domestic like product. (The term *de minimis* is defined in section 213 of the implementing bill for purposes of antidumping investigations and in section 263 for purposes of countervailing duty investigations.)

Under current U.S. law (section 771(7)(C)(iv) of the 1930 Tariff Act), the ITC is required to assess cumulatively the volume and price effects of imports from two or more countries if such imports are subject to investigation and compete with each other and with the domestic like product unless the ITC determines that such imports are negligible and have no discernible adverse impact on the domestic industry. Thus, U.S. law, as well as ITC practice, is largely consistent with the Agreements' requirements. Nonetheless, the Committee believes that it is desirable to modify the current standards for cumulation to implement fully Articles 15.3 and 3.3 of the Subsidies and Antidumping Agreements, respectively.

Section 222(e) amends section 771(7) of the 1930 Tariff Act by striking the current standards for cumulation in material injury determinations (cumulation in threat of material injury determinations is discussed below) and adding a new subparagraph (G). These modifications require the ITC to assess cumulatively the vol-

ume and effect of imports from all countries with respect to which petitions were filed on the same day or investigations were self-initiated by the Commerce Department on the same day. Cumulation is also required for imports with respect to which petitions were filed and investigations self-initiated on the same day. Under new subparagraph (G), cumulation is conditioned on a finding that imports compete with each other and with domestic like products in the U.S. market. This provision is not intended to change current ITC practice regarding its analysis of the conditions of competition in the context of cumulation.

The new cumulation provision retains the exceptions to cumulation that are found in current law. These are set forth in amended sections 771(7)(G)(ii)(III) and (IV). Section 771(7)(G)(ii)(III) provides that, for purposes of making determinations with respect to countries that are beneficiaries under the Caribbean Basin Economic Recovery Act, imports from such countries may be cumulated only with imports from other beneficiary countries. Section 771(7)(G)(ii)(IV) provides that imports from Israel shall not be cumulated with imports from other countries unless the ITC first determines that a domestic industry is materially injured or threatened with material injury by reason of imports from Israel. (The statutory provision refers to any country that is a party to a free trade area with the United States that entered into force before January 1, 1987; Israel is the only country to which this designation applies.)

Two new exceptions to cumulation are also set forth in amended section 771(7)(G)(ii). These new provisions, amended sections 771(7)(G)(ii)(I) and (II), prohibit cumulation: (1) of imports with respect to which Commerce has made a negative preliminary determination, unless Commerce subsequently makes a final affirmative determination before the ITC's final determination; and (2) of imports that are the subject of investigations that have been terminated. This second new exception implements the Agreements' requirements, in Articles 15.3 of the Subsidies Agreement and 3.3 of the Antidumping Agreement, that imports that are negligible or *de minimis* may not be cumulated.

In order to comply with the Agreements' mandate that cumulation is permissible only with respect to imports that are simultaneously subject to investigation, the amendments to section 771(7)(G) require the ITC to make its determinations, in cases where imports have been cumulated, based on the record compiled in the first investigation in which it makes a final determination. It is the view of the Committee that this should eliminate the need for the ITC to consider whether imports from the first-decided investigation that are subject to antidumping or countervailing duty orders have a continuing effect on imports covered by the subsequent investigations at the time the ITC makes its decisions in those subsequent investigations. However, the parties to each subsequent case will be permitted to comment on the significance of Commerce's final determination regarding dumping or subsidization, and the final record in the subsequent cases will include the final Commerce determination and any comments submitted in connection with that finding.

Consistent with the Agreements' requirements for regional industry cases, amended section 771(7)(G)(iv) provides that cumulation will be based on the volume and effects of imports into the region or regions concerned.

New section 771(7)(H) concerns cumulation in threat of material injury determinations. This new section preserves the discretion in current law (found in section 771(7)(F)(iv), repealed by this implementing bill) permitting the ITC to assess cumulatively the volume and price effects of imports that compete with each other and with domestic like products. As is the case with respect to cumulation in material injury cases, imports may be cumulated only if they are the subject of petitions that were filed the same day, investigations that were self-initiated on the same day, or petitions filed and investigations self-initiated on the same day.

These changes to the standards for cumulation do not affect the discretion the ITC currently exercises with respect to its consideration of prior unfair imports. The Committee fully intends that the ITC will retain the discretion to consider whether such prior unfair imports have rendered the domestic industry more vulnerable to injury by reason of the dumped or subsidized imports currently under investigation.

Post-petition information.—Section 222(f) of the bill adds a new section 771(7)(I), relating to the consideration of post-petition information. Under this new section, the ITC is required to consider whether any change in the volume, price effects, or impact of imports of the subject merchandise since the filing of the petition is related to the pendency of the investigation. If so, the ITC may reduce the weight accorded to the data in making its injury determination.

The mere filing of an antidumping or countervailing duty petition can have a significant effect in the market by, for example, suppressing demand for the imports covered by the petition, causing import volumes to fall. Similarly, and particularly after the imposition of provisional duties, there can be price effects on both imports and on the domestic like product. As a consequence, there may be improvements in the condition of the domestic industry that are due solely to the pendency of an investigation. It is reasonable for the ITC to presume that changes in the condition of the industry, or the volume and price effects of imports that occur in the period following the filing of a petition, are due to the pendency of the investigation and, accordingly, in the absence of sufficient evidence rebutting that presumption and establishing that such change is related to factors other than the pendency of the investigation, discount the weight accorded to that data.

Interested parties.—Articles 12.9 of the Subsidies Agreement and 6.11 of the Antidumping Agreement identify those parties that each WTO Member must consider an "interested party" for purposes of antidumping and countervailing duty investigations. U.S. law conforms to the definition in all respects except one: Currently, trade associations of exporters or producers are not considered "interested parties." Accordingly, section 222(g) of the implementing bill amends section 771(9) of the 1930 Tariff Act to incorporate associations of exporters or producers into the definition of "interested party."

Ordinary course of trade.—Under Article 2.1 of the Antidumping Agreement, dumping is measured by comparing the export price of a product with the comparable price of the like product, in the ordinary course of trade, in the market of the exporting country. Article 2.2.1 further provides that certain below-cost sales may be treated as not being in the ordinary course of trade.

Section 222(h) of the implementing bill amends the current definition of “ordinary course of trade,” in section 771(15) of the 1930 Tariff Act, to require Commerce to consider two types of transactions as outside the ordinary course of trade. These are below-cost sales disregarded pursuant to Article 2.2.1 (as further elaborated in section 224 of the implementing bill) and certain transactions between affiliated parties that are, because of the unreliability of certain cost elements in these transactions, disregarded for purposes of calculating constructed value or cost of production. (The provision regarding transactions between affiliated parties is currently set forth in current law at section 773(e)(2) of the 1930 Tariff Act and, in its amended form, is included in section 224 of this implementing bill, as section 773(f)(2).)

The Committee does not intend that these two types of transactions will be the only types of transactions considered to be outside the ordinary course of trade. Rather, they are illustrative of the types of transactions that Commerce may find to be outside the ordinary course of trade. In appropriate circumstances, the Committee expects Commerce, consistent with its current practice, to exclude as outside the ordinary course of trade merchandise sold at unusual prices or sold pursuant to unusual terms of trade, as well as merchandise sold to unusual product specifications. The Committee believes that Commerce should avoid basing normal value on sales that are extraordinary for the market in question, since this could affect the “fair comparison” required by Article 2.4 of the Antidumping Agreement.

Other definitions.—Section 222(i) of the implementing bill further amends section 771 of the 1930 Tariff Act to set forth additional definitions of a number of key terms used throughout Title VII. Three of these, in particular, bear comment.

(1) *Exporter or producer.*—Section 222(i)(1) adds section 771(28) to define the term “exporter or producer” to include, where appropriate, both the exporter and producer of the merchandise subject to an antidumping proceeding. This definition is intended to clarify that, consistent with current Commerce practice, where different firms perform the production and selling functions, Commerce may include the costs, expenses and profits of each firm in calculating cost of production and constructed value as provided for in section 773 of the 1930 Tariff Act (as amended by section 224 of this implementing bill).

(2) *Affiliated parties.*—The Subsidies and Antidumping Agreements, in Articles 16.1 and 4.1, respectively, use the term “related parties” in the context of determining whether a specific producer should be considered part of the domestic industry. For purposes of U.S. law, to avoid confusion with other circumstances in which the relationship between parties is relevant, this bill adopts the term “related parties” to refer to those situations contemplated by Articles 16.1 and 4.1. Accordingly, section 222(a) of this bill, as de-

scribed above, incorporates the Agreements' definition of "related parties" by amending section 771(4)(B) of the 1930 Tariff Act. For other circumstances in which the relationship between parties is relevant, the bill adopts the term "affiliated parties." Section 222(i) defines the term "affiliated parties" by adding a new section, section 771(33), to the 1930 Tariff Act.

The new definition is based on current section 773(e)(4) of the 1930 Tariff Act. New section 771(33) modifies section 773(e)(4) in the following three respects. First, the term is now "affiliated parties," rather than "related parties." Second, the definition is moved from section 773(e)(4) to section 771, which includes the definitions of other terms used in Title VII. And third, although the definition of "affiliated parties" is largely based on the definition of "related parties" currently set forth in section 773(e)(4), one factor has been added. Consistent with the Agreements, parties are also considered to be affiliated if one person controls any other person. And as prescribed in the Agreements, a person shall be considered to control another if that person is legally or operationally in a position to exercise restraint or direction over that other person.

(3) *Exporter*.—Section 222(i)(2) of the implementing bill repeals the term "exporter" currently found in section (771)(13) of the 1930 Tariff Act. Commerce has used this definition primarily to establish whether an importer is sufficiently related to an exporter or producer as to warrant the use of the exporter's sales price methodology, set forth in current law in section 772(c) of the 1930 Tariff Act. The use of the "constructed export price" methodology (as set forth in section 223 of the bill), which is the successor to the exporter's sales price methodology, turns instead on the "affiliation" between the importer and exporter or producer. Thus, it is the application of the term "affiliated parties," as described above, that will determine the use of the constructed export price methodology. As a consequence, the definition of the term "exporter" is no longer necessary and is repealed.

Export Price and Constructed Export Price

(Section 223)

Article 2.1 of the Antidumping Agreement sets forth the definition of the term "dumping." Under that Article, a product is considered to be dumped, *i.e.*, introduced into the commerce of another country at less than its "normal value," if the "export price" of the product is less than the comparable price of the product sold in the ordinary course of trade in the market of the exporting country. Article 2.2 further specifies how "normal value" is to be determined. Article 2.3 provides that, where there is no export price or in cases where the export price is unreliable because of transactions between related parties, the export price may be constructed on the basis of the sale to the first unrelated purchaser. Article 2.4 requires a "fair comparison" between the export price (or constructed export price) and the normal value and provides that the comparison should be made at the same level of trade, normally at the ex-factory level, and in respect of sales made as nearly as possible at the same time.

These basic requirements have been carried over from the 1979 Antidumping Agreement, and are implemented in U.S. law in sections 772 and 773 of the 1930 Tariff Act, as amended. The new Antidumping Agreement also sets forth in much greater detail the methodology that countries should use to calculate normal value, export price and any necessary adjustments in order to achieve the required "fair comparison." Sections 223 and 224 of this bill amend sections 772 and 773 to bring U.S. antidumping methodology into conformity with the new Antidumping Agreement.

Terminology.—Section 223 of the bill amends section 772 of the 1930 Tariff Act to incorporate the Agreement's terminology and modify the methodology for establishing export price (or constructed export price). Thus, the term "purchase price" under current law becomes "export price" and the term "exporter's sales price" becomes "constructed export price."

Basis for calculation.—As is the case under current law, if the first sale to an unaffiliated purchaser in the United States (or to an unaffiliated purchaser for exportation to the United States) is made by the producer or exporter before the date of importation into the United States, the price of that sale, as adjusted pursuant to section 772(c) (discussed below), becomes the basis for comparison and is called the "export price." If, however, before or after the time of importation, the first sale in the United States to an unaffiliated person is made by (or for the account of) the producer or exporter or by a seller in the United States affiliated with the producer or exporter, that sale will be the basis for the calculation; the price of that sale, as adjusted pursuant to sections 772(c) and (d), discussed below, is the "constructed export price."

Adjustments for export price and constructed export price.—Amended section 772(c) sets forth the adjustments that Commerce must make to both the export price and the constructed export price. Amended section 772(c)(1) provides that the price used to establish the export price or constructed export price will be increased by: (1) the amount of packing costs for shipment to the United States, if such costs are not included in the price; (2) the amount of duty drawback on the export sale (that is, the amount of duties rebated or not collected by reason of the exportation); and (3) the amount of any countervailing duty imposed on the merchandise to offset an export subsidy. These adjustments are identical to the adjustments required in current law, with one exception. Current law, at section 772(d)(1)(C), also requires that Commerce increase the purchase price or exporter's sales price by the amount of any taxes imposed in the country of exportation on the exported merchandise or components thereof which have been rebated (or not collected) by reason of the exportation, but only to the extent that such taxes are added to or included in the price of the foreign like product when sold in the exporting country. The implementing bill, in section 224, requires that these taxes be deducted from normal value; this provision is discussed further below.

Under amended section 772(c)(2), Commerce is required to reduce the prices used to establish export price or constructed export price by the amount of: (1) any transportation, warehousing, and other expenses included in the price that were incurred in bringing the subject merchandise from the original place of shipment in the

exporting country to the place of delivery in the United States; and (2) if included in the price, any export taxes, duty, or other charges imposed by the exporting country. These adjustments are provided for under current law; however, the implementing bill clarifies that the deduction for transportation and other expenses applies to expenses incurred from the *original* place of shipment.

With respect to the reductions in export price or constructed export price that amended section 772(c)(2) requires, the Committee is aware that Commerce, by regulation, deducts from the U.S. price (*i.e.*, export price or constructed export price under the new terminology adopted in this legislation) the amount of any antidumping duty which the producer or reseller pays directly on behalf of the importer or reimburses to the importer. The Committee expects that Commerce will continue to make this deduction. It is the view of the Committee, however, that there is no reason to differentiate between the reimbursement of antidumping duties and the reimbursement of countervailing duties in calculating export or constructed export price in antidumping proceedings. Accordingly, the Committee expects the Commerce Department to amend its regulations to require a reduction in the export or constructed export price for countervailing duties directly paid or reimbursed to importers. With respect to the adjustments required to be made to constructed export price, the Committee is aware that the issue of whether an antidumping duty should also be treated as a cost in exporter's sales price (*i.e.*, constructed export price under the new terminology) cases is currently pending in several cases before the Court of International Trade. The Committee expects the Commerce Department to administer the new law in a manner consistent with final judicial interpretations made in those cases.

Additional adjustments for constructed export price.—As under current law, Commerce will make additional adjustments for constructed export prices. Revised section 772(d) requires Commerce to deduct from the price that is used to establish the constructed export price the amount of the following expenses and profit associated with selling the merchandise in the United States: (1) commissions; (2) expenses that result from and bear a direct relationship to the sale, including credit expenses, guarantees and warranties; (3) any selling expenses that the seller assumes (*i.e.*, pays on behalf of the buyer); (4) any indirect selling expenses; (5) the cost of any further manufacture or assembly in the United States (subject to the special rule established in section 772(e), as amended); and (6) an allowance for profit allocable to the selling, distribution and further manufacture and assembly activities in the United States.

- *Adjustments for commissions, direct and indirect selling expenses and assumptions.*—Amended section 772(d)(1)(A) directs Commerce, as under current law, to deduct commissions incurred in the United States for selling the subject merchandise in the U.S. market. With respect to the deduction for direct selling expenses, amended section 772(d)(1)(B) provides an illustrative list of the types of expenses the Committee expects Commerce will consider to be direct selling expenses. Commerce will deduct these or other eligible expenses, where a deduction is warranted, to the extent that they are incurred after importation into the United States. Under amended section

772(d)(1)(C), Commerce is directed to deduct any selling expenses assumed by the seller. The Committee understands that Commerce currently considers these "assumptions" as direct selling expenses. The addition of this more explicit category in the implementing bill is intended to ensure that these expenses continue to be deducted even though they may in some cases not precisely meet the new definition of "direct" expenses. And amended section 772(d)(1)(D) provides, as under current law, for the deduction of indirect selling expenses. The Committee intends that this category will, as under current practice, encompass those expenses that do not result from, or cannot be tied directly to specific sales, but that may reasonably be attributed to such sales.

- *Adjustments for further manufacture or assembly in the United States.*—Section 223 also revises the required adjustment, provided for in current law in section 772(e)(3) of the 1930 Tariff Act, for any increased value resulting from further manufacture or assembly in the United States after the importation of the merchandise. Amended section 772(d)(2) requires the deduction of the cost of any further manufacture or assembly (including additional material and labor), except in certain circumstances, which are described in amended section 772(e).

Under amended section 772(e), in cases where value is added in the United States by an importer affiliated with the producer or exporter and the value added in the United States is likely to exceed substantially the value of the subject merchandise, Commerce will determine the constructed export price by using either one of the following methods: (1) the price of identical subject merchandise sold by the exporter or producer to an unaffiliated buyer; or (2) the price of other subject merchandise sold by the exporter or producer to an unaffiliated buyer. If there is not a sufficient quantity of sales to provide a reasonable basis for using either of these alternatives or Commerce otherwise determines that neither of these alternatives is appropriate, Commerce may use any other reasonable method to establish the constructed export price.

By making these changes, the Committee intends to simplify the methodology Commerce employs for determining the adjustment for value added in the United States. Under the formulation in current law, Commerce has confronted, in some circumstances, the enormous burden of backing out from the price of a complex finished product all of the value added in the United States to arrive at the constructed export price of a small component that was subject to an antidumping order. In practice, Commerce simply exempted certain imported components from the assessment of antidumping duties. With the new methodology, such exemption will not occur.

Under amended section 772(e), where the value added in the United States by the related importer is likely to exceed substantially the value of the subject merchandise, Commerce will, in all cases, determine the constructed export price using either of the alternatives set forth in the statute, or, if these are not feasible or appropriate, any other reasonable alternative. Any product that is subject to an antidumping order

will be assessed the appropriate duties. The Committee has not established a precise numerical test for determining whether the value added is likely to "exceed substantially" the value of the subject merchandise. However, "exceed substantially" means that the value added in the United States must be substantially more than half of the total price of the merchandise. The Committee intends that the Commerce Department may estimate the value added in the United States to determine whether the test has been met. The Committee further expects that the determination will be made on a case-by-case, product-by-product basis.

- *Deduction for profits.*—Section 223 also adds a new section, 772(d)(3), which requires Commerce to deduct from the starting price in the U.S. market an amount for profit, allocated to the selling, distribution and further manufacturing activities in the United States. This new section, together with amended section 772(d)(2), discussed above, implements an element of Article 2.4 of the Antidumping Agreement. Article 2.4 provides, in pertinent part, that, in cases involving affiliated parties, allowances for costs incurred between importation and resale, and for profits accruing, should be made.

Section 223 adds new section 772(f) to set forth the formula the Commerce Department will use in calculating and allocating the profit. Under this new section, the profit that will be deducted from the starting price in the U.S. (*i.e.*, the price used to establish the constructed export price) will be determined by multiplying the total actual profit by the percentage calculated by dividing total U.S. expenses by total expenses. New section 772(f)(2)(B) defines total U.S. expenses as all of the expenses deducted under new section 772(d)(1) and (2), that is commissions, direct and indirect selling expenses, assumptions, and the cost of further manufacture in the U.S. New section 772(f)(2)(C) establishes a hierarchy of methods for determining total expenses. Total expenses will be the expenses incurred with respect to the production and sale of the subject merchandise sold in the United States and the foreign like product sold in the exporting country if Commerce requested these expenses for purposes of determining normal value and constructed export price (*i.e.*, if Commerce is conducting a cost of production investigation). If Commerce did not request these expenses, then total expenses will be the expenses incurred with respect to the narrowest category of merchandise that includes the subject merchandise and that is sold in both the U.S. and the exporting country. If the data are not available under either of these methods, then the amount for actual expenses will be the expenses incurred with respect to the narrowest category of merchandise that includes the subject merchandise and that is sold in all countries. Total actual profit will be based on whichever category of merchandise is used to determine total expenses.

The Committee expects Commerce, as required by law, to verify the data used to establish the amount of the profit deduction. The Committee urges Commerce to safeguard against the manipulation of profit allocations, particularly where a for-

foreign producer or exporter produces a greater range of products than the product that is the subject of the antidumping investigation. In cases where there is no profit to be allocated (either because profits are zero or the affiliated entity is operating at a loss in the United States and foreign markets), the Committee intends that no adjustment for profit will be made.

It is the Committee's intent that the profit calculation required by new section 772(d)(3), as amplified in new section 772(f), will have no effect on and will bear no relationship to the calculation of transfer prices under section 482 of the Internal Revenue Code.

Normal Value

(Section 224)

Article 2 of the Antidumping Agreement sets forth a number of requirements with respect to the calculation of normal value, which is (1) the price charged on sales of the like product (*i.e.*, merchandise that is like the merchandise subject to an antidumping investigation) in the market of the exporting country (home market), (2) the price charged on sales of the foreign like product in a third country, or (3) constructed. The calculation of normal value is provided for in U.S. law in section 773 of the 1930 Tariff Act. Section 224 of the implementing bill amends section 773 to conform U.S. methodology to the requirements of the Agreement.

Fair comparison.—Amended section 773(a) incorporates the requirement of Article 2.4 of the Antidumping Agreement that a fair comparison be made between the export price or constructed export price and the normal value. In order to achieve this fair comparison, amended section 773(a) specifies the prices that will be used as the starting point for the calculation of normal value and enumerates the adjustments to that starting point that Commerce will make.

General rule for establishing normal value.—As under current law, normal value will be established at a time reasonably corresponding to the time of the sale used to establish the export price or constructed export price in question. This general rule, set forth in amended section 773(a)(1), conforms to the Agreement's requirement in Article 2.4 that the comparison between export price and normal value shall be in respect of sales made as nearly as possible at the same time.

Articles 2.1 and 2.2 of the Antidumping Agreement specify the sales that should be used to establish normal value. Article 2.1 establishes a preference for the use of home market sales. Amended section 773(a)(1)(B) implements this preference; it provides that the price used to establish normal value should be the price at which the foreign like product is sold for consumption in the home market, in the usual commercial quantities, 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.

Market viability.—Article 2.2 recognizes, however, that the home market may not always be a viable market for purposes of comparison; in such cases, it should not be used for determining normal value. Under Article 2.2, when there are no sales of the like prod-

uct in the ordinary course of trade in the home market, or, because of the particular market situation or the low volume of sales in the home market, such sales do not permit a proper comparison, normal value may be established by using either sales to a third country or by constructing the value of the product.

New section 773(a)(1)(C) implements the Agreement's home market viability test. This new subparagraph further provides that, as set forth in Article 2.2., note 2, home market sales will normally be considered insufficient if the quantity (or value) of such sales is less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

If Commerce determines that the home market is not viable, new section 773(a)(1)(B)(ii) permits Commerce to determine normal value in a third country. In order to ensure, however, that the third country market is a viable market, a viability test similar to that used for home market sales is applied. Third country sales may be used if the price at which the merchandise is sold in that market is representative, the aggregate quantity (or value, if quantity is not appropriate) is five percent or more of the aggregate quantity (or value) of sales to the United States, and Commerce does not determine that the particular market situation in that third country prevents a proper comparison.

These new viability requirements change current U.S. law in several important respects. Under current law, home market viability is determined by comparing the volume of home market sales to the volume of sales to countries other than the United States. Under these new provisions, viability will be measured by comparing home market sales with sales to the United States. And under current law, if the home market is not viable, normal value may be established by using collective sales to multiple third countries. Under Article 2.2, as implemented in new section 773(a)(1)(B)(ii), normal value may only be established by using sales to a single third country.

Fictitious markets and pretended sales.—Section 224 of the implementing bill, in amended section 773(a)(2), consolidates the provisions of current law regarding fictitious markets (found in current law in section 773(a)(5)) and pretended sales (found in current law in section 773(a)(1)). No substantive changes to these provisions are intended.

Intermediate country reseller.—Article 2.5 of the Antidumping Agreement provides that, in cases where products are imported from an intermediate country, rather than directly from the country of origin, normal value will normally be based on the comparable price in the intermediate country. However, Article 2.5 provides an illustrative list of circumstances in which normal value may be based on the country of origin. These circumstances include, for example, situations in which goods are merely transshipped through the country of export; such goods are not produced in the country of export; or there is no comparable price for them in the country of export.

In current law, under section 773(f) of the 1930 Tariff Act, normal value is presumed to be based on the country of origin unless certain conditions are met. Article 2.5 presumes that normal value will be based on the intermediate country, unless certain cir-

cumstances arise. Section 224 of the implementing bill redesignates and revises section 773(f) as amended section 773(a)(3) to conform U.S. law to the requirements of Article 2.5.

Amended section 773(a)(3) identifies four situations in which normal value will be determined in the country of origin, rather than in the intermediate country. Two of these situations are taken directly from the provisions of Article 2.5: The subject merchandise is merely transshipped through the intermediate country; or the foreign like product is not produced in the intermediate country.

The third situation identified in amended section 773(a)(3) is that the sales in the intermediate country do not satisfy the market "viability" conditions established in new section 773(a)(1)(C), that is, there are no sales of the foreign like product in the intermediate country; the quantity of such sales is insufficient (normally less than five percent of sales to the United States) to permit a proper comparison; or the particular market situation in the intermediate country otherwise does not permit a proper comparison. This provision is derived from Article 2.5, which permits the establishment of normal value in the country of origin if there is "no comparable price" in the intermediate country.

Amended section 773(a)(3) provides a fourth circumstance where it may be proper to establish normal value in the country of origin rather than the intermediate country: When the producer knew at the time of the sale that the subject merchandise was destined for exportation. This paraphrases the requirement in current law that Commerce may base normal value on sales in the intermediate country only if the producer in the country of origin did not know that the seller intended to export the merchandise to the intermediate country. The Committee believes that the circumstance described in amended section 773(a)(3) may be an appropriate circumstance in which to base normal value in the country of origin, rather than the intermediate country, since the producer, knowing that the merchandise is to be exported, might sell at a lower price than if the merchandise is intended for domestic consumption. In such circumstances, the Committee does not believe that it would be proper to base normal value on intermediate country prices, which may be dumped prices. The Committee expects that Commerce will make its "knowledge" determination based on all relevant evidence.

Use of constructed value to determine normal value.—As under current law (section 773(a)(2)), the bill (amended section 773(a)(4)) allows Commerce, in lieu of using third country sales, to construct the normal value of the merchandise. The Committee intends that, as is presently the case, Commerce may use either third country sales or constructed value to establish normal value.

Indirect sales or offers for sale.—Section 224 of the bill incorporates the provisions of current law, at section 773(a)(3), regarding indirect sales and offers for sales. The bill renumbers this provision—it becomes amended section 773(a)(5)—and makes technical and conforming changes to reflect the terminology of the Agreement. No substantive changes are intended.

Adjustments to normal value.—The implementing bill, in new section 773(a)(6), sets forth the general adjustments to normal value that Commerce is required to make. Under these provisions,

Commerce must increase normal value by the amount of U.S. packing costs. In addition, Commerce must, when included in the price used to establish normal value, deduct: (1) the cost of packing for shipment in the exporting country or to a third country; and (2) transportation, warehousing, and other expenses incurred in bringing the merchandise from the original place of shipment in the exporting country to the place of delivery in the exporting country or a third country. The deduction provided for in (2) is intended to mirror the deduction of movement charges from export price and reflects the requirement of Article 2.4 of the Antidumping Agreement, which calls for a comparison of prices normally at the ex-factory level. Current law does not explicitly provide for this deduction.

In addition, normal value will be reduced, in new section 773(a)(6)(iii), by the amount of any indirect taxes imposed on the foreign like product or components thereof that have been rebated (or not collected) on the subject merchandise, but only to the extent that such taxes are actually included in the price of the foreign like product. This constitutes a change from the existing statute (section 772(d)), which provides for an adjustment to export price, rather than an adjustment to normal value, for these indirect taxes.

Article 2.4 of the Antidumping Agreement further requires that "due allowance" be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical differences and any other differences that are also demonstrated to affect price comparability. Section 224 implements this requirement by revising and renumbering the existing provision covering such adjustments (section 773(a)(4)). New section 773(a)(6)(C) requires Commerce to make appropriate adjustments to normal value (increasing or decreasing the price, as appropriate) to account for any difference (or lack of difference) between normal value and the export price or constructed export price that is wholly or partly due to differences in quantities, physical characteristics, or other differences in the circumstances of sale. This new section expressly precludes the double-counting of adjustments.

Level of trade adjustment and constructed export price offset.—Article 2.4 of the Antidumping Agreement calls for the comparison between export price and normal value to be made at the same level of trade. That same Article further provides that, where a constructed export price is used, and the adjustments that are made to establish that constructed export price have affected price comparability, the authorities should establish normal value at a level of trade that is equivalent to the level of trade of the constructed export price, or make due allowance as warranted.

To implement these requirements, section 224 first creates section 773(a)(7)(A) providing for level of trade adjustments. Under this new provision, Commerce is directed to increase or decrease normal value to make due allowance for any difference (or lack of difference) between normal value and export price or constructed export price that is shown to be due wholly or partly to a difference in level of trade. To avoid double counting, however, this new section expressly precludes level of trade adjustments to account for differences for which an allowance has already otherwise been

made. In order to qualify for such a level of trade adjustment, the differences in levels of trade must (1) involve the performance of different selling activities, and (2) be demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at the different levels of trade in the country in which normal value is established.

The Committee intends that Commerce make level of trade adjustments only when both of the above conditions are satisfied. The Committee expects Commerce to investigate carefully to determine whether, in fact, different selling activities are performed at the different levels and that there are consistent, observable and quantifiable price differences between sales at the different levels in the home or third country markets. If, for example, the performance of different selling activities suggests that there are different levels of trade, but the data do not establish a pattern of consistent price differences, no adjustment should be made. Where a level of trade adjustment is appropriate, new section 773(a)(7)(A) provides that the amount of the adjustment will be based on the price differences between the two levels in the country in which normal value is determined.

In certain circumstances, where normal value is clearly established at a level of trade that is 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 quantify the level of trade adjustment, new section 773(a)(7)(B) requires Commerce nonetheless to make an offsetting adjustment. Where warranted, this adjustment, the constructed export price offset, requires Commerce to reduce normal value by the amount of indirect selling expenses incurred in the country in which normal value is established, subject to a limit. The limit is the amount of indirect selling expenses deducted from the constructed export price.

Neither the level of trade adjustment nor the constructed export price offset should be made where Commerce is able to compare sales at the same level of trade. Consistent with Article 2.4, which requires that price comparisons be made at the same level of trade, Commerce should, to the extent practicable establish normal value based on home market or third country sales at the same level of trade as the constructed export price or the starting point for the export price. Only if Commerce is unable to do so is a level of trade adjustment or constructed export price offset warranted. This statutory scheme is designed to ensure that a proper comparison is made.

Adjustments to constructed value.—In cases where normal value is based on constructed value, new section 773(a)(8) authorizes Commerce to make appropriate adjustments to constructed value. The Committee intends that Commerce will make any such adjustments under the same conditions as under current law.

Below-cost sales.—Article 2.2.1 of the Antidumping Agreement provides that below-cost sales of the foreign like product may be disregarded in determining normal value if certain conditions are met. These conditions are that such sales are made within an extended period of time in substantial quantities and at prices which do not provide for the recovery of all costs within a reasonable period of time. Article 2.2.1 further provides that if prices which are

below per unit costs at the time of sale are above weighted average per unit costs for the period of investigation, such prices will be considered to provide for the recovery of costs within a reasonable period of time. Two footnotes to this Article further elaborate on certain of the conditions. Footnote 4 to Article 2.2.1 provides that the extended period of time should normally be one year, but in no case less than six months. Footnote 5 provides that below-cost sales are made in substantial quantities where the weighted average selling price of the transactions under consideration for the determination of normal value is below the weighted average per unit cost or where the volume of sales below per unit costs is at least 20 percent of the total volume of transactions under consideration.

For the most part, Article 2.2.1 is based on U.S. law, which currently provides for the exclusion of below-cost foreign market sales as a basis for determining normal value. Section 773(b) of the 1930 Tariff Act provides that home market sales or sales to third countries are to be disregarded in calculating foreign market value if they have been made at prices less than the cost of production, if such below-cost sales have been made: (1) over an extended period of time; (2) in substantial quantities; and (3) at prices that do not permit recovery of all costs within a reasonable period of time. With respect to the consideration of "substantial quantities," current Commerce Department practice is to disregard below-cost sales if they constitute 10 percent or more of the sales under consideration. And with respect to the definition of an extended period of time, current Commerce practice is generally to disregard below-cost sales if these have been made in three of six months.

Section 224 of this bill amends certain elements of section 773(b) to incorporate the specific requirements of Article 2.2.1. The amendments to section 773(b) provide, as required by the Agreement, that below-cost sales must have been made "within" an extended period of time in substantial quantities (rather than "over an extended period of time" as provided in current law). And amended section 773(b) also incorporates the definition of "extended period of time" provided in Article 2.2.1, *i.e.* a period that is normally one year, but not less than six months. Amended section 773(b) also adopts the definitions of "substantial quantities" and the measurement of cost recovery provided in Article 2.2.1.

Amended section 773(b) retains the requirement in current law that Commerce, whenever it has reasonable grounds to believe or suspect that sales under consideration for the determination of normal value have been made at below-cost prices, should initiate a cost-of-production investigation. Section 224 of this bill amends section 773(b) to define such "reasonable grounds." Under amended section 773(b), Commerce will have reasonable grounds to initiate a cost of production investigation if an interested party provides information, based on observed prices or constructed prices or costs, that sales under consideration have been made at below-cost prices. Observed or constructed prices need not be specific to a particular foreign producer or exporter, but may be derived on a country-wide basis. It is the Committee's intent that this amendment will permit interested parties to make allegations of below-cost sales at the outset of an investigation. The Committee believes that this change will benefit both petitioners and respondents in antidumping inves-

tigations, since the earlier initiation of an investigation will give all parties greater opportunities to analyze and comment on the cost-of-production information provided and the Commerce Department's methodology. Section 224 also codifies current Commerce Department practice with respect to cost-of-production inquiries in administrative reviews. Section 224 amends section 773(b) to provide that Commerce will have "reasonable grounds" to initiate a cost of production investigation in an administrative review if Commerce excluded below-cost sales of a particular exporter or producer in the investigation or most recently completed administrative review.

Section 224 further amends section 773(b) to provide that, when Commerce disregards below-cost sales, normal value will be based on the remaining sales of the foreign like product in the ordinary course of trade. If there are no such sales, Commerce will construct the value of the merchandise.

Finally, new section 773(b)(3) specifies how Commerce will calculate the cost of production. This new provision largely codifies the current Commerce Department methodology and parallels the methodology for calculating constructed value, as discussed below.

Special rules for non-market economies and certain multinational corporations.—Section 224 also makes minor modifications to sections 773(c) and (d) of the 1930 Tariff Act, relating, respectively, to non-market economies and to certain multinational corporations. Changes are made to conform the terminology in those sections to the terminology of the new Agreement. In addition, section 773(d) amends the special rule for certain multinational corporations to replace the current home market viability test with the new test set forth in amended section 773(a)(1)(C), as described above. The Committee otherwise intends no substantive changes to either of these provisions.

Constructed value; amounts for selling, general and administrative expenses and for profit.—When home market sales cannot be used as the basis for determining normal value, Article 2.2 of the Antidumping Agreement permits the administering authorities to base normal value on either sales to an appropriate third country or to construct normal value based on the cost of production of the country of origin plus a reasonable amount for administrative, selling and general costs and for profits. Article 2.2.2 further provides that the amounts for administrative, selling and general costs and for profits must be based on actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation. If these amounts cannot be determined on that basis, the administering authorities may base the amounts on any of the following: (1) the same exporter's or producer's actual costs and profits with respect to home market sales of the same general category of products; (2) the weighted average costs and profits of other exporters or producers under investigation with respect to home market sales of the foreign like product; or (3) any other reasonable method. If the third option is chosen, the amount used for profit may not exceed the profit normally realized by other producers or exporters on sales in the home market of products in the same general category of goods.

The requirements of Article 2.2.2 with respect to the use of actual data for administrative, selling and general costs and for profits conflict with current law. Section 773(e)(1)(B) currently provides for the use of a statutory minimum for general expenses of not less than 10 percent of the cost of materials and fabrication and a statutory minimum for profits of not less than eight percent of the sum of the general expenses and cost of materials and fabrication. Section 224 amends section 773(e) to conform to the requirements of Article 2.2.2.

The amendments replace existing section 773(e)(1)(B) with a new section, 773(e)(2)(A) and (B), which requires the use of the actual amounts for selling, general and administrative expenses and profits incurred and realized by the specific producer or exporter in question in connection with the production and sale of the foreign like product, in the ordinary course of trade, for consumption in the home market of the producer. If actual data are not available (because, e.g., there are no home market sales or all such sales are below cost or otherwise not in the ordinary course of trade), Commerce may use any of the following methods: (1) the actual amounts incurred and realized by the specific exporter or producer in question in connection with the production and sale, for consumption in the home market, of merchandise in the same general category as the subject merchandise; (2) the weighted average of the actual amounts incurred and realized by other exporters or producers under investigation in connection with the production and sale of the foreign like product, in the ordinary course of trade, for consumption in the home market; or (3) any other reasonable method, subject to the condition in Article 2.2.2 that the amount used for profit not exceed the amount normally realized by other exporters or producers in connection with the sale, for consumption in the home market, of merchandise in the same general category as the subject merchandise.

The Committee does not intend, with these amendments, to establish a hierarchy of methods when Commerce cannot use the producer's or exporter's actual profits. This is fully consistent with Article 2.2.2., since the Agreement does not contemplate a hierarchy. Rather, the Committee intends that Commerce will make a determination on a case-by-case basis as to which method to use. With respect to the third option, i.e., the use of any other reasonable method, it is the Committee's understanding and expectation that, in light of the fact that Commerce has not yet had experience in administering this provision, Commerce does not intend at this time to develop particular benchmarks for profits.

General rules for the calculation of cost of production and constructed value.—Article 2.2.1.1 of the Antidumping Agreement provides that costs will normally be calculated on the basis of the exporter's or producer's records, provided that the records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product in question. With respect to the allocation of costs, Article 2.2.1.1 requires the authorities to consider all available evidence on proper allocation, including evidence provided by the exporter or producer in question if they have historically used such allocations, in particular with respect to es-

tablishing appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs.

Section 224 of the implementing bill amends section 773 of the 1930 Tariff Act to enact, in new section 773(f)(1)(A), these specific requirements. The Committee expects the Commerce Department, in determining whether a producer's or exporter's records reasonably reflect the costs associated with the production and sale of the product in question, to examine the recorded production costs with a view to determining as closely as possible the costs that most accurately reflect the resources actually used in the production of the merchandise in question. Particularly where allocation methodologies are used, the Committee expects Commerce to accept only those methodologies used by the exporter or producer in question in the normal course of its business and in a period before the anti-dumping investigation was initiated. Commerce should not, in any event, accept allocation methodologies that distort real costs.

Nonrecurring costs.—Article 2.2.1.1 further provides that costs must be adjusted appropriately for non-recurring items of cost which benefit future and/or current production. Section 224 of the implementing bill enacts this requirement, which is consistent with current Commerce Department practice, into law in new section 773(f)(1)(B).

Start-up costs.—Article 2.2.1.1 requires costs to be adjusted appropriately for circumstances in which costs during the period of investigation are affected by start-up operations. Footnote six of the Agreement further elaborates that the adjustment for start-up shall reflect the costs at the end of the start-up period or, if that period extends beyond the period of investigation, the most recent costs that can reasonably be taken into account.

Section 224 of the implementing bill, in new section 773(f)(1)(C), establishes the rules for making the required start-up adjustments. The general requirement is set forth in new section 773(f)(1)(C)(i), and the adjustment is provided for in new section 773(f)(1)(C)(iii). Section 224 elaborates further that, for purposes of determining the adjustment, the start-up period is deemed to end at the point at which the level of commercial production that is characteristic of the product, producer or industry in question is achieved. Where the start-up period extends beyond the period of investigation or review, the Committee expects Commerce, in making the required adjustment, to use the most recent cost of production data that it can reasonably obtain, but only if such data can also be analyzed and verified and made available for interested parties' comments without delaying the completion of the investigation or review.

New section 773(f)(1)(C)(ii) places limitations on start-up adjustments to ensure that Commerce will adjust only for those costs directly attributable to start-up. Accordingly, adjustments may be made for start-up operations only where a producer is using new production facilities or producing a new product that requires substantial additional investment. In addition, production levels must be limited by technical factors associated with the initial phase of commercial production before a start-up adjustment may be made. Further, the new provision requires Commerce, in determining whether commercial production levels have been achieved, to consider other factors, unrelated to start-up, that might affect commer-

cial production levels. Such factors might include demand for the product in question, any seasonality of production or demand, or business cycles. The Committee expects Commerce to evaluate these other factors carefully, so that any adjustment for start-up is limited solely to those costs that are directly attributable to the start-up phase of production. Under new section 773(f)(1)(C)(iii), the start-up phase is deemed to end when commercial production levels characteristic of the product, producer, or industry are achieved.

Transactions disregarded; major input rule.—Finally, section 224 amends the provision in current law (section 773(e)(2)) authorizing Commerce to disregard, for purposes of constructed value, certain transactions between related parties and the provision (at section 773(e)(3)) setting forth a special rule for the valuation of a major input in connection with transactions between related parties. Consistent with the Agreement, amended sections 773(f)(2) and (3) provide that these provisions will apply to transactions between “affiliated” parties, as discussed above, and to the calculation of cost of production, in addition to constructed value.

Currency Conversion

(Section 225)

Article 2.4.1 of the Antidumping Agreement provides that, when a conversion of currencies is required, the conversion should be made using the rate of exchange on the date of sale. However, if the sale of foreign currency on forward markets is directly linked to the export sale in question, Article 2.4.1 provides that the rate of exchange in the forward sale should be used. The Article further provides that fluctuations in exchange rates shall be ignored and that, in an investigation, the authorities shall allow exporters at least 60 days to adjust their export prices to reflect sustained movements in exchange rates during the period of investigation. Section 225 enacts these requirements into law, creating new section 773A of the 1930 Tariff Act.

Proprietary and Nonproprietary Information

(Section 226)

Articles 12.4 of the Subsidies Agreement and 6.5 of the Antidumping Agreement prohibit the disclosure of proprietary information without the permission of the submitter. However, these Articles also require that parties submitting confidential information must provide non-confidential summaries. In exceptional circumstances, however, parties may indicate that the information cannot be summarized, providing reasons that support that contention.

Current U.S. law, in section 777(b)(1) of the 1930 Tariff Act, already complies with these requirements. Under that provision, proprietary information submitted to Commerce or the ITC may not be disclosed to any person without the consent of the submitter, other than to officers or employees of either agency involved in the investigation or officers or employees of the Customs Service directly involved in conducting an investigation regarding fraud

under Title VII. Section 226(a)(1) of the implementing bill amends section 777(b)(1) to provide for the disclosure of proprietary information to officers or employees of the ITC or Commerce involved in conducting reviews, in addition to investigations, but only those reviews covering the same subject merchandise as the investigation.

Section 226(a)(2) further amends section 777(b), by adding new paragraph 777(b)(3). This new provision allows the ITC or Commerce to use proprietary information that was submitted to it in a changed circumstances or sunset review that resulted in the revocation of an antidumping or countervailing duty order or the termination of a suspended investigation in any investigation initiated within two years of the revocation or termination.

Articles 12.4.2 of the Subsidies Agreement and 6.5.2 of the Antidumping Agreement permit authorities to disregard information as to which a request for confidential treatment was denied, unless it can be demonstrated from appropriate sources that the information is correct. Section 777(b)(2) of the 1930 Tariff Act provides that, if Commerce or the ITC determines that proprietary treatment is not warranted, the agency must notify the submitter and ask for an explanation. Unless the submitter persuades the agency that the designation is warranted or withdraws the designation, the agency must return the information. To comply with Articles 12.4.2 and 6.5.2, section 226(b) amends section 777(b)(2) to add that, if the information is returned, the submitter may, within the applicable time limits, submit other materials concerning the subject matter of the returned information.

Opportunity for Comment by Consumers and Industrial Users

(Section 227)

Article 12.10 of the Subsidies Agreement and Article 6.12 of the Antidumping Agreement require the authorities to provide opportunities for industrial users of the product under investigation, and for representative consumer groups (if the product is commonly sold at retail), to provide relevant information. Section 227 implements the requirements by adding a new subsection (h) to section 777 of the 1930 Tariff Act.

Public Notice and Explanation of Determinations

(Section 228)

Article 22 of the Subsidies Agreement and Article 12 of the Antidumping Agreement set forth detailed requirements regarding public notice, and the contents of the public notice, of decisions to initiate countervailing or antidumping duty investigations, preliminary and final determinations, the imposition of provisional measures, the conclusion of suspension agreements and the termination of suspended investigations. These notice requirements apply equally to reviews. Existing U.S. law and practice fully comply with these requirements.

Section 228 of the bill creates new section 777(i) of the 1930 Tariff Act to consolidate the existing notice requirements and codify U.S. practice. New section 777(i)(1) requires publication of the facts

and conclusions supporting determinations to initiate investigations, preliminary and final determinations, determinations suspending investigations, and determinations relating to injury investigations with respect to certain countervailing duty cases. Under new section 777(i)(2), the notice or determination must include, for determinations by the Commerce Department, the names of exporters or producers of the subject merchandise (or the exporting countries when providing such names is impracticable), a description of the merchandise, the amount of the countervailable subsidy or weighted average antidumping margin and an explanation of the methodology used in establishing those amounts, and the primary reasons for the determination. For determinations by the ITC, the determination must include considerations relevant to the injury determination and the primary reasons for the determination.

New section 777(i)(3) imposes additional requirements for final determinations. The Commerce Department must include an explanation of the basis for its determination, addressing relevant arguments made by interested parties who are parties to the investigation or review. The ITC must include in its final determination an explanation of the basis for its determination, addressing relevant arguments concerning the volume, price effects and impact on the industry of imports of the subject merchandise.

This section is not intended to alter the existing practice of either the ITC or Commerce with respect to the publication or contents of their notices or determinations.

Sampling and Averaging; Determination of Weighted Average Dumping Margin

(Section 229)

Samples and averages.—Article 6.10 of the Antidumping Agreement provides that the authorities should normally determine an individual dumping margin for each known exporter or producer. However, if the number of producers, exporters, importers or types of products involved is so large that an individual determination would not be practicable, Article 6.10 permits the authorities to limit their examination: (1) to a reasonable number of parties or products by using statistically valid samples; or (2) to the largest percentage of exports from the country in question that can reasonably be investigated. Article 6.10 further provides that any sample should preferably be chosen in consultation with and with the consent of the exporters, producers, or importers concerned.

Section 777A of the 1930 Tariff Act allows Commerce, in antidumping investigations and administrative reviews, to use averaging or generally recognized sampling techniques where there is a significant volume of sales or where a significant number of price adjustments is required. It also provides that Commerce may decline to take into account adjustments that are insignificant in relation to the price or value of the merchandise. Current law makes clear that the authority to select the appropriate samples and averages rests exclusively with Commerce.

Consistent with the Antidumping Agreement, Section 229(a) of this bill revises section 777A to clarify that Commerce, in calculating export price or constructed export price and normal value, and

in carrying out administrative reviews, may use averaging and statistically valid samples if there is a significant volume of sales or a significant number or types of products. Revised section 777A(b) also incorporates the consultation requirement, by providing that Commerce shall, to the greatest extent possible, consult with exporters and producers regarding the method to be used to select the exporters, producers or types of products to be examined.

Section 229(a) also adds new section 777A(c) setting forth the general rule of Article 6.10 that Commerce shall, subject to certain exceptions, determine the individual weighted average dumping margin for each known exporter or producer. The exceptions track Article 6.10. If it is not practicable to make individual determinations because of the large number of exporters or producers involved, new section 777A(c) provides that Commerce may determine the weighted average dumping margins for a reasonable number of exporters or producers by limiting its examination to: (1) a statistically valid sample, based on information available to Commerce at the time of the selection; or (2) exporters and producers accounting for the largest volume of subject merchandise that can reasonably be examined.

Determination of dumping margins.—Article 2.4.2 of the Anti-dumping Agreement provides that subject to the provisions governing fair comparison, dumping margins shall normally be determined, during the investigation phase, by comparing the weighted average normal value to the weighted average export price or by comparing the normal value and the export price on a transaction-to-transaction basis. Under current practice, Commerce generally compares weighted average normal values with the export prices of individual transactions.

Section 229(a) codifies the requirements of Article 2.4.2. It adds to section 777A a new section 777A(d), which requires Commerce to determine whether the subject merchandise is being sold at less than its fair value by comparing weighted average normal values and weighted average export prices (or constructed export prices) or by comparing the normal values of individual transactions to the export prices (or constructed export prices) of individual transactions. However, as provided for in Article 2.4.2, Commerce may compare weighted average normal values with the export prices (or constructed export prices) of individual transactions if there is a pattern of export prices (or constructed export prices) that differ significantly among purchasers, regions or periods of time and Commerce explains why such differences cannot be taken into account using the preferred methodologies described above.

The exceptions are intended to permit Commerce to examine and take into account whether “targeted dumping” is occurring, which might otherwise be masked by the use of weighted average export prices (or constructed export prices). The Committee expects that Commerce will collect and make available to interested parties that are parties to the proceeding the data necessary to establish whether any of the conditions have been met that would warrant determining the dumping margin by comparing weighted average normal values and transaction-specific export prices.

With respect to the determination of dumping margins in administrative reviews, the Committee understands that, consistent with

the Agreement, Commerce intends to continue its current methodology, in which it normally compares weighted average normal values to individual export prices. With respect to the determination of margins in reviews, Section 229(a) adds new section 777A(d)(2) to require Commerce to 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.

Magnitude of the margin of dumping.—Article 3.4 of the Anti-dumping Agreement requires an evaluation of the magnitude of the margin of dumping when the authorities examine the impact of dumped imports on the domestic industry in question. Because it is the Commerce Department, and not the ITC, that determines the dumping margins, section 226(b) defines the margins that the ITC should use in its analyses. In new section 771(35)(C), the margins to be used by the ITC are the following: (1) in making a preliminary determination, the ITC will use the dumping margin or margins published by Commerce in its initiation of the investigation; (2) in making its final determination, the ITC will use the margin or margins most recently published by Commerce prior to the closing of the ITC's administrative record; and (3) in a changed circumstances review under section 751(b)(2) of the 1930 Tariff Act, the ITC will use the most recent margins determined by Commerce under section 752(c)(3) (the new provision setting forth the special rules for sunset and changed circumstances reviews), if any, or in its preliminary or final determinations with respect to the merchandise in question; and (4) in a sunset review, the ITC will use the margins determined by Commerce under section 752(c)(3).

Section 229(b) of the implementing bill also defines the terms "dumping margin" and "weighted average dumping margin" since these terms are used frequently throughout subtitles B, C and D of Title VII. These definitions are consistent with the definitions set forth in Commerce's current regulations.

Anticircumvention

(Section 230)

One of the United States' principal objectives in the Uruguay Round negotiations, as set forth in the 1988 Trade Act, was to improve the rules safeguarding against the circumvention of anti-dumping and countervailing duty orders. That objective was not achieved. Instead, the Final Act includes a Ministerial Declaration on Anticircumvention which acknowledges the problem of circumvention of antidumping duty measures, but notes that the negotiators were unable to agree on specific text. Despite this lack of agreement, the Committee has undertaken a review of the current statutory provisions on anticircumvention, and has revised them with the aim of making them more effective than the provisions of current law. The Committee urges the Administration to pursue negotiations in the WTO as soon as possible aimed at developing comprehensive global rules to prevent the circumvention of anti-dumping and countervailing duty orders.

Under current law, with respect to merchandise completed or assembled in the United States, section 781(a) provides that imported parts or components used in the completion or assembly of the

merchandise in the United States may be included within the scope of an antidumping or countervailing duty order if three conditions are met. These are that: (1) merchandise is sold in the United States that is the same as merchandise that is subject to an antidumping or countervailing duty order; (2) merchandise is completed or assembled in the United States from parts or components produced in the foreign country to which the antidumping order applies; and (3) the difference between the value of the merchandise sold in the United States and the value of the imported parts and components is small. In determining whether to include the parts or components within the scope of the order, Commerce must take into account such factors as the pattern of trade, whether the manufacturer or exporter of the parts or components is related to the assembler in the United States, and whether imports into the United States of the parts or components have increased since the order was issued.

With respect to merchandise completed or assembled in other foreign countries, current law (section 781(b)) provides that imported merchandise may be included within the scope of the order if four conditions have been met. The conditions are that: (1) merchandise imported into the United States is the same class or kind as merchandise subject to an order; (2) before importation, that merchandise was completed or assembled in another foreign country from merchandise subject to an order or was produced in the foreign country to which the order applies; (3) the difference between the value of the imported merchandise and the value of the merchandise completed or assembled in a third country is small; and (4) Commerce determines that action is appropriate to prevent the evasion of an order. As is the case with respect to merchandise completed in the United States, Commerce is instructed to take into account such factors as the pattern of trade, whether the exporter or manufacturer of the merchandise in question is related to the assembler in the foreign country, and whether imports into the foreign country of the merchandise in question have increased since the order was issued.

In practice, current law has not proved effective in curbing the circumvention of antidumping and countervailing duty orders. Since section 781 was incorporated into U.S. law (in the 1988 Trade Act), flaws in the statutory scheme have become apparent. The biggest problem has been the requirement that the difference between the value of the merchandise covered by the order and the value of the imported parts and components be "small." In practice, this has proved to be a difficult standard to meet, substantially limiting the effectiveness of the current provisions. Current law does not, for example, take into account scenarios where only minor assembly occurs in the United States or a third country, but for various reasons the difference in value is not "small." And under the existing statutory scheme, third country parts cannot be included with the parts imported from the country subject to the order in determining whether the difference in value is "small."

Accordingly, section 230 amends sections 781(a) and (b) to shift the focus of the anticircumvention inquiry away from a test of the difference in *value* between the subject merchandise and the imported parts or components toward the *nature of the process* per-

formed in the United States or a third country. Instead of considering whether the difference in value between the subject merchandise and the imported parts or components is "small," amended sections 781(a) and (b) require Commerce to consider whether: (1) the process of assembly or completion in the United States or third countries is minor or insignificant and (2) the value of the parts or components produced in the foreign country to which the order applies is a significant portion of the total value of the merchandise.

With respect to the first inquiry, section 230 further amends sections 781(a) and (b) to set forth the factors that Commerce should examine in determining whether the process of assembly or completion in the United States or the third country is minor or insignificant. These factors include the level of investment; the level of research and development; the nature of the production process; the extent of production facilities; and whether the value of the processing performed in the United States or the third country represents a small proportion of the value of the merchandise sold in or imported into the United States. The Committee expects Commerce to examine each of these factors carefully; no single factor should be controlling.

With respect to the second inquiry regarding the value of the parts or components produced in the foreign country, the Committee does not, with this new formulation, intend to replace one problematic test—the "small" value test—with another. The Committee expects and intends that the new standard will be less difficult to meet, thereby improving our ability to prevent circumvention. It also recognizes the need for flexibility in administering this standard. Thus, the bill does not to establish a rigid numerical standard for determining "significance" nor does the Committee expect Commerce to establish a specific numerical test. The determination of whether the value of the parts or components is a significant portion of the total value of the merchandise should be made on a case-by-case basis, looking at the totality of the circumstances. However, where the proportion of the value is relatively high (*e.g.*, the value of a television tube in relation to a finished television set), the conclusion should be clear.

Section 230 of the implementing bill retains, in modified form, the provisions of current law relating to the factors that Commerce should consider in determining whether to include parts or components in an antidumping or countervailing duty order. As in current law, Commerce will examine trade patterns, but amended sections 781(a) and (b) also direct Commerce to look at sourcing patterns. And as under current law, Commerce will be directed to look at whether the manufacturer or exporter of the parts or components is affiliated with the assembler in the United States or the third country; this provision has been amended to replace the term "related" with the term "affiliated" as that term is defined in new section 771(33), as provided in section 222 of this bill. Finally, instead of examining whether imports of the parts or components in question have increased since the order was issued, Commerce will be directed to examine whether imports have increased since the antidumping or countervailing duty investigation was initiated.

Finally, section 230(b) establishes for the first time, in new section 781(f), time limits for Commerce's anticircumvention deter-

minations. To the maximum extent practicable, the Committee expects Commerce to make its determinations under section 781 within 300 days of the initiation of an anticircumvention inquiry. Moreover, the Committee expects Commerce to initiate circumvention inquiries in a timely manner and generally consistent with the standards for initiating antidumping or countervailing duty investigations. The Committee also expects the Commerce Department, to the maximum extent practicable, to make its determinations in so-called "scope" reviews (in which the Department determines whether certain products, parts or components should be included in, or excluded from, an antidumping or countervailing duty order) within 120 days.

The Committee believes that these amendments are fully consistent with the Antidumping and Subsidies Agreements. It is the expectation of the Committee that these amended provisions will prove more effective than current law in deterring the circumvention of antidumping and countervailing duty orders. The Committee expects that Commerce will vigorously enforce the law to prevent the circumvention of orders. It is the Committee's expectation that these amendments will remedy circumvention that may have occurred in the past through the use of insignificant operations in the United States or third countries.

Evidence

(Section 231)

Conduct of investigations and administrative reviews.—Section 231(a) creates new section 782 to implement a number of requirements in the Antidumping and Subsidies Agreements relating to the conduct of investigations and reviews and to consolidate in that new section related provisions scattered throughout Title VII.

(a) Treatment of voluntary responses.—Article 6.10.2 of the Antidumping Agreement provides that, if the administering authorities have limited their investigations, using sampling techniques, because of the large number of producers or exporters involved, they will nonetheless determine an individual dumping margin for any exporter or producer not initially selected who submits the necessary information in time, unless the number of such exporters or producers is so large that individual examinations would be unduly burdensome and prevent timely completion of the investigation. Although the Subsidies Agreement does not include a similar provision, the Committee believes it nonetheless appropriate to treat voluntary responses in countervailing duty investigations in a similar manner.

New section 782(a) requires Commerce, in antidumping and countervailing duty investigations and reviews, to establish an individual countervailable subsidy rate or individual weighted average dumping margin for any exporter or producer not initially selected for individual examination if that exporter or producer submits the information requested from exporters or producers selected for examination by a specified time and the number of exporters or producers that have submitted such information is not so large that individual examination would be unduly burdensome and inhibit timely completion of the investigation. The time speci-

fied for submission of the information is the date applicable to exporters and producers that were initially selected for examination or the date applicable to the foreign government in a countervailing duty case where Commerce has determined a single country-wide rate.

(b) *Certification of submissions.*—The provision of current law at section 776(a) requiring certifications as to the accuracy and completeness of factual information is incorporated into new section 782(b).

(c) *Difficulties in meeting requirements.*—Annex II of the Antidumping Agreement sets forth specific guidelines for basing determinations on the facts available, as provided in Article 6.8. Paragraph 2 of Annex II provides that if the authorities request that an interested party provide its response in a particular medium or computer language, the authorities should consider the reasonable ability of that party to respond in the requested medium or computer language. Further, the authorities should not pursue a request for a computerized response if the party does not maintain computerized accounts and if responding in the requested manner would create an unreasonable extra burden on that party.

New section 782(c)(1) implements this requirement, making it applicable to submissions in countervailing duty investigations and reviews as well as in antidumping investigations and reviews. Under this new subsection, if an interested party promptly notifies Commerce or the ITC that it is unable to submit information in the requested manner and form, and provides a full explanation and suggested alternative forms in which it could submit the information, the agency in question shall consider that party's ability to comply with the request and may modify its requirements to the extent necessary to avoid imposing an unreasonable burden on that party.

Articles 12.11 of the Subsidies Agreement and 6.13 of the Antidumping Agreement require the authorities to take due account of any difficulties experienced by interested parties, particularly small companies, in supplying requested information and provide any assistance practicable. New section 782(c)(2) implements these provisions.

(d) *Deficient submissions.*—Annex II of the Antidumping Agreement provides, in paragraph 6, that if evidence or information is not accepted by the authorities, the supplier should be promptly informed of the reasons and should have an opportunity to provide further explanations within a reasonable period of time, consistent with the time limits of the investigation.

Section 231(a) of the implementing bill enacts this requirement into law in new section 782(d). That new section provides that if Commerce or the ITC determines that a response is deficient, the agency must promptly inform the submitter and, to the extent practicable, provide the submitter with an opportunity to remedy or explain the deficiency in light of the time limits established for completing the investigation or review. If the submitter submits additional information in response to the deficiency but Commerce or the ITC finds that the response is not satisfactory or that it is not submitted within the applicable time limits, the agency may disregard all or part of the original or subsequent submissions.

(e) *Use of certain information.*—Annex II, paragraph 5, of the Antidumping Agreement states that even though the information that has been provided may not be ideal in all respects, this does not provide a justification for disregarding it entirely if the submitter has acted to the best of its ability. Section 231(a) complies with this requirement by adding new section 782(e), which sets forth the guidelines for ITC and Commerce consideration of deficient information.

Under new section 782(e), Commerce and the ITC may not decline to consider information that is necessary to a determination but that does not meet all of the requirements established by the appropriate agency if five conditions are met. These are that: (1) the information is submitted within the established deadline; (2) it can be verified to the extent required by law; (3) it is not so incomplete that it cannot serve as a reliable basis for reaching the required determination; (4) the submitter has demonstrated that it has acted to the best of its ability in providing the information and meeting the requirements; and (5) it can be used without undue difficulties.

(f) *Nonacceptance of submissions.*—Annex II of the Antidumping Agreement further requires, in paragraph 6, that if the authorities reject submitted information, they must provide the reasons for the rejection. Section 231(a), in new section 782(f), meets this requirement by directing the ITC or Commerce to provide, to the extent practicable, a written explanation for the rejection of submitted information.

(g) *Public comment on information.*—Article 12.8 of the Subsidies Agreement and Article 6.9 of the Antidumping Agreement require the authorities, before making a final determination, to inform the parties to a proceeding of the essential facts under consideration and offer the parties an opportunity to defend their interests. Section 231(a) implements this requirement, which is generally consistent with current Commerce and ITC practice, in new section 782(g).

New section 782(g) reorganizes and modifies the provisions of current law, at section 777(e), to provide that information submitted on a timely basis to either Commerce or the ITC will be subject to comment by other parties to the proceeding, within the time period specified by the relevant agency. In order to make the opportunity to provide final comments meaningful, new section 782(g) requires the ITC and Commerce to cease collecting information and to provide the parties with a final opportunity to comment on matters on which they have not previously had an opportunity to comment. In order to ensure that all parties will have had an opportunity to comment on any factual information that will form the basis for the agency's decision, the agencies are directed to disregard any final comments that contain new factual information.

(h) *Termination of investigation or revocation of order for lack of interest.*—Section 231(a) adds new section 782(h) to clarify that the Commerce Department will retain the authority to terminate antidumping or countervailing duty investigations, revoke outstanding orders, or terminate suspended investigations if it determines that producers accounting for substantially all of the production of the domestic like product have indicated a lack of interest in continu-

ing the investigation or order. This provision is added to clarify that Commerce will retain this authority notwithstanding the provisions of amended sections 702(c)(4)(E) and 732(c)(4)(E), as set forth in section 212 of this bill, that Commerce may not reconsider its determination regarding industry support for purposes of initiating investigations.

(i) *Verification*.—Current law, at section 776(b), requires Commerce to verify all information it relies upon in making certain of its determinations. This provision of law is incorporated into new section 782, as section 782(i).

Availability of nonproprietary information.—Section 12.1.2 of the Subsidies Agreement and 6.1.2 of the Antidumping Agreement require written evidence submitted by one interested party to be made available to other interested parties, subject to the requirement to protect confidential information. Current law, at section 777(a)(4), authorizes, but does not require, Commerce and the ITC to disclose proprietary and nonproprietary information if certain conditions are met. Section 231(b) of the implementing bill amends section 777(a)(4) to make disclosure mandatory.

Determinations on the basis of the facts available.—Article 12.8 of the Subsidies Agreement and 6.8 of the Antidumping Agreement authorize the authorities to make determinations on the basis of the facts available in cases where any interested party in antidumping or countervailing duty proceedings refuses access to or otherwise does not provide necessary information within a reasonable time or significantly impedes an investigation. A separate Annex to the Antidumping Agreement, Annex II, sets forth additional guidelines for the use of the “information available.” A number of the specific requirements in that Annex are implemented in new section 782, as established by section 231(a) of this bill, described above. Section 231(c) sets forth the general requirements of Articles 12.8 and 6.8 regarding the use of the “information available.”

Section 731(c) amends existing section 776 of the 1930 Tariff Act, which sets forth the provisions of current law regarding the circumstances in which Commerce or the ITC shall use the “best information available” in making their determinations. Consistent with Articles 12.8 and 6.8, the amendments to section 776 require Commerce and the ITC to use the facts otherwise available in making their determinations if: (1) necessary information is not available on the record; or (2) an interested party withholds requested information; fails to provide information within the established deadlines or in the manner requested (subject to the restrictions imposed on the agencies in new section 782); significantly impedes an antidumping or countervailing duty proceeding; or provides information that cannot be verified. The Committee views new section 776(a)(1), requiring use of the facts otherwise available notwithstanding that necessary information, or information from interested parties, is not available, as essential to the agencies’ ability to complete their investigations and reviews within the deadlines established by statute.

Consistent with paragraph 7 of Annex II of the Antidumping Agreement, new section 776(b) provides that Commerce or the ITC may, in selecting from among the facts available, make an infer-

ence that is adverse to a party that has failed to cooperate. New section 776(b) further provides that a party has failed to cooperate if it has not acted to the best of its ability to comply with a request for information. The adverse inferences that may be drawn may include information from the petition, a final determination, any previous review or any other information placed on the record.

Finally, as required by paragraph 7 of Annex II of the Antidumping Agreement, new section 776(c) directs Commerce and the ITC, whenever they rely on secondary information, to corroborate that information, to the extent practicable, from independent sources reasonably at their disposal. Secondary information is information derived from: (1) the petition that gave rise to the investigation or review; (2) the final determination concerning the subject merchandise; or (3) any previous review concerning the subject merchandise conducted under section 751 of the 1930 Tariff Act. By requiring corroboration, to the extent practicable, when such secondary information is used, the Committee intends only that Commerce or the ITC must satisfy itself that the information has probative value.

Antidumping Petitions by Third Countries

(Section 232)

Article 14 of the Antidumping Agreement sets forth general guidelines for the authorities of one country to consider petitions for antidumping actions on behalf of the government of a third country. Such petitions must be supported by price information that demonstrates dumping and detailed information showing that the alleged dumping is causing injury to the domestic industry of that third country. The decision to proceed with an investigation rests with the importing country. If that country decides it is prepared to take action, it must seek the approval of the Council for Trade in Goods established under the Agreement Establishing the World Trade Organization.

Section 232 implements Article 14 by adding a new section to the 1930 Tariff Act, as amended. New section 783 provides that a WTO member country may file a petition with USTR requesting that an investigation be conducted to determine if imports from another country are being dumped in the United States and an industry in that foreign country is materially injured by reason of those imports. After consultations with Commerce and the ITC, and after obtaining the approval of the WTO Council for Trade in Goods, USTR will determine whether to initiate such an investigation. It is the Committee's intent that one of the factors that USTR should take into account in determining whether to initiate an investigation is whether the foreign country that requested the action provides equivalent opportunities to U.S. companies wishing to initiate antidumping investigations in that country.

If USTR decides to proceed, new section 783 provides that it will ask Commerce and the ITC to make the required determinations regarding dumping and injury. If the determinations are affirmative, Commerce will issue an antidumping order. USTR, Commerce and the ITC will provide an opportunity for public comment with respect to each of the determinations required.

*Conforming Amendments**(Section 233)*

Section 233 includes a number of technical amendments aimed chiefly at conforming the existing language of Title VII with the newly adopted terminology of the Antidumping and Subsidies Agreements, and providing for greater consistency of terminology throughout Title VII.

*Application to Canada and Mexico**(Section 234)*

Under Article 1902 of the North American Free Trade Agreement, each Party reserved the right to change or modify its anti-dumping and countervailing duty laws, but provided that such amendments would apply to the goods of a NAFTA Party only if the amending statute specifically so stated. That obligation was implemented in U.S. law in section 408 of the North American Free Trade Agreement Implementation Act. Accordingly, section 234 of the implementing bill specifically states that all of the amendments made by Title II of this bill will apply with respect to goods from Canada and Mexico, as well as with respect to goods from all other countries.

SUBTITLE B—SUBSIDIES PROVISIONS

Background on the Subsidies Agreement and U.S. countervailing duty law.—Article VI of the GATT governs the imposition by GATT signatories of countervailing measures, intended to offset any unfair competitive advantage enjoyed by foreign manufacturers or exporters over domestic producers as a result of subsidies. Article VI provides that no countervailing duty shall be imposed on imports from another GATT party in excess of the amount of the subsidy bestowed on the manufacture, production, or export of such merchandise. Article VI provides further that no countervailing duty shall be levied on imports from another GATT party without a determination of injury to a domestic industry.

U.S. countervailing duty law dates back to 1897. While important changes to the law were made in the 1974 Trade Act, the general structure of the 1897 provisions remained in place until 1979, when the law was changed substantially to conform to the Agreement Relating to Subsidies and Countervailing Measures (commonly known as the Subsidies Code), part of the Tokyo Round agreements. The Subsidies Code sets out procedures to govern domestic countervailing duty actions, as well as international procedures for consultations and dispute settlement with respect to subsidies. The changes to U.S. countervailing duty law necessary to implement the Subsidies Code were enacted as part of the 1979 Trade Act, and became effective January 1, 1980. Title VII of the 1930 Tariff Act, as amended by the 1979 Trade Act, governs the imposition of countervailing duties on Subsidies Code signatories and other countries that have assumed substantially equivalent obligations; imports from other countries are subject to section 303 of

the 1930 Tariff Act, which in most cases does not afford an injury test, but otherwise closely tracks the provisions of Title VII.

The Uruguay Round Agreement on Subsidies and Countervailing Measures (the Subsidies Agreement) is intended to improve upon the 1979 Subsidies Code, primarily by strengthening international disciplines on trade-distorting subsidies and subjecting all WTO Members to its disciplines (whereas only 24 countries joined the 1979 Code). The Subsidies Agreement also includes much more detailed procedural provisions applicable to the use of domestic countervailing duty law than under the 1979 Code. As noted above, Subtitle A of Title II implements those procedural and evidentiary provisions of the Subsidies Agreement that are identical or similar to provisions of the Antidumping Agreement. These include most of Part V (Articles 10 through 23) of the Subsidies Agreement, covering Countervailing Measures.

Provisions in Subtitle B.—Subtitle B of Title II includes the changes to U.S. law to implement other parts of the Subsidies Agreement, including Article 1 (subsidy definition), Article 2 (specificity), Articles 8 and 9 (non-actionable subsidies), Article 10 (applying the requirements of GATT Article VI), Article 14 (calculating a subsidy in terms of the benefit to the recipient), and Article 27 (concerning developing country Members). Several other Agreement provisions concern international dispute settlement procedures with respect to different categories of subsidies; Subtitle B includes provisions intended to ensure that the United States enforces its rights pursuant to these provisions.

The provisions in Subtitle B implementing the Subsidies Agreement fall into four general categories: (1) those relating to the definition of a “countervailable subsidy” (the new term used in U.S. countervailing duty law for subsidies that are actionable), as well as the types of subsidies treated as non-countervailable; (2) the repeal of section 303 of the 1930 Tariff Act and various amendments to Title VII of that statute; (3) special rules applicable to injury investigations where countervailing duty orders were issued under section 303; and (4) provisions addressing the enforcement of U.S. rights under the Subsidies Agreement.

The Committee has given especially careful consideration to the provisions concerning the definition of countervailable subsidy and the enforcement of U.S. rights under the Subsidies Agreement. During hearings on the Agreement in March and April 1994 and consideration of its recommendations for the implementing legislation in July and August 1994, the Committee expressed particular concern about the categories of non-actionable subsidies created in the Agreement, seeing these so-called “green light” subsidies as having the potential to undermine the gains from the Agreement’s stronger disciplines on trade-distorting foreign subsidies (notably the establishment under Article 6 of a special presumption of “serious prejudice” for certain egregious, though non-prohibited, types of subsidies). The Committee therefore insisted upon a series of provisions in the bill to make clear that (1) these “green light” categories shall be construed narrowly and applied only when the strict criteria required under the Agreement (and amplified upon in the bill, the Statement of Administrative Action, and this report) are satisfied, and (2) USTR and the Commerce Department will enforce

U.S. rights under the Agreement aggressively, both with respect to the Article 8 notification requirements and application of the “serious adverse effects” criteria in Article 9. The Committee intends to scrutinize closely the implementation of both the definitional and the enforcement provisions of the bill to ensure that these dual objectives are satisfied.

PART 1—COUNTERAVAILABLE SUBSIDIES

Countervailable Subsidy

(Section 251)

Section 251 consists of three sets of provisions: (1) the elements required for a “countervailable subsidy;” (2) the factors that determine whether a subsidy is “specific;” and (3) the categories of non-countervailable subsidies.

Definition of countervailable subsidy.—Section 251(a) amends section 771(5) of the 1930 Tariff Act to add a definition of “countervailable subsidy”—a term not found in current law, and which is added in view of the inclusion of categories of non-countervailable subsidies in U.S. law for the first time. Section 251(b) conforms section 771(6) of the 1930 Tariff Act to this change. This new definition reflects the terminology used in the Subsidies Agreement, which distinguishes between subsidies that are actionable under countervailing duty law and those that are not. A countervailable subsidy is a subsidy that meets the two conditions in section 771(5), as revised (“financial contribution” and “benefit conferred”), is specific within the meaning of new section 771(5A), and does not come within the definitions of non-countervailable subsidies in new section 771(5B); these provisions are described in turn below.

The Committee expects that, unless past administrative practice or judicial interpretation with respect to the terms “subsidy” and “bounty or grant” in current law is inconsistent with the definition in section 251(a), and taking account of other relevant changes to U.S. countervailing duty law included in this bill (e.g., the provisions on non-countervailable subsidies and *de minimis* thresholds), foreign subsidy practices that have been countervailable under current law will continue to be countervailable under the statute as revised by this bill.

Consistent with Article 1 of the Subsidies Agreement, section 251(a) provides that a subsidy exists where two conditions are met. The first condition (described in new section 771(5)(B)) is that a government or any public body (1) provides a financial contribution; (2) provides any form of income or price support within the meaning of Article XVI of the GATT 1994; or (3) makes a payment to a funding mechanism to provide, or entrusts or directs a private entity to provide, a financial contribution—if the provision of such contribution normally would be vested in the government and the practice does not differ in substance from practices normally followed by governments. The second condition (described in new section 771(5)(E)) is that a benefit is thereby conferred, regardless of whether the subsidy is provided directly or indirectly on the production or export of the merchandise.

Section 251(a) adopts the definition of "financial contribution" in Article 1 of the Subsidies Agreement. This encompasses four broad categories of practices: (1) direct or potential direct transfers of funds (*e.g.*, grants, loans, equity infusions, loan guarantees); (2) foregoing or not collecting revenue otherwise due (*e.g.*, tax credits, tax deductions); (3) providing goods or services, other than general infrastructure; or (4) purchasing goods.

Consistent with Article 1 of the Agreement, section 251(a) provides that, under new section 771(5)(B)(iii) of the 1930 Tariff Act, a "financial contribution" includes situations where a government entrusts or directs a private body to carry out one or more of the above functions. The Committee intends that the term "entrusts or directs" shall be interpreted broadly to prevent the "indirect" provision of a subsidy from becoming a harmful loophole to effective enforcement of the countervailing duty law. The Commerce Department has countervailed a variety of programs as "indirect" subsidies where a government measure directly led to a discernible benefit being provided to the industry under investigation (*see, e.g.*, *Certain Softwood Lumber Products from Canada, Leather from Argentina, Lamb from New Zealand, Oil Country Tubular Goods from Korea, Carbon Steel Wire Rod from Spain, Certain Steel Products from Korea*). Where the government acts through a private party, *e.g.*, *Certain Softwood Lumber Products from Canada, Leather from Argentina* (involving export restraints that led directly to a discernible reduction in input costs), the Committee expects that the countervailing duty law will continue to be administered consistent with the principles and the prior cases cited above. The Committee further expects that these types of indirect subsidies will continue to be countervailable where the standard under new section 771(5)(B)(iii) has been met.

Section 251(a) also provides that a benefit normally shall be regarded as having been conferred where there is a "benefit to the recipient" (consistent with longstanding Commerce Department methodology and practice), including: (1) in the case of an *equity infusion*, the investment decision is inconsistent with the usual investment practice of private investors in the relevant country; (2) in the case of a *loan*, there is a difference between the amount the recipient pays on the government loan and the amount that the recipient would pay on a comparable commercial loan it actually could obtain on the market; (3) in the case of a *loan guarantee*, there is a difference (after adjusting for any difference in guarantee fees) between the amount the recipient pays on the guaranteed loan and the amount it would pay for a comparable commercial loan if there were no such guarantee; and (4) in the case of the *provision of goods or services*, or the *purchase of goods*, the provision is made for less or the purchase for more than adequate remuneration, with the adequacy of remuneration to be determined in relation to prevailing market conditions (*e.g.*, price, quality, availability, marketability, transportation, and other conditions of purchase or sale) for the good or service in the relevant country. The new standards for determining the existence and amount of a benefit with respect to the provision of goods or services replace the "preferentiality" standard used in current law and practice.

Section 251(a) further amends section 771(5) of the 1930 Tariff Act to provide that, in determining whether a subsidy exists, the Commerce Department is not required to consider the effect of a subsidy (e.g., whether it lowers the price or increases the output of a good). The Committee expects that new section 771(5)(C), as added by section 251(a), will put to rest any confusion with respect to the language and intent of U.S. countervailing duty law. In May 1993, a majority of a binational panel in *Certain Softwood Lumber Products from Canada* ruled that, in order to find certain government practices to be subsidies, Commerce had to determine that the practice had an effect on the price or output of the merchandise under investigation. In so doing, the majority of that panel misconstrued the holding in a prior determination of the U.S. Court of Appeals for the Federal Circuit (the 1986 *Georgetown Steel* case). Section 251(a) clarifies that the new definition of subsidy does not require the Commerce Department to consider or analyze the price or output effects (including whether there is any effect at all) of a government action on the merchandise under investigation or review. The panel decision does not constitute, nor should it constitute, binding precedent for any future cases; nevertheless, in view of the panel majority's error, the Committee believes that section 251(a) serves the important function of making the intent of the statute unambiguous.

Change of ownership.—Section 251(a) further amends section 771(5) of the 1930 Tariff Act to provide that a change in the ownership of all or part of a foreign enterprise (i.e., a firm or a division of a firm) or its productive assets does not by itself require the Commerce Department to determine that a countervailable subsidy received by the firm prior to the change in ownership no longer continues to be countervailable, even if the change in ownership occurs through an “arm’s length transaction” (defined as a transaction negotiated between unrelated parties, each acting in its own interest, or between related parties such that the terms of the transaction are those that would exist if the transaction had been negotiated between unrelated parties).

The Committee believes that this provision serves the important purpose of making clear that the sale of a firm at “arm’s length” does not automatically extinguish any previously-conferred subsidies. New section 771(5)(F) stands in contrast to such an interpretation, which would result in an end to the countervailability of prior subsidies otherwise allocable to the merchandise. The sale of subsidized goods or assets to an unrelated party should not in and of itself permit the avoidance of duties. The Commerce Department should continue to have the discretion to determine whether, and to what extent (if any), actions such as the “privatization” of a government-owned company actually serve to eliminate such subsidies. It is the Committee’s expectation that Commerce will exercise this discretion carefully and make its determination based on the facts of each case, developing a methodology consistent with the principles of the countervailing duty statute.

Specificity.—As the Court of International Trade (CIT) made clear in 1983 in the *Carlisle Tire* case, the basic purpose of the specificity test is to serve as a means for differentiating between government assistance that genuinely is available broadly and used

widely throughout an economy and subsidies provided to or used by discrete segments of the economy. Thus, while the specificity test is intended to avoid the imposition of countervailing duties in situations where a subsidy is widely available and used throughout an economy, it must not be allowed to serve as a means for avoiding the imposition of duties in other circumstances. The Committee welcomes and supports the intention of the Administration, as set out in the Statement of Administrative Action, to apply the specificity test "in light of its original purpose, which is to function as an initial screening mechanism to winnow out only those foreign subsidies which truly are broadly available and widely used throughout an economy."

Section 251(a) adds a new subsection 771(5A) to the 1930 Tariff Act; the new provision sets out the criteria for determining when a subsidy is specific in law (*de jure*) or in fact (*de facto*). In determining whether a domestic subsidy is specific in law or in fact, section 251(a) adopts the principles set forth in the Subsidies Agreement, which themselves are consistent with the principles the Commerce Department currently applies. With the exception of subsidies that satisfy the criteria for treatment as non-countervailable, a subsidy shall be countervailable only if it is specific in accordance with the statutory definitions.

A subsidy will be deemed to be specific if it is (1) an export subsidy (contingent in law or in fact on export performance) or (2) an import substitution subsidy (contingent on the use of domestic over imported goods). The definition of export subsidies in the Subsidies Agreement and this bill is broader than that used in current law and practice, and the category of import substitution subsidies is a new one that is neither part of the 1979 Subsidies Code nor included in current law.

A domestic subsidy is specific as a matter of law 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, or group thereof. This standard recognizes that, where a foreign government expressly limits access to the subsidy to a small number of firms or industries, further inquiry into actual use is not necessary. Moreover, consistent with long-standing Commerce Department practice, the *intent* to target or otherwise limit benefits is not a prerequisite for a finding of *de jure* specificity. In contrast, where the authority or the legislation establishes objective (*i.e.*, neutral) criteria or conditions governing eligibility for and the amount of a subsidy, it is not specific as a matter of law, as long as eligibility is automatic, the criteria or conditions are strictly followed, and they are clearly set forth in the relevant statute, regulation, or other official document.

A domestic subsidy is specific as a matter of fact if one or more of the following factors exist: (1) the actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number; (2) an enterprise or industry (or a group thereof) is a predominant user of the subsidy; (3) an enterprise or industry receives a disproportionately large amount of the subsidy; or (4) 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. The Committee

anticipates that the weight accorded by Commerce, in a countervailing duty investigation, to these factors will vary from case to case; the bill makes clear, however, that Commerce shall find *de facto* specificity if *one or more* of the above factors exists. In so doing, the bill is intended to prevent any further misinterpretation of U.S. countervailing duty law in this regard, as occurred in two 1993 binational panel decisions.

Consistent with current law and Commerce practice, evidence of government intent to target or otherwise limit benefits is irrelevant in analyzing whether *de facto* specificity exists. Moreover, and again consistent with current law and practice, the fact that use of a subsidy may be limited due to the inherent characteristics of the good or service in question should be considered irrelevant for purposes of specificity analysis. In determining whether the actual recipients of the subsidy are limited in number, the proper comparison to be made is one between the beneficiaries of the subsidy and the economy of the subsidizing jurisdiction as a whole—not one between the actual beneficiaries and the universe of potential beneficiaries.

In evaluating the four factors listed above, Commerce is required to take into account the extent of the economic diversification within the relevant jurisdiction, as well as how long the subsidy program has been in operation. These considerations, however, do not substitute for, or replace, the above factors as indicators of whether specificity exists.

In addition, the bill provides that a subsidy is specific where it is limited to an enterprise or industry within a designated geographical region within the jurisdiction of the authority providing the subsidy, *e.g.*, subsidies provided by the central government that are limited to a particular state or province. In contrast, subsidies granted by a state or province on a generally available basis within such jurisdiction (*i.e.*, not limited to certain enterprises) would not be treated as specific; however, a state or provincial subsidy limited to particular regions within such jurisdiction would be specific. This standard is consistent with current Commerce Department practice for determining “regional specificity.”

Non-countervailable subsidies.—The third set of provisions in section 251(a) add a new subsection (5B) to section 771 of the 1930 Tariff Act to define the categories of subsidies that are not subject to countervailing duties (*i.e.*, “green lighted”) pursuant to Article 8 of the Subsidies Agreement. A subsidy shall be treated as non-countervailable (but only in the case of merchandise imported from a country that is a signatory to the Subsidies Agreement) if it is notified pursuant to Article 8.3 of the Agreement or if Commerce determines in either a countervailing duty investigation or an administrative review that the subsidy meets *all* of the criteria set forth in the bill to describe either (1) a research subsidy, (2) a subsidy to disadvantaged regions, or (3) a subsidy for the adaptation of existing facilities to new environmental requirements. The “green light” provisions on research and pre-competitive development activity expressly do not apply to civil aircraft products.

In each of these categories, the bill incorporates the detailed definitions used in Article 8 of the Subsidies Agreement. (In so doing, it also makes clear that the research subsidy provision does not

apply to civil aircraft products.) The Committee believes that these carefully-crafted definitions must be construed narrowly to prevent the misuse of this provision. For example, in order to be non-countervailable, a research subsidy may not cover more than 75 percent of the costs of "industrial research" or not more than 50 percent of the costs of "pre-competitive development activity" (as those terms are defined in the bill and Agreement) and it must be limited exclusively to five narrowly-defined categories of costs that are set out in the bill and agreement, e.g., it must be limited to the cost of personnel employed *exclusively* in the research activity, the cost of instruments, equipment, land, and buildings used *exclusively* and *permanently* (except when disposed of on a commercial basis) for the research activity. In particular, the Committee expects that the term "pre-competitive development activity" will be construed strictly in order to ensure that it does not render subsidies for production or export non-countervailable. It is the Committee's understanding that only government assistance for research up to the point of the first *non-commercial* prototype is non-countervailable; as a general rule, a prototype must undergo substantial or material modification in order to be capable of any commercial use. Government-funded development and production aid will remain fully actionable under both WTO dispute settlement procedures and, where applicable, U.S. countervailing duty law.

Similarly, the bill provides that government assistance to disadvantaged regions is non-countervailable only if six specified conditions (e.g., the regions are clearly designated and contiguous and not created solely as a conduit for assistance, the eligibility criteria are clearly spelled out in law or regulation so as to be capable of verification) all are satisfied. In addition to these requirements, a regional development subsidy program cannot provide more aid than is appropriate for reducing any regional disparities and must include a ceiling on the amount of assistance per project. The Committee believes that strict construction of this "green light" provision is essential to prevent foreign governments from manipulating it to subsidize particular firms or industries.

Finally, the bill provides that a subsidy for the adaptation of existing facilities to new environmental requirements is non-countervailable only if it satisfies each of the five conditions set out in the bill and Agreement. The Committee believes that the terms of this category (e.g., a "one-time non-recurring measure") must be construed narrowly to prevent repeated subsidies to offset the costs of individual new environmental requirements. In this regard, it is essential that subsidies be treated as non-countervailable only when they are limited to one subsidy per "new environmental requirement" and per facility—in order that slightly different requirements do not permit the repeated subsidization of a single facility. In addition, they shall be treated as non-countervailable only when provided to facilities in operation for at least two years when the new environmental requirements are imposed—in order that recently-built or new facilities are not able to benefit from non-actionable environmental subsidies. The Committee expects that the failure to satisfy any one of the conditions would result in a subsidy being countervailable in full.

The bill provides further that a subsidy shall be treated as non-countervailable, and not subject to investigation or review, if it is granted pursuant to a program that has been notified properly to the WTO Subsidies Committee in accordance with Article 8.3 of the Subsidies Agreement. However, if USTR notifies the Commerce Department that the subsidy in question has been challenged successfully in the Subsidies Committee pursuant to Article 8.4 or 8.5 of the Subsidies Agreement, meaning that it does not satisfy the Agreement's conditions and criteria for non-actionability, then the subsidy may be countervailable (if it otherwise meets the statutory criteria for a countervailable subsidy). The Committee expects that USTR and Commerce will utilize the notification procedures of Article 8.3, and the review and challenge procedures of Articles 8.4 and 8.5, aggressively to scrutinize all foreign countries' applications for non-actionable status.

Article 8 confers "green light" status on those subsidies that have been notified to the Subsidies Committee. In addition, a footnote to Article 10 of the Agreement permits the subsidizing government to decline to so notify and instead demonstrate that a subsidy challenged in either a WTO dispute settlement proceeding or a domestic countervailing duty case satisfies all of the relevant criteria for non-actionability under Article 8.2. The Committee believes that, where an investigation or review involves a foreign subsidy that has not been notified under Article 8, the respondent shall have the burden of presenting evidence demonstrating compliance with all of the Agreement criteria for "green light" status. Absent substantial evidence demonstrating compliance, the Commerce Department should determine that the criteria have not been met.

As described under section 282(c) below, the provisions in this bill pertaining to the above categories of non-countervailable subsidies, with the exception of agricultural domestic support measures, shall cease to have any effect 5½ years after the WTO Agreement enters into force for the United States, unless they are extended pursuant to the procedures set out in section 282(c).

Domestic support measures that are provided with respect to the products listed in Annex 1 to the Agreement on Agriculture (Agriculture Agreement), and that the Commerce Department determines conform fully to the provisions of Annex 2 to that Agreement—so-called "green box" programs, as delineated under Annex 2—also shall be treated as non-countervailable with respect to imports from WTO Member countries. The provisions on non-countervailable domestic support measures under the Agriculture Agreement shall no longer apply at the end of the nine-year period beginning on January 1, 1995, with the precise termination date for each country to be determined by USTR in accordance with Article 1 of the Agriculture Agreement.

PART 2—REPEAL OF SECTION 303 AND CONFORMING AMENDMENTS

Repeal of Section 303

(Section 261)

Section 303 of the 1930 Tariff Act currently applies in countervailing duty investigations for any country that is not a "country

under the Agreement”—a term encompassing signatories to the Tokyo Round Subsidies Code and two other categories of agreements. Except in the case of imports of duty-free merchandise from GATT Contracting Parties, countries normally do not receive an injury test (*i.e.*, an investigation and determination by the ITC of whether there is material injury) under section 303—even if they are GATT parties. All WTO Members, however, will be entitled to an injury test before countervailing duties are levied. Therefore, current law must be amended to conform to this obligation.

Section 261(a) repeals section 303. This repeal prevents confusion in the application of U.S. countervailing duty law, given the new definition of subsidy in Title VII and Article 1 of the Subsidies Agreement. (The amendments to section 701 of the 1930 Tariff Act, made under section 262 of this bill, clarify the future application of the injury test.)

Section 261(b) provides that all orders, determinations, and other administrative actions issued pursuant to a section 303 investigation and in effect on such date of repeal shall continue in effect until modified, terminated, superseded, set aside, or revoked by the Commerce Department, the ITC, a court, or by operation of law. However, the repeal shall not affect any section 303 proceedings pending before Commerce or the ITC on the effective date of this Title, or judicial review of a countervailing duty order issued pursuant to an investigation under section 303 (or of an administrative review of such an order) that is pending on the effective date. Sections 261(c) and (d) provide definitions and make several conforming amendments necessitated by this repeal.

Imposition of Countervailing Duties

(Section 262)

Section 262 amends three subsections of section 701 of the 1930 Tariff Act.

First, it amends section 701(a) to clarify the requirements for the imposition of countervailing duties: a Commerce Department determination of a countervailable subsidy, and an ITC determination (in the case of imports from a Subsidies Agreement country) of material injury or threat of material injury by reason of imports.

Second, it amends section 701(b) to provide a definition of the term “Subsidies Agreement country” (for purposes of determining which countries shall be entitled to an injury test under U.S. countervailing duty law). This encompasses any WTO Member country, as well as a country which the President has determined has assumed substantially equivalent obligations with respect to the United States as those under the Subsidies Agreement, and a country which the President determines has an agreement with the United States (as of the date of enactment of this bill) that requires unconditional MFN treatment with respect to U.S. imports.

Third, it amends section 701(c) to clarify that, in the case of imports from a country that is not a Subsidies Agreement country, an ITC injury determination shall not be required in any investigation or review, and the provision on “sunset” reviews (see section 220 above) is not applicable.

*De Minimis Countervailable Subsidy**(Section 263)*

Section 263 provides that in making a subsidy determination, the Commerce Department shall disregard any *de minimis* countervailable subsidy. Consistent with Article 11 of the Subsidies Agreement, it defines such a subsidy as less than one percent *ad valorem* (compared with 0.5 percent *ad valorem* under current Commerce regulations), except that the *de minimis* threshold is two percent in the case of imports from a Subsidies Agreement country designated by USTR as a developing country (see section 267 below), and three percent in the case of a country determined by USTR to be a least-developed country (for eight years after the WTO Agreement enters into force) or a developing country which USTR has notified Commerce has eliminated its export subsidies on an expedited basis under Article 27.11 of the Subsidies Agreement (for eight years, unless USTR notifies Commerce earlier that the country is providing an export subsidy). It is the Committee's understanding that the *de minimis* requirements of Article 11, and the special provisions for developing countries under Article 27, apply only to initial countervailing duty investigations, not to administrative reviews of countervailing duty orders, for which the current regulatory threshold will continue to apply.

*Determination of Countervailable Subsidy Rate**(Section 264)*

Section 264 enables the Commerce Department, consistent with Article 19.3 of the Subsidies Agreement, to determine an estimated countervailable subsidy rate for each exporter and producer individually investigated, and an estimated "all-others" rate for those not individually investigated and for new exporters and producers, unless there is a basis for applying a single country-wide rate applicable to all exporters and producers. It provides further that the all-others rate shall equal the weighted average rates for those individually investigated, excluding zero and *de minimis* rates and those developed entirely using the facts available (as described under section 776 of the 1930 Tariff Act, as amended by section 231(c) of this bill). If, however, the rates established for *all* exporters and producers individually investigated are zero or *de minimis*, or determined entirely using the facts available, Commerce may use any reasonable method to establish the all-others rate.

These provisions implement the requirements of Article 19.3 of the Agreement, which provides that any producer whose exports are subject to a countervailing duty order, but which was not actually investigated (other than because it refused to cooperate), shall be entitled to an expedited review to establish an individual countervailing duty rate. Current Commerce practice, under which it normally calculates a country-wide rate applicable to all exporters unless there is a significant differential in rates between companies (thus establishing a presumption in favor of a single rate), must be modified in order to comport with Article 19.

Assessment of Countervailing Duty

(Section 265)

Section 265 complements section 264 by eliminating the current presumption in section 706(a) of the 1930 Tariff Act favoring country-wide subsidy rates.

Nature of Countervailable Subsidy

(Section 266)

Section 266 amends section 771(7)(E) of the 1930 Tariff Act to provide that the Commerce Department shall inform the ITC whenever a subsidy is either a prohibited subsidy under Article 3 of the Subsidies Agreement or one that presumptively causes serious prejudice under Article 6.1 of the Agreement; the ITC shall consider such information in determining whether there is a threat of material injury.

Definition of Developing and Least-Developed Country

(Section 267)

Section 267 amends section 771 of the 1930 Tariff Act by adding a new paragraph defining the terms “developing country” and “least developed country,” consistent with their use in Article 27 of the Subsidies Agreement. “Developing country” is defined as a country designated as such by USTR, based on factors including but not limited to the country’s level of economic development (*e.g.*, its per capita GNP) and share of world trade. “Least-developed country” is defined consistent with Annex VII to the Subsidies Agreement; if not expressly referenced as “least developed” in that Annex, a country must have a per capita GNP of less than \$1000 per annum to qualify as “least developed.”

The Committee strongly believes that the special benefits accruing to developing and least-developed countries under the Agreement—including an opportunity to phase out export subsidies and import substitution subsidies gradually, exemption from the presumption of serious prejudice, and higher thresholds for de minimis subsidization in countervailing duty actions—must be limited to countries genuinely meriting such disparate treatment. Permitting countries to “self-elect” developing country status simply invites abuse. The Committee therefore welcomes the declarations of both the United States and the European Union, made prior to the conclusion of the Uruguay Round negotiations (and reiterated in the Statement of Administrative Action) that they would not consider Hong Kong, Korea, or Singapore to be developing countries for purposes of the Subsidies Agreement.

Upstream Subsidies

(Section 268)

Section 268 amends section 771A of the 1930 Tariff Act to establish the criteria for determining the existence of an upstream subsidy (a subsidy bestowed on an input that is passed through to a

downstream product). Under current law, only domestic subsidies can be treated as upstream subsidies. The Agreement's addition of the new category of import substitution subsidies warrants a change in this definition. Section 268 therefore provides that any countervailable subsidy, other than an export subsidy, bestowed on an input used in the production of the subject merchandise may constitute an upstream subsidy, provided that the other statutory criteria are satisfied.

Determination of Countervailable Subsidy Rate

(Section 269)

Section 269(a) provides that, in determining countervailable subsidy rates, the Commerce Department shall determine an individual rate for each known exporter or producer, unless it finds that it is not practicable to do so because of the large number of exporters or producers involved in the investigation or review. In such cases, Commerce may determine individual rates for a reasonable number of exporters or producers by limiting its examination to (1) a statistically-valid sample of such exporters or producers, or (2) those accounting for the largest volume of the imports. Alternatively, it may determine a single country-wide rate to be applied to all exporters or producers. Section 269(b) makes conforming amendments to current law to reflect this change.

Conforming Amendments

(Section 270)

Section 270 consists of a series of conforming amendments, the bulk of which apply the terms "countervailable subsidy" and "countervailable subsidies" that are added by this bill.

PART 3—SECTION 303 INJURY INVESTIGATIONS

*Special Rules for Injury Investigations for Certain Section 303
Countervailing Duty Orders and Investigations*

(Section 271)

Section 271(a) adds a new section 753 to the 1930 Tariff Act to establish a special procedure for making injury determinations with respect to countervailing duty orders issued under section 303 which did not involve such determinations. This provision shall apply only to goods from a Subsidies Agreement country, thus requiring countries to become WTO Members in order to benefit from its terms. This special procedure is necessary in order to comply with the requirement that goods from such countries receive injury determinations in countervailing duty investigations. (See description of section 261 above.)

Section 271(a) provides that, upon receipt of a request from a domestic interested party within six months after the country in question becomes a Subsidies Agreement country (*i.e.*, joins the WTO), the ITC shall initiate an investigation to determine whether a U.S. industry is likely to be materially injured by reason of imports subject to an order if the order were revoked. (If no request

is received, Commerce will revoke the order and refund, with interest, any estimated duties collected.) Commerce shall provide to the ITC the amount of the likely net subsidy if the order were revoked, normally choosing from among those found in the final determination in the original investigation or under administrative reviews. Commerce also shall inform the ITC if the subsidy is prohibited or presumed to cause serious prejudice under the Agreement. If the ITC considers the magnitude of the net subsidy relevant to its analysis, it shall rely on the net subsidy that Commerce determined is likely to prevail if the order is revoked.

The ITC normally shall issue its determination not later than one year from the date of initiation; different time limits apply for section 303 investigations in progress at the time a country becomes a Subsidies Agreement country. If the ITC makes an affirmative determination, the order remains in effect; if the determination is negative, Commerce shall revoke the order.

At the request of the same domestic interested party, Commerce shall also initiate one or more "sunset" reviews under section 751(c) of the 1930 Tariff Act (as added by section 220 of this bill) of orders involving the same or comparable merchandise as that subject to the above injury investigation. The different proceedings shall be treated as having been initiated simultaneously. The ITC also shall make its determinations at the same time, but will continue to apply the different procedures and standards applicable to the two distinct proceedings (most importantly, the different standards for determining injury). The ITC may cumulate the imports in the two proceedings, but is not required to do so. The Committee does not regard this provision as broadening the legal grounds for cumulation.

The Committee is concerned that these special procedures not create a hardship for the domestic industries that were petitioners in an original section 303 case. It is the Committee's understanding that, in order to ensure that such parties have the opportunity to request an injury determination in a timely fashion (to prevent the order from simply being revoked), Commerce will notify them directly as soon as possible after the opportunity to make such a request arises.

PART 4—ENFORCEMENT OF UNITED STATES RIGHTS UNDER THE SUBSIDIES AGREEMENT

Whereas Parts 1 through 3 of Subtitle B make changes to U.S. countervailing duty law to implement the Subsidies Agreement, most of Part 4 covers the new procedures established to enforce the multilateral subsidies remedies provided in the Agreement. In so doing, it is intended to ensure that the United States aggressively utilizes the strengthened remedies under the Agreement for combatting prohibited and actionable subsidies, as well as the mechanisms for addressing non-actionable subsidies.

Subsidies Enforcement

(Section 281)

Section 281 establishes a set of procedures under which the Commerce Department and USTR will enforce U.S. rights under the

Subsidies Agreement. In addition, Commerce will provide information to the public and, to the extent feasible, assistance to interested parties concerning the remedies and benefits available under the Agreement, and the procedures relating to such remedies and benefits. These provisions are intended to provide for greater coordination of countervailing duty law and multilateral enforcement of subsidies obligations. The Committee believes such coordination is essential in view of the new disciplines, as well as the categories of non-actionable subsidies, included in the Agreement. At the same time, it hopes and expects that the process for assisting domestic industries with respect to multilateral subsidies remedies will not impose overly formal or burdensome requirements on such industries; the Committee notes in this regard that the bill utilizes the term "requests" from interested parties, not "petitions."

Prohibited and actionable subsidies.—Articles 3 through 7 of the Subsidies Agreement are intended to improve the disciplines on foreign subsidies through their detailed definitions of "prohibited" and "actionable" subsidies, and their more effective procedures and remedies. In particular, the provisions of Article 6.1, under which four types of subsidies are presumed to cause "serious prejudice" (thus placing the burden on the subsidizing government to demonstrate that such prejudice did not result from the subsidization), represent a significant expansion on the disciplines of the 1979 Tokyo Round Subsidies Code.

Sections 281(a) through (d) of the bill build on these Agreement provisions by establishing specific procedures for challenging alleged prohibited or actionable subsidies. If Commerce determines on its own, or finds there is reason to believe based on a request from an interested party, that foreign goods are benefiting from a subsidy which is prohibited or actionable under the Agreement, it shall notify and provide supporting information to USTR. On the basis of the information provided, and after consulting with the interested party (if any), USTR then shall determine whether to initiate an investigation of the subsidy under Title III of the 1974 Trade Act (hereafter "section 301"), unless the interested party objects. This determination shall be made as quickly as possible, consistent with the requirements of section 301. Normal procedures and timetables then shall apply to consultations, dispute settlement, and potential countermeasures against the subsidizing country.

Notification of non-actionable subsidies.—Section 281(e) requires USTR to provide Commerce with any information submitted to the WTO Subsidies Committee pursuant to the notification procedures in Article 8.3 or 8.4 of the Agreement concerning non-actionable subsidies. Commerce shall review such information and, where appropriate, recommend to USTR that it seek additional information concerning a notified subsidy program. If Commerce has reason to believe, including based on a request submitted by an interested party, that a subsidy violates the conditions of Article 8, it shall inform and provide supporting information to USTR.

If USTR concurs, and after consulting with the interested party and appropriate domestic industries, it shall invoke the procedures of Article 8.4 or 8.5 of the Agreement for review of foreign programs that are notified as non-actionable. USTR shall determine

that there is reason to believe a violation of Article 8 exists in any case where it determines that a notified subsidy program does not meet the conditions required for non-actionability under the bill and Agreement. USTR shall notify Commerce whenever a violation has been found to exist pursuant to Article 8.4 or 8.5.

Remedy for "serious adverse effects."—Section 281(e) provides further that an interested party may request that Commerce determine whether a non-actionable subsidy program (either notified to the WTO Subsidies Committee or not notified but previously determined by Commerce to be "green lighted") is causing "serious adverse effects" under Article 9 of the Subsidies Agreement. This is intended to ensure that, even if a subsidy program meets the criteria for non-actionability under Article 8 of the Agreement, it may be challenged under Article 9 on the grounds that it causes such effects to a U.S. industry, creating "damage which would be difficult to repair." Within 90 days, Commerce shall determine whether it has reason to believe that such effects exist. If so, it shall notify and provide supporting information to USTR. Within 30 days after receiving such notice, USTR shall determine whether there is reason to believe that such effects exist; it shall concur with Commerce unless it finds that Commerce's decision is not supported by the facts. If USTR concurs, it shall initiate consultations under Article 9.2, unless the relevant domestic industry objects.

If the consultations do not produce a mutually acceptable solution within 60 days, USTR shall refer the matter to the WTO Subsidies Committee. Not later than 120 days thereafter, USTR shall determine whether the Committee has found the existence of serious adverse effects. If USTR determines that the Committee has been prevented from such a finding because of the refusal of the subsidizing country to join in the necessary consensus, or that the Committee has not made its decision within 120 days, USTR shall determine within 30 days what action to take in response under section 301. If the Committee does recommend a modification of the foreign subsidy, USTR shall determine within six months whether the subsidizing country has complied with such recommendation. If USTR finds that the country has not complied, it shall determine what action to take in response under section 301.

The Committee anticipates that USTR will retain the discretion to find that consensus in the Subsidies Committee has been prevented by more than one country where USTR believes the subsidizing country has requested the assistance of other countries in blocking action. Where the United States and the vast majority of the Subsidies Committee agree that serious adverse effects have been demonstrated, the Committee believes strongly that the United States should demand removal of such effects and respond if they are not removed. Any blocking or other frustration of the WTO Subsidies Committee's ability to make a timely decision under Article 9 would, in the Committee's view, seriously harm the credibility of the Subsidies Agreement and the Subsidies Committee process. The Committee also endorses the Administration's intention to propose to the Subsidies Committee that the WTO Secretariat should review and report on any allegation of serious adverse effects under Article 9; this offers the potential to make Arti-

cle 9 a more effective remedy over time by diminishing the likelihood that political considerations will affect the decisionmaking.

Consultations and annual enforcement report.—Section 281(f) provides that USTR shall submit promptly to the Committees on Finance and Ways and Means, and other appropriate Congressional Committees, all notifications under Article 8 from foreign governments of proposed “green light” subsidies, publish notice of these in the *Federal Register*, and consult with the appropriate Committees and private sector. It is the Committee’s expectation that the United States will use this notification process aggressively to monitor the operation of the “green light” categories, and that USTR will object to any foreign programs that fail to meet the agreement criteria for “green light” treatment, based on the interpretations of such criteria in the bill, the Statement of Administrative Action, and this report.

With respect to the potential notification of U.S. subsidies, the Committee notes its understanding that USTR shall decide which U.S. programs to notify to the Subsidies Committee after consulting with the Departments of Commerce and Defense, other interested agencies, interested private parties, and the Committees on Finance and Ways and Means and other appropriate Congressional Committees.

Section 281(f) also provides for USTR and Commerce to issue jointly to Congress, not later than February 1 each year beginning in 1996, a report on the subsidies practices of major U.S. trading partners, as well as the monitoring and enforcement activities of USTR and Commerce relating to such practices.

Section 281(g) provides for interagency cooperation in carrying out the above provisions. Section 281(h) defines the key terms used in the bill and Agreement relating to these enforcement provisions. Finally, section 281(i) concerns the treatment of proprietary information provided by Commerce to USTR to carry out its responsibilities under the above.

Review of Subsidies Agreement

(Section 282)

Section 282 includes a series of provisions relating to U.S. review of the Subsidies Agreement, the most important of which requires the Congress to determine whether to extend the application of the non-countervailable subsidy categories included in the bill.

Sections 282(a) and (b) set out U.S. objectives to ensure both effective subsidy disciplines and that the Agreement’s provisions on non-actionable subsidies do not undermine the benefits of other parts of the Agreement. Toward this end, there will be an ongoing U.S. review of the operation of the Agreement provisions on non-actionable subsidies.

Section 282(c) provides for the termination of the bill’s provisions on non-countervailable subsidies (other than those covered by the Agreement on Agriculture). Those provisions, added under section 251(a), will expire 5½ years after the WTO Agreement enters into force, unless three steps occur. *First*, the WTO Subsidies Committee must agree to extend Articles 8 and 9, as well as Article 6.1 (concerning the presumption of serious prejudice), of the Subsidies

Agreement; under Article 31 of the Agreement, those provisions will expire automatically at the end of five years unless the Subsidies Committee agrees to extend them in either the same or a modified form. The President must consult with the Committees on Finance and Ways and Means before and after such a decision is reached. *Second*, once there has been a decision to extend, the President must submit a document describing the terms of such extension, as well as an implementing bill providing for the extension of the non-countervailable subsidy provisions in U.S. law, accompanied by a statement of administrative action and supporting information. *Third*, the implementing bill must be enacted into law. Congressional "fast track" procedures, set forth in section 151 of the 1947 Trade Act, will apply to consideration of the bill.

This procedure ensures that the ultimate determination on whether or not it is wise policy to maintain the three categories of non-countervailable subsidies under U.S. law will be made by the Congress. At the same time, the application of "fast track" procedures ensures that it will be acted upon in a timely manner. The Committee anticipates that the decision whether to extend the non-countervailable subsidies provisions will depend to a significant extent on how effective and aggressive USTR and the Commerce Department have been in enforcing U.S. rights under Articles 8 and 9 of the Agreement and section 281 of the bill, and in ensuring that the definitions of such subsidies under section 251 of the bill are construed narrowly to prevent them from becoming a loophole to effective use of the countervailing duty law and other subsidies disciplines and remedies.

Finally, section 282(d) provides that Commerce shall review the operation of the Subsidies Agreement and submit a report on such review to the Congress within 4½ years of the date of enactment of this bill. The report shall address the Agreement's effectiveness in disciplining prohibited subsidies and remedying the effects of actionable subsidies, and the extent to which the "green light" provisions may have undermined the benefits from other parts of the Agreement.

Amendments to Title VII of the Tariff Act of 1930

(Section 283)

Section 283 amends the countervailing duty law to include provisions relating to the enforcement of the Subsidies Agreement, so as to allow Commerce to include previously notified foreign subsidies in its investigations or reviews (*i.e.*, adjust the rate of duty) if it determines they benefit the subject merchandise and are countervailable. This will permit Commerce to respond adequately where the notification procedures under Article 8 of the Subsidies Agreement were used improperly by a foreign government.

Section 283(a) amends section 703 of the 1930 Tariff Act to provide that, where the only subsidy under investigation is one that USTR notified Commerce was in violation of Article 8, the period for Commerce's preliminary countervailing duty determination is reduced from 65 to 60 days. This is the maximum that the process can be expedited, since under Article 17.3 of the Agreement provi-

sional measures may not be imposed earlier than 60 days after initiation of an investigation.

Section 283(b) amends section 775 of the 1930 Tariff Act to provide that, where Commerce discovers during an investigation or review that a subsidy is in violation of Article 8, or appears to be countervailable despite not having been included in the countervailing duty petition, it shall include the subsidy in the investigation. Section 283(c) amends section 751 of the 1930 Tariff Act to provide that, if such information is provided but a review is not in progress, Commerce shall conduct a review to determine whether the subject merchandise benefits from the subsidy; if so, it shall adjust the estimated duty upward accordingly. If, on the other hand, USTR notifies Commerce that a WTO Member country has withdrawn a countervailable subsidy provided with respect to the merchandise subject to an order, Commerce shall conduct a review to determine whether to adjust the estimated duty downward or revoke the order entirely.

SUBTITLE C—EFFECTIVE DATE

Effective Date

(Section 291)

The amendments made by Title II shall take effect on the date the WTO Agreement enters into force with respect to the United States; thus, they apply only to investigations initiated based on petitions filed (or self-initiated), and reviews begun pursuant to a request filed, after that date.

TITLE III—ADDITIONAL IMPLEMENTATION OF AGREEMENTS

Title III contains five subtitles with provisions to implement the Uruguay Round agreements or understandings regarding safeguards, dispute settlement, textiles, and government procurement; to clarify U.S. objectives on intellectual property related to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement); and to implement a GATT panel report regarding section 337 of the 1930 Tariff Act.

SUBTITLE A—SAFEGUARDS

The Agreement on Safeguards (Safeguards Agreement) addresses the application of GATT 1994 Article XIX, which permits a country to impose import restrictions (“safeguard” measures) when increased imports are found to cause or threaten to cause serious injury to a domestic industry. The Agreement elaborates on GATT 1947 Article XIX which provided little guidance on the specific application of safeguard measures. Because Article XIX required that safeguard measures be applied on an MFN basis and allowed countries whose exports are affected by such measures to retaliate in the absence of agreed compensation, it actually discouraged the use of safeguard measures because of the specter of enormous compensation and retaliation. Instead, GATT contracting parties have tended to negotiate voluntary restraint agreements (VRAs) and

other so-called "grey area measures." Such measures have not always been administered in a transparent manner and often have been left in place longer than needed, causing distortions in the pattern of trade internationally.

Thus the principal U.S. objectives for the Uruguay Round safeguard negotiations as set down by Congress in section 1101 of the Omnibus Trade and Competitiveness Act of 1988 (1988 Trade Act) (19 U.S.C. 2901) stressed improving and expanding rules and procedures to encourage WTO Members to use rather than ignore safeguard rules. Since the United States applies safeguard measures through fair and transparent rules and procedures, much of the Safeguards Agreement is borrowed from current U.S. law in the safeguard area (Title II of the Trade Act of 1974 (1974 Trade Act), 19 U.S.C. 2251, *et seq.*). The Agreement includes the following concepts from U.S. law: determination of injury and increasing imports; procedures to ensure transparency; an eight-year maximum duration; expedited procedures that may be applied in "critical circumstances," including special provisions for proceedings concerning imports of perishable products; "degressivity" (progressive liberalization of safeguard restrictions); and the right to re-impose safeguard restrictions at a later date. Few provisions of U.S. law need to be changed to implement the Safeguards Agreement.

To address two concerns from the GATT 1947 Article XIX, the Safeguards Agreement stipulates that the exporting country may not impose trade retaliation during the first three years of any safeguards measure put in place to address an absolute increase in imports. The Agreement also prohibits VRAs.

Investigations, Determinations, and Recommendations by the ITC

(Section 301)

Treatment of confidential information.—Section 301(a) implements paragraph 2 of Article 3 of the Safeguards Agreement (hereafter in this subsection referred to as "the Agreement"), which specifies procedures for investigations by competent authorities in Member countries. The ITC is the competent authority for safeguard investigations under Title II of the 1974 Trade Act, as amended. The bill amends section 202(a)(8) of the 1974 Trade Act to authorize the ITC to request that parties submitting confidential business information provide a non-confidential summary of such information. In keeping with the Agreement, the bill stipulates that the ITC can disregard the submission if it finds that a request for confidentiality is unwarranted and the submitter is unwilling to make the information public or authorize its disclosure in summary form.

Administrative protective orders (APOs).—Section 301(b), which is consistent with paragraph 2 of Article 3 of the Agreement, amends section 202 of the 1974 Trade Act to require the ITC to promulgate regulations to provide access to confidential business information under an APO to authorized representatives of interested parties who are parties to a safeguard investigation.

Release of confidential business information under an APO is provided for and done routinely under Title VII of the 1930 Tariff Act, as amended (19 U.S.C. 1671, *et seq.*), which deals with anti-

dumping and countervailing duty investigations. The Committee expects that APO procedures for safeguard investigations will be administered in a manner similar to those currently followed for Title VII investigations. The Committee further expects that the Executive Branch will seek public comments and take these comments into account in promulgating regulations in this area.

Notice of proceedings.—Section 301(c) implements certain procedural requirements in paragraph 1 of Article 3 of the Agreement by amending section 202(b) of the 1974 Trade Act to codify certain ITC procedural practices. For example, the requirement that the ITC publish a notice in the *Federal Register* of commencement of proceedings and that it offer private parties an opportunity to respond to the presentations of others.

Critical circumstances.—Section 301(d) implements Article 6 of the Safeguards Agreement, dealing with provisional safeguards measures. It replaces the provision in current law with a new, faster procedure in amended section 202(d)(2) of the 1974 Trade Act.

Under the new provision, as under current law, industries filing petitions under section 202 may allege that critical circumstances exist and seek provisional relief pending the completion of the full ITC investigation and review by the President. The proposed change calls for the ITC to make a critical circumstances determination within 60 days of the filing of the petition alleging such circumstances. The bill then allows the President 30 days from the time he receives the ITC's report to decide what, if any, action to take.

Under current law, the ITC does not make its critical circumstances determination until after it has made an affirmative injury determination, which occurs generally at the close of the 120-day injury phase of the investigation. The President then has seven days from the ITC's critical circumstances determination to decide whether to provide provisional relief. The Committee notes that the new provision is substantially faster than current law as it allows the President to impose provisional relief in 90 days, as compared with 127 days under current law.

If the President decides to impose provisional relief, it would remain in effect for a period not to exceed 200 days—a limitation imposed by the Agreement—and would, if feasible, take the form of imposition of duties or increases in duties. The regular 120-day injury phase of the ITC investigation would begin after the completion of the 60-day ITC critical circumstances phase in cases where critical circumstances are alleged. To ensure that provisional relief measures do not lapse before the President acts on the ITC's final recommendation, the bill limits the time for Presidential consideration of the ITC's final recommendation from 60 days to 50 days in those cases where the President has imposed provisional relief.

The bill continues to allow industries producing a perishable agricultural product to request provisional relief under section 202(d)(1), provided that the imported product has been the subject of an ITC monitoring investigation under section 332 of the 1930 Tariff Act for at least 90 days.

Factors in making determinations.—Section 301(e) implements Article 4 of the Safeguards Agreement which addresses determination of serious injury or threat thereof by adding "productivity" to

the list of factors in section 202(c)(1)(B)(i) that the ITC must consider in making its determinations of serious injury or threat thereof. The Committee understands that this does not represent a change in ITC practice, as the ITC already uses data relating to this factor in judging whether an industry has been seriously injured.

The bill also adds definitions of the terms "domestic industry," "serious injury," and "threat of serious injury" to section 202(c)(6) to be consistent with the language of Article 4 of the Agreement. The change in the definition of "domestic industry" codifies current ITC practice. The terms "serious injury" and "threat of serious injury" are not defined under current law, but the suggested definition for "serious injury" follows closely the ITC's current practice, and the suggested definition for "threat of serious injury" is quite similar to the definition of that term in the reports of the Committees on Finance and Ways and Means regarding section 201 under the 1974 Trade Act. Thus the Committee does not anticipate that the inclusion of these definitions in U.S. law will significantly alter ITC practice.

Consistent with the Statement of Administrative Action, the Committee expects that the ITC in making the recommendation to the President required by section 202(e)(1), will take into account the existence of other relief, such as relief under the antidumping or countervailing duty laws, and when such other relief has been identified, will describe in its report to the President how it has taken such relief into account.

Limitations on investigations.—Section 301(f) addresses Article 2 of the Agreement on Textiles and Clothing (Textiles Agreement) by providing that a section 201 safeguard investigation of imports of any product that is subject to the Textiles Agreement may be conducted only if the United States has integrated the product into the GATT 1994 pursuant to the Textiles Agreement. It further requires that, not later than the date that 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.

Action by the President After Determination of Import Injury

(Section 302)

Authority to enter into international agreements.—Section 302(a) addresses paragraph 1 of Article 11 of the Safeguards Agreement ("Prohibition and Elimination of Certain Measures"). In order to draw a distinction between agreements described under section 203 and "orderly marketing agreements" which the Safeguards Agreement seeks to prohibit, this section drops the term "orderly marketing agreements" from section 203 of the 1974 Trade Act. The Committee does not expect the dropping of the term "orderly market agreement" from section 203 to make any substantive change in U.S. law since all U.S. orderly marketing agreements have been negotiated under section 203 authority in a manner that is consistent with the requirements of the Safeguards Agreement.

Article 11 of the Safeguards Agreement addresses the principal trade negotiating objectives of the United States for safeguards, as

set forth in section 1101(b)(12) of the 1988 Trade Act. In setting out these objectives, Congress stressed the need to make the procedures for granting temporary import relief more transparent. Congressional concern stemmed from the fact that some countries have made a practice of ignoring GATT safeguard rules in favor of so-called "grey area measures," such as orderly marketing agreements, which are outside the purview of the GATT. Paragraph 2 of Article 11 of the Agreement requires that such measures be phased-out within four years, but allows each country one "grandfathered" exception under extraordinary circumstances which can continue through 1999. Under the bill, the President retains authority to enter into agreements allocating quotas allowed under paragraph 2 of Article 5 of the Safeguards Agreement, which addresses the application of safeguard measures.

Limitations on actions.—Section 302(b)(1) implements paragraph 1 of Article 7 of the Agreement ("Duration and Review of Safeguard Measures") by amending section 203(e)(1) to provide that a safeguard action may be imposed initially for no more than four years, including the time, if any, during which provisional relief is in effect. To conform with paragraphs 2 and 3 of Article 7 of the Agreement, the bill further amends section 203(e)(1) to provide that the action may be renewed for one or more additional periods for a total period of relief of eight years if the President determines that (1) the action continues to be necessary to prevent or remedy serious injury and (2) there is evidence that the domestic industry is making a positive adjustment to import competition. Under current U.S. law, a safeguard action may be taken for up to eight years, but the initial period may be longer than the four years stipulated by the Agreement.

Limitations on quantitative restrictions.—Section 302(b)(2) implements paragraph 1 of Article 5 of the Agreement, which addresses the application of safeguard measures, by providing in section 203(e)(4) that any action by the President to impose a quantitative restriction shall permit the importation of a quantity or value of the product equal to the amount imported in the most recent three years that are representative of imports of such product and for which data are available, unless the President finds that the importation of a different quantity or value is justified in order to prevent or remedy serious injury. Current law does not require that the representative period be three years. The Agreement cites a three-year period, but neither it nor the bill stipulates that the three years must be consecutive.

Phasing-down of actions.—Section 302(b)(3) implements paragraph 4 of Article 7, which addresses the duration and review of safeguard measures, by amending section 203(e)(5) of the 1974 Trade Act to provide that an action that has an effective period of more than one year shall be phased down at regular intervals over the period during which the action is in effect. Current law stipulates that relief in effect for more than three years is to be phased down "[t]o the extent feasible." The bill leaves to the discretion of the President what would be considered an appropriate "regular interval" and over the amount by which the relief is phased down at those intervals.

Limitations on new actions and investigations of same article.—Section 302(b)(4) implements paragraph 5 of Article 7 by amending section 203(e) to provide that no new action may be taken with respect to a product that was the subject of a safeguard action for a period that is equal to the previous safeguard action or two years, whichever is longer. It implements paragraph 6 of Article 7 by amending section 203(e) to provide that if the action was in effect for a period of 180 days or less, the President may take a new action provided (1) at least one year has elapsed since the previous action went into effect; and (2) a safeguard action has not been taken on the product in question more than twice in the last five years. Additionally, it amends section 202(h)(2) of the 1974 Trade Act to prohibit ITC investigations inconsistent with these time constraints. Thus, the bill allows new petitions involving a product for which import relief was provided previously to be filed with the ITC up to eight months earlier than under current law. This is because the limitation is phrased in terms of when new relief may be granted instead of when a new petition may be filed.

Reports on monitoring.—Section 302(c) makes slight modifications in section 204(a)(2), which addresses the timing of ITC monitoring reports during the period of relief, to accommodate the timetable for such reports set forth in paragraph 4 of Article 7 of the Agreement and to eliminate redundant reports.

Investigation of extension of action.—Section 302(d) also amends section 204 by adding a new subsection (c) to implement Article 7(2) of the Agreement, which governs determinations regarding the extension of relief. The bill provides the ITC authority, when relief has been granted, to investigate whether relief continues to be necessary and whether the industry is adjusting to import competition. Such investigations may be initiated either by a petition on behalf of the concerned industry filed between six and nine months in advance of the scheduled expiration of the initial relief, or by a request from the President. The bill provides that the ITC will publish notice and hold a public hearing during any such investigation. The ITC will submit its report to the President at least 60 days before the initial action is to terminate, unless the President specifies a different date.

Miscellaneous Amendments

(Section 303)

Miscellaneous amendments.—Section 303 makes technical corrections in sections 202 and 203 of the 1974 Trade Act. These changes primarily address cross-referencing errors in current law.

Effective Date

(Section 304)

Subtitle A 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, except that the amendment made by section 301(b) takes effect on the date of enactment of this bill.

SUBTITLE B—FOREIGN TRADE BARRIERS AND UNFAIR TRADE
PRACTICES

Subtitle B makes changes to sections 181 and 182 and Title III, Chapter 1 (sections 301 through 310) of the 1974 Trade Act to implement the Uruguay Round Dispute Settlement Understanding and improve the functioning of these provisions. It also sets out U.S. intellectual property objectives related to the TRIPs Agreement. These changes are intended to ensure that these provisions work effectively in conjunction with the terms of the Dispute Settlement Understanding, and that they afford effective responses to those unfair foreign trade practices that are not subject to the disciplines of the Uruguay Round agreements.

Identification of Foreign Anticompetitive Practices

(Section 311)

Section 311 amends section 181(b)(2) of the 1974 Trade Act to provide that USTR shall include in the annual National Trade Estimate Report on Foreign Trade Barriers (required by March 31 each year) a new section on foreign anticompetitive practices, the toleration of which by foreign governments adversely affects U.S. exports of goods and services. The bill requires USTR to prepare this section in consultation with the Justice Department (in view of Justice's responsibility for international antitrust matters). The Committee believes this additional attention to foreign government toleration of such practices, a matter of critical concern to American exporters, will assist those exporters in key markets. (The changes to section 301 to better address such practices are described more fully under section 314(c) of the bill.)

Consultation with Committees

(Section 312)

Section 312 amends section 181(b) of the 1974 Trade Act to require USTR, after the submission of the National Trade Estimate report, to consult with, and take into account the views of, the relevant Congressional Committees on means to address the foreign trade barriers identified in the report, including the possible initiation of section 301 investigations or other trade actions.

*Identification of Countries that Deny Protection of Intellectual
Property Rights*

(Section 313)

Section 313 amends section 182 of the 1974 Trade Act, the "special 301" provision concerning the identification of priority countries in connection with denial of adequate and effective intellectual property protection or denial of market access for U.S. persons that rely on intellectual property protection. In identifying foreign countries under special 301, USTR shall consider the history of a country's intellectual property protection, including its prior treatment under special 301. The list of intellectual property rights to be addressed is updated to include related rights, mask works,

trademarks, plant breeders' rights, and trade secrets. Section 313 provides further that a foreign country may be determined to deny adequate and effective protection of intellectual property rights, even if it is in compliance with the Uruguay Round TRIPs Agreement. Section 313 also requires the USTR to submit an annual report to the House Committee on Ways and Means and the Senate Committee on Finance on actions taken under special 301 during the preceding twelve months and the reasons for such actions, including a description of progress made in achieving improved protection and market access for intellectual property rights.

The Committee believes that the new requirement that, in identifying countries, the USTR take into account the history of a country's treatment under special 301 should discourage the current practice of leaving a country on the special 301 "watch list" or "priority watch list" for several years consecutively without elevating that country to the next level of scrutiny or identifying it as a priority foreign country even though the country has made little or no progress over the period. Furthermore, the addition of intellectual property areas to those already specifically covered by special 301 will ensure that the statute is up-to-date and that all intellectual property areas of interest to U.S. persons are squarely under the statute.

The Committee further believes that these amendments will maintain the effectiveness of special 301 by clarifying how the entry into force of the TRIPs Agreement will affect the operation of special 301. The Committee's expectation is that the Administration will continue to work bilaterally for upgraded intellectual property protection under special 301, notwithstanding the fact that the TRIPs Agreement allows developing countries a long transition period after entry into force of the Agreement. In this regard, the Committee notes with interest that the Statement of Administrative Action has as a key Administration objective to seek accelerated implementation of the TRIPs Agreement. The Committee also is concerned that the TRIPs Agreement does not cover all areas of intellectual property protection and expects the Administration to work bilaterally under special 301 to increase protection in those areas for U.S. interests.

The Committee also welcomes the addition of an annual report on intellectual property protection, which will focus in particular on those countries and practices that have been the subject of public submissions over the prior year. (See also additional discussion of intellectual property rights in sections 314 and 315 below.)

Amendments to Title III of the Trade Act of 1974

(Section 314)

Section 314 amends several provisions in Title III, chapter 1 (sections 301 through 310) of the 1974 Trade Act to clarify the scope of retaliatory actions available in response to the unfair foreign practices subject to those provisions, revise the definitions of certain covered practices, modify the applicable time periods for certain investigations, and improve the monitoring of foreign government compliance with trade agreements. The general intention of section 314 is to ensure that Title III of the 1974 Trade Act re-

mains a strong and effective means of enforcing U.S. rights under trade agreements and addressing other unfair foreign trade practices in various contexts.

Scope of retaliation.—Section 314(a) amends sections 301(a) and (b) of the 1974 Trade Act to clarify that USTR, subject to the President's direction, may take retaliatory action with respect to trade in any goods or services, or with respect to any other area of pertinent relations with the foreign country whose policies or practices are subject to retaliation. This is intended to permit the scope of possible action to reach beyond U.S. obligations under the Uruguay Round agreements. Section 314(a) also amends section 301(c) to provide that priority shall be accorded to the imposition of retaliatory duties only when USTR determines that the actions to be taken are to be in the form of import restrictions. This is intended to afford USTR greater flexibility in determining the best means of responding under section 301 to a particular foreign practice, based on the recognition that the imposition of duties may not be the most effective or feasible form of action in all cases.

Relationship with other authorities.—Section 314(b) amends section 301(c) to provide clear authority to USTR under section 301 to restrict benefits under U.S. preferential trade arrangements pursuant to the GSP, CBERA, or ATPA. It makes explicit that, if the foreign government act, policy, or practice fails to meet the eligibility criteria for those programs, one of the options available is the withdrawal, suspension, or partial suspension of program benefits granted to the country in question.

Definition of "unreasonable" act, policy, or practice.—Section 314(c) amends the definition of an "unreasonable" act, policy, or practice under section 301(d)(3)(B) to address two issues of particular concern. *First*, it clarifies that USTR may determine that a country is denying adequate and effective protection of intellectual property rights, notwithstanding that the country may be in compliance with the specific obligations of the Uruguay Round TRIPs Agreement. In addition, it adds the denial of non-discriminatory market access opportunities for U.S. persons that rely on intellectual property protection to the definition of "unreasonable" practices; this currently is covered only under section 182 of the 1974 Trade Act ("special 301").

Second, it amends the definition of "unreasonable" act, policy, or practice with respect to foreign government toleration of systematic anticompetitive activities to clarify that this applies to state-owned enterprises as well as private firms; to the denial of fair and equitable market access opportunities for U.S. services as well as goods; and to anticompetitive practices that restrict the sale of U.S. goods or services to a foreign market, not just to the foreign firms that engage in the practices. This is intended to provide greater certainty that U.S. trade law can be used effectively to address the broad range of foreign anticompetitive practices that may be burdening or restricting U.S. commerce. (See also the expanded reporting provision concerning such practices under section 311 above.)

The Committee has taken an interest in the use of Title III of the 1974 Trade Act to address the toleration of anticompetitive practices since it amended the statute in 1988 to include such a provision. The amendments made in this bill are necessary in view

of growing indications that foreign government toleration of systematic and pernicious anticompetitive practices such as cartels, closed distribution systems and purchasing practices (including coercion of distributors or customers), reciprocal dealing arrangements, and tying arrangements, is creating significant barriers to U.S. exporters in key foreign markets, and that the law should be strengthened to address these concerns. Moreover, the Uruguay Round agreements do little to address such government action or inaction, making it essential to provide a stronger and more effective domestic remedy. The Committee is particularly concerned that such problems caused by anticompetitive behavior may exist in the glass and the auto parts sectors. The Committee expects that, where appropriate, the Administration will utilize U.S. trade laws, as strengthened by the amendments made in this section and other provisions in Title III of this bill, to address these concerns. The Committee therefore supports the Administration's commitment, set out in the Statement of Administrative Action, to utilize this provision vigorously and, in so doing, to look to various sources of information in evaluating a foreign government's toleration of anticompetitive practices.

The Committee also has followed with great interest USTR's efforts to address U.S. trade losses resulting from the lack of effective worldwide protection for intellectual property rights since Title III was amended in 1984 to explicitly cover this area. While much progress has been made in the intellectual property area under Title III and so-called "special 301," added in 1988, the Committee wants to ensure that the statute continues to be used effectively to combat low worldwide standards of intellectual property protection. The changes included here in the intellectual property area parallel the amendments being made to special 301 in section 313 of the bill to ensure that both statutes will be available to address the full range of intellectual property areas, both in terms of protection and market access, notwithstanding the conclusion and entry into force of the Uruguay Round TRIPs Agreement. (See additional discussion of the Committee's concerns with regard to intellectual property rights and the TRIPs Agreement in the description of sections 313 and 315 of this bill.)

Time limits for determination.—Section 314(d) amends the deadlines under section 304(a) of the 1974 Trade Act for section 301 cases involving the Subsidies Agreement to conform to the 18-month period for cases involving other trade agreement violations. This change makes U.S. law consistent with the timetables set forth in the Uruguay Round Dispute Settlement Understanding. The current different time limits for non-trade agreement cases and "special 301" investigations which do not involve a violation of the TRIPs Agreement or another trade agreement are retained; if, however, such investigations involve a trade agreement, then the longer trade agreement time limits apply.

Monitoring foreign compliance.—Section 314(e) is intended to improve USTR monitoring of foreign compliance with trade agreement obligations by amending section 306 of the 1974 Trade Act to provide that USTR shall (1) monitor the implementation of any agreement or other measure undertaken by a foreign government to resolve an investigation under Title III, whether or not USTR

has made a determination that such government's act, policy, or practice is "unreasonable;" (2) monitor the implementation of panel and Appellate Body reports by other WTO Members; and (3) determine, within 30 days of the expiration of any "reasonable period of time" established under Article 21 of the Uruguay Round Dispute Settlement Understanding for implementation of such report, whether a country has failed to implement such report so as to deny the United States its rights under a trade agreement. These changes to section 306 are intended to strengthen U.S. enforcement of trade agreement obligations. Monitoring of foreign compliance with such obligations no longer will depend on whether USTR had determined that a practice was actionable under section 301; section 306 also will apply where a foreign government had concluded a settlement agreement before such a determination. The 30-day timeframe for a USTR determination following expiration of the "reasonable period of time" under the Dispute Settlement Understanding provides an explicit link between section 306 and the enforcement of U.S. rights under the WTO dispute settlement system.

"Super 301" extension.—Section 314(f) amends section 310 of the 1974 Trade Act (commonly known as "Super 301"), a provision of the 1988 Trade Act that expired in 1990. Section 314(f) codifies, for one year, the provisions of the President's March 3, 1994 Executive Order on Super 301. It requires USTR to identify and report to the Committees on Finance and Ways and Means, no later than 180 days after the publication of the National Trade Estimate report in 1995, on the priority foreign country practices that, if eliminated, are likely to have the most significant potential to increase U.S. exports. Within 21 days of the report's submission, USTR is required to initiate investigations under section 302(b)(1) of the identified priority practices. USTR also may cite in the report practices that may warrant identification in the future or that were not identified because they already are being addressed.

The Committee believes that this one-year codification of the terms of the March 1994 Executive Order, represents a positive step toward more effective utilization of the U.S. laws to address particularly significant unfair foreign trade practices. The Committee fully expects that the Administration will consult closely with it, consistent with section 312 of this bill, on the implementation of this provision in 1995, and with respect to whether it should be extended beyond next year.

GAO report.—In view of the importance of Title III of the 1974 Trade Act in addressing unfair foreign trade practices, and concerns that the Uruguay Round agreements could undermine its use and effectiveness, the Committee also intends to request the GAO, soon after the enactment of this bill, to undertake a study on the effectiveness of section 301, including the Special 301 and Super 301 provisions added in the 1988 Trade Act and since amended.

Objectives in Intellectual Property

(Section 315)

Section 315 sets out U.S. objectives with respect to intellectual property protection, including accelerated implementation of the TRIPs Agreement, foreign enactment and implementation of effec-

tive laws protecting intellectual property rights that go beyond the TRIPs Agreement and the NAFTA, fair and non-discriminatory market access opportunities for U.S. persons that rely on intellectual property protection, and active roles on intellectual property in both the WTO and World Intellectual Property Organization (WIPO). In seeking foreign enactment and implementation of effective laws protecting intellectual property rights, the U.S. objective is to conclude bilateral and multilateral agreements that create obligations to protect and enforce such rights and to cover new and emerging technologies and new methods of transmission and distribution. Additionally, it is the U.S. objective to seek to prevent or eliminate discrimination with respect to matters affecting the availability, acquisition, scope, maintenance, use and enforcement of intellectual property rights.

The Committee strongly endorses these objectives. The Committee recognizes that much progress has been made over the past decade in the intellectual property area, but believes it is clear that more work needs to be done to ensure the strongest possible protection for U.S. intellectual property abroad. The Uruguay Round TRIPs Agreement and the intellectual property chapter of the NAFTA are important achievements in upgrading protection for such rights, but they do not address all areas of interest to the United States and contain additional flaws, such as the long transition period for developing countries in the TRIPs Agreement.

These objectives make it clear that the Congress expects the Executive Branch to work bilaterally and multilaterally in the WIPO and the WTO to address existing intellectual property areas not now adequately covered—to bring protection for such areas up to the level of protection enjoyed in the United States—and to update continually its agenda in this area to ensure that it reflects the most important objectives of the United States. This is especially a concern because of the emergence of new technologies and new methods for transmission and distribution. In this regard, the Committee supports the Administration's stated intention, set forth in the Statement of Administrative Action, to continue to maintain a model intellectual property agreement, and to review and update this model regularly to ensure that U.S. objectives take account of new and emerging developments that are relevant to the broad range of current and future technologies. The Committee also is concerned that the Administration work to eliminate the discrimination that currently exists in certain intellectual property areas, and to prevent future discrimination against U.S. interests in new and emerging areas. (See also discussion of intellectual property rights in sections 313 and 314 above.)

Effective Date

(Section 316)

Subtitle B, and the amendments it makes to current law, will take effect on the date that the WTO Agreement enters into force for the United States, except that the effective date of section 314(f) is the date of enactment of this bill.

SUBTITLE C—UNFAIR PRACTICES IN IMPORT TRADE

*Unfair Practices in Import Trade**(Section 321)*

Section 337 of the 1930 Tariff Act provides for relief against certain unfair methods of competition and unfair acts in the importation of articles, including the importation of articles that infringe a valid and enforceable U.S. patent, copyright, trademark, or semiconductor maskwork. Section 337 applies to the infringement of patents, copyrights, trademarks, and semiconductor maskworks only if an industry related to the intellectual property right in question exists or is in the process of being established.

The ITC has the responsibility under section 337 to conduct an investigation of an alleged violation of this provision either upon a complaint filed by an interested party or upon its own motion. If the ITC finds that a violation has occurred, it must order that the imports concerned be excluded from entry into the United States and may enjoin activities with respect to such imports, unless it determines that such an order should not be issued after considering the effect of exclusion or injunction on the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States and U.S. consumers. The ITC must notify the President of affirmative determinations. If the President, for "policy reasons," disapproves of the ITC determination within 60 days of notification, the order ceases to have effect. If, however, the President takes no action or approves the determination, the ITC's order becomes final.

In 1988, a GATT panel found that certain procedural aspects of section 337 violated the national treatment obligation of Article III of GATT 1947. The panel report was adopted in November 1989. The panel cited four areas where section 337 proceedings at the ITC against imported goods differ from proceedings in Federal district courts in infringement actions brought against domestically produced goods: (1) section 337 imposes time limits on the ITC, while there are none imposed on Federal district courts; (2) counterclaims are not permitted at the ITC, but are permitted in district courts; (3) a right holder may seek relief against domestically-produced goods only in district court, while relief against imported goods may be sought at both the ITC and district court, creating the possibility that actions could be maintained against imported products simultaneously in two separate fora; and (4) general exclusion orders are available remedies at the ITC, but are not available in district court proceedings.

Section 321 of the implementing bill brings section 337 into compliance with the GATT panel report. The Committee notes that, in 1989, when the GATT panel report was adopted, the United States assumed an obligation to bring section 337 into compliance with the GATT. That obligation remains under the Uruguay Round agreements, as the national treatment provision, which the panel found was violated by certain aspects of section 337, has been carried forward as Article III of GATT 1994. However, the Committee also notes that, since the issuance of the GATT panel report in 1989, the negotiations on the TRIPs Agreement have been com-

pleted. The TRIPs Agreement, which is part of the Uruguay Round agreements, recognizes that it may be necessary to treat imported and domestically produced goods differently in order to enforce intellectual property rights with respect to imported goods. Accordingly, the amendments do not create procedures identical in all respects for the enforcement of intellectual property rights with respect to domestically produced and imported goods, but have limited any differences in treatment to those necessary for the effective enforcement of U.S. laws in respect of imported products.

Amendments to Section 337 of the Tariff Act of 1930

Section 321(a) sets forth amendments to section 337 that address three of the problems cited by the GATT panel—time limits, inability to file counterclaims, and general exclusion orders. These changes are described in greater detail below. Section 321(b) amends Title 28, United States Code, to address the fourth problem cited by the GATT panel—parallel proceedings in two fora—and to make conforming amendments to the substantive intellectual property laws.

Time limits.—Under current law, the ITC must make its determination within one year (or 18 months in more complicated cases). The GATT panel found that these relatively short and fixed time limits could put respondents in a less favorable position than they would be if a case had been brought in Federal district court, where no such time limits apply. Accordingly, section 321 eliminates the time limits in section 337 investigations. Instead, the ITC will be required to conclude its investigation at the earliest practicable time. To assist in reaching that goal, a target date for the ITC's final determination must be established within 45 days of the initiation of an investigation. The Committee notes that these requirements parallel procedures set forth in the Federal Rules of Civil Procedure to provide district courts with various means for expediting litigation. Although the fixed deadlines for the completion of section 337 investigations have been eliminated, the Committee expects that, given its experience in administering the law under the deadlines in current law, the ITC will nonetheless normally complete its investigations in approximately the same amount of time as is currently the practice.

Counterclaims.—Although existing law provides that all legal and equitable defenses may be presented in section 337 cases, respondents in a section 337 investigation do not have the right to file counterclaims. The GATT panel found that the inability to raise a counterclaim in a section 337 action, which is a right granted to defendants in Federal district court proceedings, deprives respondents of an option that is available where products of U.S. origin are concerned. Section 321(a) grants respondents in section 337 actions the right to raise any counterclaim. Once a counterclaim is raised, the respondent must file a notice of removal of the counterclaim with a district court of proper venue. The Committee notes that removal of the counterclaim to district court will ensure that all such counterclaims will be heard by a court that has the expertise and authority to adjudicate them. Under section 321(a), any counterclaim raised pursuant to these provisions will relate back to the date of the original complaint filed at the ITC. The Committee

believes that these provisions will be particularly useful to respondents with respect to the tolling of applicable statutes of limitation and the calculation of damages in infringement actions. Adjudicating counterclaims in district court will also ensure that the full panoply of remedies are available to the party raising the counterclaim. The Committee notes that the right to raise a counterclaim in a section 337 action is in addition to the right to present all legal and equitable defenses. Moreover, it is the Committee's intention that the raising of a counterclaim will not delay the ITC proceedings with respect to the section 337 complaint. Similarly, once a counterclaim has been removed to a district court pursuant to this subsection, the dismissal, termination or withdrawal of the section 337 complaint at the ITC will have no effect on the counterclaim.

General exclusion orders.—Section 337(d) directs the ITC, if it determines that section 337 has been violated, to exclude from entry the articles concerned. In general, the ITC issues limited exclusion orders, *i.e.*, orders that apply only to the parties to a section 337 proceeding. In certain cases, however, the ITC may issue general exclusion orders, which exclude from entry all imports that infringe the patent or other intellectual property right at issue regardless of the source or importer. The GATT panel found that the issuance of general exclusion orders is relief that is not generally available to successful plaintiffs in actions against domestic infringers. However, the Panel also noted that there might sometimes be objective reasons why general exclusion orders are sometimes necessary. The Panel noted that, for example, in the case of imported products, it might be considerably more difficult to identify the source of infringing products or to prevent the circumvention of orders limited to the products of named persons, than in the case of products of U.S. origin. Accordingly, section 321(a) amends section 337(d) to provide that the ITC shall issue limited exclusion orders unless the ITC determines that a general exclusion order is necessary to prevent circumvention of a limited order or there is a pattern of violation of section 337 and it is difficult to identify the source of infringing products. It is the Committee's understanding that these limitations do not differ significantly from the current practice of the ITC with respect to the issuance of general exclusion orders.

Other amendments.—Section 321(a) makes several additional technical amendments to section 337 that are designed to bring section 337 practice into closer conformity with district court rules and practices with respect to similar matters. Under existing law, articles subject to a temporary exclusion order issued under section 337 may enter under bond; if the bond is forfeited, the proceeds go to the U.S. Treasury. Section 321(a) authorizes the ITC to establish the bonding amount at an amount that is sufficient to protect the complainant from any injury. If the ITC later determines that the respondent has violated section 337, the bond may be forfeited to the complainant. But if the ITC finds that section 337 has not been violated, the bond may be returned to the respondent. Similarly, under current law, if the ITC issues a temporary cease and desist order, it may require the complainant to post a bond as a prerequisite to issuing such an order. The amendments to section 337 will provide that if the ITC later determines that the respondent

has not violated section 337, the bond may be forfeited to the respondent. Finally, section 321 amends the bonding requirement applicable to entries of articles during the 60-day period for Presidential review of ITC determinations. Subsection (j) of section 337 is amended to provide that, during this period, articles may enter under bond in an amount the ITC determines is sufficient to protect the complainant from any injury. If the ITC's determination becomes final, the bond may be forfeited to the complainant. Section 321(a) also makes decisions related to bonds subject to judicial review.

Section 321(a) also modifies subsection (n) of section 337 to grant ITC employees involved with all aspects of an investigation or with proceedings for the modification or rescission of an order, administration of a bond, enforcement of orders and maintenance of the public record access to confidential information. These amendments also clarify that employees or officers of the Customs Service directly involved in administering an exclusion order shall also have access to confidential information. It is the Committee's view that these amendments will clarify existing law and facilitate effective administration of section 337 and enforcement of orders issued pursuant to section 337.

Finally, section 321(a) amends section 337(c) to strike the term "settlement agreement," replacing it with a reference to an agreement between private parties, including an agreement to present the matter for arbitration. By according deference to arbitration agreements, this amendment is intended to bring ITC practice under section 337 into closer conformity with district court practice.

Amendments to Title 28, United States Code

Section 321(b) makes a number of amendments to Title 28, United States Code, to complement and parallel the amendments to section 337 of the 1930 Tariff Act that are designed to bring the United States into compliance with the GATT panel report.

Simultaneous proceedings.—The GATT panel found that the possibility that importers or producers of imported goods might have to defend their products simultaneously before the ITC and in Federal district court, whereas no corresponding exposure exists with respect to domestically produced goods, constitutes a violation of the GATT's national treatment obligation. To remedy the problem, section 321 requires a district court hearing an infringement case to stay its proceedings, if requested to do so by the respondent in a section 337 investigation, with respect to any claim that involves the same issues that are pending before the ITC. When a district court dissolves its stay after the section 337 proceeding is completed, the ITC record may be offered as evidence in the court's proceedings, to the extent permitted under the Federal Rules of Evidence and Federal Rules of Civil Procedure.

Effective Date

(Section 322)

Section 322 provides that the amendments made by section 321 apply to complaints filed on or after the date of entry into force of the WTO for the United States. In cases initiated on the ITC's own

motion, these amendments apply with respect to investigations initiated on or after that date.

SUBTITLE D—TEXTILES

The WTO Agreement on Textiles and Clothing (Textiles Agreement) will replace the Multifiber Arrangement (MFA), which has been in effect since 1974. The MFA and its predecessors—the Short-Term Arrangement Regarding International Trade in Cotton Textiles (1961–1962) and the Long-Term Arrangement Regarding International Trade in Cotton Textiles (1962–1973)—have governed world trade in textiles and apparel for over 30 years. Under the new Agreement, textile and apparel articles will be completely integrated into the GATT, that is, subject to GATT rules and disciplines, over a 10-year transition period. The integration, which includes the liberalization and eventual elimination of quotas on textiles and apparel, will occur in four stages: immediately upon entry into force of the WTO, after three years, and after seven years, with full integration to be achieved at the end of 10 years.

Textile Product Integration

(Section 331)

Article 2(6) of the Agreement requires WTO Members, immediately upon entry into force of the WTO, to integrate into the GATT products which, in 1990, accounted for not less than 16 percent of the total volume of imports of the textile and apparel products listed in the Annex to the Agreement. Article 2(8) establishes the integration schedule for the remainder of the 10-year transition period. Three years after the WTO enters into force, Members must integrate products which, in 1990, accounted for not less than 17 percent of the total volume of imports of the products listed in the Annex. After seven years, products which, in 1990, accounted for not less than 18 percent of the total volume of covered products must be integrated. After 10 years, all textile and apparel products will be integrated into the GATT.

Section 331 requires the Secretary of Commerce, within 120 days of entry into force of the WTO, to publish in the Federal Register a notice containing the list of products to be integrated in each of the stages set forth in Article 2(8). In developing the integration schedule, the Committee expects that the Administration will consult with all interested parties. Once the list is published, section 331 provides that it may not be changed unless required by subsequent legislation or superseding international obligations of the United States, to correct technical errors or to reflect reclassifications. The Committee believes that this procedure will ensure that all relevant parties—including domestic producers, retailers and importers—will have adequate and timely notice of the integration schedule, allowing them to take the schedule fully into account in making long-range business plans.

*Amendment to Section 204 of the Agricultural Act of 1956**(Section 332)*

Section 204 of the Agricultural Act of 1956, as amended, provides the President with the basic statutory authority to enter into agreements with foreign governments to limit their exports of agricultural or textile products to the United States, and to issue regulations to carry out such agreements. In addition, if a multilateral agreement is concluded under the authority of this section among major textile or agricultural exporters, the President is authorized to issue regulations governing the importation of such textile or agricultural products from countries that are not parties to the agreement.

Section 332 of this bill clarifies that the multilateral agreements referred to in section 204 include the Textiles Agreement negotiated as part of the Uruguay Round agreements. Section 332 also clarifies that, in order to carry out any such multilateral agreement, the President may issue regulations governing imports from countries that are *not* parties to the agreement and also to countries to which the United States does not apply the agreement.

*Textile Transshipments**(Section 333)*

Article 5 of the Textiles Agreement provides that Members should establish legal and administrative procedures to take action against the circumvention of textile quotas by transshipment, re-routing, false declarations of origin or falsification of official documents and obligates Members to cooperate fully to address circumvention problems. Section 333 adds a new provision to Title IV of the 1930 Tariff Act to address specifically the problem of textile transshipments.

New section 592A authorizes the Secretary of the Treasury to publish semiannually in the *Federal Register* a list of the names of any foreign producers, manufacturers, suppliers, sellers, exporters or other persons outside the United States against whom the Customs Service has issued a penalty claim or final decision with respect to such claim for certain violations of the customs laws, including using documentation that indicates a false or fraudulent origin for textiles or apparel; using or providing counterfeit visas, licenses, permits, bills of lading or similar documentation subsequently used by the importer for the entry into the United States of textiles or apparel; manufacturing, producing, supplying or selling textile or apparel articles labelled with a false or fraudulent country of origin; or engaging in practices that aid or abet the transshipment of textiles or apparel. After a name has been published, the Secretary must require any importer of record to show that the importer has used reasonable care to ensure that textiles or apparel produced, sold, exported or transported by a named person is accompanied by accurate country of origin documentation, packaging and labeling. Section 333(a) further requires the Secretary to remove persons from the list who petition for removal and

who have not committed any of the violations described above for a period of at least three years.

Section 333(b) authorizes the President or his designee, after seeking the advice of the Secretaries of Commerce and Treasury and any other appropriate agencies, to publish an annual list of countries in which illegal activities involving textile transshipment or activities designed to evade textile quotas have occurred, if such countries do not demonstrate a good faith effort to cooperate with the United States in ceasing such activities. Countries shall be removed from the list if they subsequently demonstrate a good faith effort to cooperate. The Secretary shall require any importer of record importing textiles and apparel from a listed country to show that reasonable care has been taken to ascertain the true country of origin.

It is the view of the Committee that these provisions will serve two important purposes. First, the Committee believes that they will act as a deterrent to transshipment and textile quota evasion as exporters, producers and exporting countries exercise greater care to ensure that goods are properly documented and labelled as to their true country of origin. Second, by publishing the names of offending persons and countries, they will alert U.S. importers to potential problems before they arise, and will encourage importers to ensure that the persons with whom they do business are properly labelling and documenting their textile and apparel shipments. The Committee believes that new section 592A properly allocates responsibility to both exporters/producers and to U.S. importers to ensure against transshipment and quota evasion.

Rules of Origin for Textile and Apparel Products

(Section 334)

Under current law, the origin of textile and apparel products is generally based on a determination by the Customs Service as to where the last substantial transformation with respect to the product in question took place. This general "substantial transformation" principle was set forth in a final rule published by the Department of the Treasury in 1985; the rule is incorporated into the Customs Service regulations. As a practical matter, origin determinations have evolved since 1985 through a series of product-specific rulings, as Customs has interpreted the "substantial transformation" requirement.

Section 334 of the bill directs the Secretary of the Treasury to issue final rules, by July 1, 1995, for determining the origin of textile and apparel products. The new rules, subject to the exceptions described below, will take effect July 1, 1996. Section 334(b) sets forth the general principles that Treasury is to follow in developing the rules. These principles generally conform to existing Customs Service practice with respect to fibers, yarns and fabrics. With respect to apparel products, the principles require that origin will be based on the place of assembly, subject to certain exceptions. Under certain rulings of the Customs Service, the origin of some apparel products is based on where the fabric is cut.

Section 334(b) establishes the following guidelines: (1) a textile or apparel product will be deemed to originate in a country if the

product is wholly obtained or produced in that country; (2) yarns, threads or similar products are deemed to originate in the country in which the fibers are spun or filament extruded; (3) fabrics are deemed to originate in the country in which their fibers, filaments or yarns are woven, knitted or otherwise transformed by any other process; and (4) other textile or apparel products are deemed to originate in the country in which they are assembled. For products that are assembled in more than one country, section 334(b) provides that the product will be deemed to originate in the country in which the "most important" assembly or manufacturing process occurs. If origin cannot be determined on that basis, then origin will be determined by the last country in which important assembly or manufacturing occurs.

The assembly rule of origin will not apply to certain products, including: specifically identified products for which an assembly rule is not appropriate; products that are knit to shape; products whose components are cut in the United States and assembled abroad into an article that is then returned to the United States; and products of Israel. In addition, section 334(b) clarifies that the new rule will not affect either the duty-free treatment under the Caribbean Basin Initiative (CBI) program for articles (except textile or apparel products) assembled in a beneficiary country wholly from U.S. components and imported directly into the United States or the application of the minimum value-added requirement under the CBI program.

As noted above, the new rules will go into effect July 1, 1996. However, section 334(c) provides that existing contracts will be grandfathered. Specifically, the new rules will not apply to goods for which a contract was entered into before July 20, 1994 if the material terms of sale were fixed before that date; a copy of the contract is filed with Customs within 60 days after enactment of this implementing bill; and the goods are imported before January 1, 1998.

In light of the emphasis in Article 5 of the Textiles Agreement on preventing circumvention of textile and apparel quotas and the work program on harmonization of rules of origin established in Part IV of the Agreement on Rules of Origin, the Committee believes that it is appropriate to establish a definitive rule of origin for textile and apparel products. The Committee believes that the new rules, once promulgated, will more accurately reflect where the most significant production activity occurs, providing the United States with a more accurate indication of the source of textile and apparel imports. Further, the Committee understands that the principles established in section 334(b) are principles followed by a number of our major trading partners; section 334 will, therefore, simply bring United States origin rules more into line with those of other countries. It is the Committee's expectation that these new rules will help reduce circumvention of quota limits and help reduce transshipments by providing greater certainty and uniformity in the rules of origin.

The Committee believes that the period between enactment of this implementing legislation and the July 1, 1995 date for issuance of the final regulation will give all interested parties—including importers, domestic producers, and retailers—sufficient oppor-

tunity to comment on the implementation and application of the general principles established in section 334(b). The Committee instructs the Department of the Treasury to begin its rulemaking process as soon as possible and take the comments of interested parties fully into account. The Committee also believes that two provisions of section 334—the delay in the effective date until July 1, 1996 and the grandfathering of existing contracts—should minimize any disruptions in trade.

Effective Date

(Section 335)

Section 335 provides that, except for the rule of origin provisions in section 334, the amendments made by Subtitle D will take effect on the date the WTO enters into force for the United States.

SUBTITLE E—TECHNICAL BARRIERS TO TRADE

The provisions in Title III, Subtitle E are within the jurisdiction of the Committee on Commerce, Science, and Transportation.

SUBTITLE F—GOVERNMENT PROCUREMENT

The provisions in Title III, Subtitle F are within the jurisdiction of the Committee on Governmental Affairs and are discussed in Part III of this report.

TITLE IV—AGRICULTURE-RELATED PROVISIONS

SUBTITLE A—AGRICULTURE

The Agreement on Agriculture establishes rules and disciplines to govern agricultural trade in three main areas: market access, domestic support measures, and export subsidies. Each WTO Member's schedule (annexed to the Marrakesh Protocol to the GATT 1994) sets forth its particular commitments with respect to market access for agricultural imports and the maximum amount of domestic support and export subsidies it will provide for agricultural products. The market access provisions in Article 4 of the Agriculture Agreement and the individual Member schedules reflect the required conversion of non-tariff barriers to tariff equivalents (so-called "tariffication") and the subsequent gradual reductions over a specified time period in these and existing tariffs, as well as the commitments to maintain current or minimum market access opportunities. In addition, Article 5 of the Agreement permits the imposition of a "special safeguard" on specified agricultural products. The Agreement's provisions on domestic support measures and export subsidies address the general obligations to reduce assistance and the types of measures that are subject to required reductions.

The descriptions below cover provisions in Title IV of the bill that make changes to U.S. law to implement the Agreement's market access commitments, including the required conversion of non-tariff barriers to tariffs, in particular tariff-rate quotas (two-tiered tariffs consisting of a lower in-quota rate and a higher over-quota rate).

This Part of the joint report discusses provisions in Title IV that are within the jurisdiction of the Committee on Finance. Part II of the report, the Report of the Committee on Agriculture, Nutrition, and Forestry, provides a general discussion of the provisions in Title IV.

PART I—MARKET ACCESS

Section 22 Amendments

(Section 401)

Section 22 of the Agricultural Adjustment Act authorizes the President to impose quantitative restrictions or fees on imports that the President finds are being imported under conditions and in quantities that undermine any Agriculture Department domestic support or stabilization program. Imposing such a quota or fee on products from WTO Members generally would be inconsistent with U.S. Uruguay Round obligations (in contrast, section 22 authority is maintained with respect to products of non-Members). The amendments in section 401(a) of the bill to section 22 itself, as well as the effective date provisions in section 401(a), are discussed in Part II of this report. Section 401(b) amends several other import provisions to conform to the tariffication of the section 22 import restrictions. These include changes necessary to continue the special cotton import quota programs under section 103B of the Agricultural Act of 1949, as well as provisions of the CBERA, ATPA, Title V of the 1974 Trade Act (the GSP program), and a Note to the U.S. tariff schedule covering products of U.S. insular possessions.

Cheese and Chocolate Crumb Imports

(Section 402)

Section 402(a) repeals sections 701 and 703 of the 1979 Trade Act, which provide for quota restrictions on imports of cheese and chocolate crumb, to reflect the conversion pursuant to the Agriculture Agreement of import quotas to tariff-rate quotas. Section 402(b) amends section 702 of the 1979 Trade Act to repeal the authority to impose a quantitative limitation on cheese imports in response to price undercutting; the President still will have the authority to proclaim the imposition of a fee on covered imports under the price-undercutting circumstances defined in section 702.

Meat Import Act

(Section 403)

Section 403 repeals the Meat Import Act of 1979 to conform to the Agriculture Agreement's "tariffication" of quotas and other quantitative import restrictions. Rather than being subject to quantitative restrictions under provisions of the Meat Import Act, covered products will be subject to a tariff-rate quota.

*Administration of Tariff-Rate Quotas**(Section 404)*

Pursuant to the Agriculture Agreement, the President will proclaim tariff-rate quotas for the following products where imports currently are subject to quota restrictions: dairy products, sugar, sugar-containing products, peanuts, cotton, and beef. Section 404 includes several provisions relating to the administration and coverage of such tariff-rate quotas. Certain of these provisions are discussed in Part II of this report.

Section 404(b) provides that, where imports of an agricultural product are subject to a tariff-rate quota and the President determines and proclaims that their supply (or that of a directly competitive or substitutable agricultural product) will be inadequate to meet domestic demand at reasonable prices because of a natural disaster, disease, or major national market disruption, the President may temporarily increase the quantity of imports of the agricultural product subject to the lower in quota rate of duty under the tariff-rate quota. This authority is similar to authority in the Meat Import Act of 1979.

Section 404(d) consists of a series of provisions relating to the coverage of tariff-rate quotas. *First*, in defined circumstances, the President may exclude certain agricultural products from the higher over-quota duty rate under a tariff-rate quota (i.e., make them subject to the in-quota rate without counting against the in-quota level): these cases include imports for use by a U.S. Government agency or foreign embassy, products entered as samples or for exhibition or display at a trade fair, and designated blended syrups. Except for the provision pertaining to imports for use by a foreign embassy, these categories track those in a note to the current U.S. tariff schedule (imports for embassy use are already exempted in practice from these restrictions).

Second, subject to the consultation and layover requirements in section 115 of the bill, the President may proclaim a modification in a tariff-rate quota if necessary to conform the tariff-rate quota to Schedule XX following a Customs Service decision reclassifying the product. Where the reclassification changes the products covered by a tariff-rate quota, a modification may be needed in order to maintain the coverage negotiated in the Uruguay Round.

Third, the President is authorized to change the allocation among supplying countries of the in-quota quantity under a tariff-rate quota. Such authority exists under section 22 and the Meat Import Act at present. New authority is necessary for the tariff-rate quotas that replace the quotas under those statutes.

Fourth, the President may proclaim an increase in the tariff-rate quota for beef if he determines it is necessary to implement agreements the United States reached in March 1994 with Argentina and Uruguay. Those agreements permit the United States to increase the in-quota quantity of the tariff-rate quota on beef for each country so as to provide each country 20,000 tons of access, if the United States first determines that beef from such country meets U.S. health and safety standards (which presently is not the case).

Fifth, the President is authorized to modify the headnote in the U.S. tariff schedule on sugar to reflect the changes in the tariff-rate

quota on sugar resulting from tariffication under Schedule XX. Sugar imports already are subject to a tariff-rate quota, but that is being revised to conform with the Agriculture Agreement.

Section 404(e) makes conforming amendments to the CBERA, ATPA, and GSP statutes, and the Note in the U.S. tariff schedule concerning U.S. insular possessions, to provide that 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 those provisions.

Section 404(e) also amends section 313 of the 1930 Tariff Act, the duty drawback statute, to provide that no drawback shall be available for an agricultural product subject to the over-quota duty rate under a tariff-rate quota, except in the limited circumstances (covered in section 313(j)(1) of the 1930 Tariff Act) when such merchandise is destroyed under Customs Service supervision or exported in the same condition in which it was imported. (One additional form of drawback is made available under section 422 of the bill for tobacco products only.) This limitation is necessary in order to prevent the use of duty drawback from undermining the protection intended under the tariff-rate quotas. If duty drawback were freely available for imports entering at the over-quota rate of a tariff-rate quota, that would allow exports to operate as a "credit" offsetting the duties paid on the over-quota amounts. The effective date of this provision is the earlier of the date of entry into force of the WTO Agreement for the United States or January 1, 1995.

Special Agricultural Safeguard Authority

(Section 405)

Section 405(a) provides that the President, consistent with Article 5 of the Agriculture Agreement and no later than the date that the WTO enters into force for the United States, shall cause to be published in the Federal Register the list of agricultural goods subject to the special agricultural safeguard established under that Article. For each such good, the President shall cause to be published the applicable trigger level and trigger price under the agreement, and the relevant period used for computing such level or price. Under section 405(b), if the President determines with respect to such good that it is appropriate to impose either the price-based or a volume-based safeguard, he shall determine the amount of the duty to be imposed, the period such duty may remain in effect, and any other applicable terms and conditions. Under section 405(c), the President then shall direct the Secretary of the Treasury (for purposes of the Customs Service's application of the safeguard) concerning such determination. Section 405(d) provides that no duty shall be in effect under this provision during any period in which the same good is the subject of any action proclaimed under regular safeguard provisions. Section 405(e) authorizes the President to exempt products originating in a NAFTA country (based on NAFTA rules of origin) from any duty imposed under this safeguard provision. Section 405(f) provides that the Secretary of Agriculture shall advise the President on the implementation of the safeguard provision.

The Committee believes that the special safeguard implemented under this section must operate in a timely and effective manner. While the President retains discretion with respect to its implementation, the safeguard must operate in conformity with Article 5 of the Agriculture Agreement, a provision structured so as to ensure that the safeguard will be workable. The Committee thus believes that decisions on whether to implement the safeguard should focus on the agricultural trade concerns underlying Article 5; these should not be influenced by other policy considerations not related to those concerns.

PART III—OTHER PROVISIONS

Authority for Certain Actions Under Article XXVIII

(Section 421)

Section 421 amends section 125 of the 1974 Trade Act to provide the authority to the President to proclaim an increase in duties on imports of specified tobacco and tobacco products of up to 350 percent above the rate existing on January 1, 1975, effective the date of enactment of the bill. In so doing, it also authorizes the President to establish a tariff-rate quota for such products pursuant to Article XXVIII of the GATT. This tariff-rate quota would replace certain provisions added by section 1106 of the Omnibus Budget Reconciliation Act of 1993 that restricted imports of tobacco in a manner found by a 1994 GATT dispute settlement panel to be inconsistent with U.S. obligations under the GATT. Amendments to those provisions under section 422 of the bill are discussed in Part II of this report.

Tobacco Imports

(Section 422)

In addition to the provisions referenced above, section 422 amends section 313 of the 1930 Tariff Act to provide that two forms of duty drawback will be available with respect to tobacco subject to the over-quota duty rate under a tariff-rate quota: (1) "same-condition, unused" drawback under section 313(j)(1), and (2) "direct-identification, manufacturing" drawback under section 313(a). No other form of drawback will be available on tobacco subject to the over-quota rate of duty under a tariff-rate quota.

Tobacco Proclamation Authority

(Section 423)

Section 423 authorizes the President to proclaim the reduction or elimination of duties on cigar binder and filler tobacco, wrapper tobacco, or oriental tobacco. Such action may be taken only after thorough consultations with the Committees on Finance and Ways and Means. The Committee views such consultations as essential. It believes further that this provision needs to be considered in light of the circumstances described in sections 421 and 422 above; it should not be seen in any way as a precedent for additional

grants of new authority to the President to proclaim the reduction or elimination of other duties.

*Report to Congress on Access to Canadian Dairy and
Poultry Markets*

(Section 424)

Section 408 provides that the President, not later than six months after the entry into force of the Uruguay Round agreements, shall submit a report to Congress on the extent to which Canada is complying with its obligations under such agreements with respect to dairy and poultry products, and with its related obligations under the NAFTA.

The Committee has long been concerned about the lack of adequate access for U.S. dairy and poultry products into the Canadian market, in large part because of Canada's maintenance of a highly restrictive supply management system covering these products. Canada's supply management system has severely limited imports of U.S. dairy and poultry products. The Committee expects this report to clarify whether Canada is satisfying its Uruguay Round obligations, as well as its related obligation to phase out all tariffs on products entering from the United States under the terms of the NAFTA.

SUBTITLE D—GENERAL EFFECTIVE DATE

General Effective Date

(Section 451)

Section 451 provides that the effective date of amendments made by Title IV shall be the date of entry into force of the WTO Agreement with respect to the United States, unless otherwise provided.

TITLE V—INTELLECTUAL PROPERTY

The provisions in Title V are within the jurisdiction of the Committee on the Judiciary and are discussed in Part IV of this report.

TITLE VI—RELATED PROVISIONS

SUBTITLE A—EXPIRING PROVISIONS

Generalized System of Preferences

(Section 601)

Section 601(a) authorizes an extension through July 31, 1995 of the Generalized System of Preferences (GSP), a program which provides duty-free treatment into the U.S. market for certain goods imported from developing countries designated as GSP beneficiaries. Under current law, the GSP program expired on September 30, 1994. Section 601(b) provides for refunds of any duty paid after that date and before the date of enactment of this bill so that the beneficiaries of the program—both U.S. importers and developing countries—are not disadvantaged by the lapse in the program.

Such refunds will only be given if a request is filed with the Customs Service within 180 days after the date of enactment that contains sufficient information to enable Customs to locate the entry, or to reconstruct the entry if it cannot be located.

This limited extension of the GSP program will allow the Congress to give further consideration next year to proposed legislative and administrative reforms of GSP, a program that supports the WTO's commitment to developing countries, as demonstrated by the Decision on Measures in Favour of Least-Developed Countries adopted as part of the Uruguay Round Final Act, and which has been a valuable trade policy tool for the United States. In this regard, the Committee notes that the Statement of Administrative Action declares the Administration's intention to submit legislation early in 1995 to further renew the GSP program, and to revise the regulations describing the administrative review process to make that process more transparent, predictable and consistent. The Committee will monitor with interest the Administration's planned actions, outlined in the Statement of Administrative Action, with regard to "reverse preferences," unreasonable export practices (export subsidies) by beneficiary countries, innersprings from South Africa, and product reviews.

U.S. Insular Possessions

(Section 602)

Section 602(a) amends additional U.S. Note 5(h)(i) to Chapter 91 of the HTSUS to extend the production incentive certificate (PIC) program for watch assemblers in the U.S. Virgin Islands, Guam, and American Samoa for 12 years until January 1, 2007. Under current law, the PIC program expires on January 1, 1995. Section 602(b) effectively reissues on the date of enactment of this bill for one year certificate number PIC-EV-89, issued jointly by the Secretary of Commerce and the Secretary of the Interior. These provisions are considered to be appropriate for inclusion in the bill implementing the Uruguay Round agreements because they allow the continuation of an expiring program to ensure that watch assemblers in the U.S. possessions, and their suppliers on the mainland, are not further disadvantaged by U.S. tariff concessions in the Uruguay Round on watches and watch movements.

SUBTITLE B—CERTAIN CUSTOMS PROVISIONS

Reimbursements from Customs User Fee Account

(Section 611)

The Customs Overtime Pay Reform Act (COPRA), enacted as sections 13811 through 13813 of the Consolidated Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66), established a new system of overtime and premium pay for Customs inspectors and canine enforcement officers. Section 13813 of that Act authorized the Secretary of the Treasury to use funds in the Customs User Fee Account to reimburse the salaries and expenses appropriation for the Customs Service to cover certain overtime and premium pay costs.

In enacting COPRA, the Congress expressly intended to authorize the use of funds in the User Fee Account to cover that portion of premium pay that was not already authorized under the Federal Employees' Pay Act (FEPA); any premium pay authorized under FEPA and currently paid out of the Customs Service's annual salaries and expenses appropriation would continue to be paid from the appropriation, with the User Fee Account covering the new premium pay authorized by COPRA. However, a technical error in COPRA inadvertently placed greater restrictions on the use of the User Fee Account, preventing Customs from seeking reimbursement from that account for premium pay earned on Sundays and holidays that are worked as part of a regular work week.

Section 611 corrects the technical error. It provides for the reimbursement of Customs inspector premium pay to the extent that it exceeds the premium pay authorized under FEPA prior to enactment of COPRA. The Committee believes this amendment is necessary to prevent an unanticipated burden (between \$5 million and \$12 million annually) on the salaries and expenses appropriation of the Customs Service. Given the increased responsibilities that the Customs Service will bear in enforcing and administering the Uruguay Round agreements, the Committee believes that it is appropriate to correct this technical error to help ensure that Customs will have sufficient resources available for the task.

The amendment would apply to premium pay earned by Customs inspectors on and after January 1, 1994.

Merchandise Processing Fees

(Section 612)

The Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, authorizes the Customs Service to levy a user fee on imported merchandise to cover the costs of Customs' commercial operations. Under current law, the merchandise processing fee for formal entries is set at 0.17 percent *ad valorem*, but Customs is authorized to adjust the fee, consistent with the costs of its commercial operations, downward to 0.15 percent *ad valorem* and upward to 0.19 percent *ad valorem*. Currently, the merchandise processing fee is 0.19 percent *ad valorem*. Notwithstanding the *ad valorem* fee, current law also establishes a minimum fee of \$21 for formal entries and a maximum fee of \$400. In addition, current law provides a schedule of flat-rate fees for informal entries: a \$2 fee is charged for automated releases not prepared by Customs; a \$5 fee is charged on manual entries not prepared by the Customs Service, and an \$8 fee, whether automated or manual, is charged on informal entries that are prepared by Customs. The merchandise processing fee does not apply to Canadian goods that meet the NAFTA rules of origin and that qualify to be marked as goods of Canada. Under current law, the fee may not be increased after December 31, 1993 on Mexican goods that meet the NAFTA rules of origin and qualify to be marked as goods of Mexico and will be eliminated on such goods after June 29, 1999.

Section 612 sets the merchandise processing fee for formal entries at 0.21 percent *ad valorem*, with corresponding increases in the minimum fee (to \$25) and in the maximum fee (to \$485). Cus-

toms will retain the authority to adjust the *ad valorem* and maximum and minimum fees within the range specified in the statute. For the *ad valorem* fee, the lower end of the range will remain 0.15 percent *ad valorem*; the upper end of the range will increase to 0.21 percent *ad valorem*. In addition, certain of the fees for informal entries are increased by one dollar; a \$6 fee will be assessed on manual entries not prepared by Customs and a \$9 fee will be charged for informal entries prepared by the Customs Service. The new rates will become effective January 1, 1995. The existing limitations with respect to merchandise from Canada and Mexico will continue to apply.

The Committee believes that this modest increase in the merchandise processing fee will assist the Customs Service in carrying out its increased responsibilities under the Uruguay Round, particularly with respect to administering the provisions of the Textiles Agreement, the Rules of Origin Agreement, and the tariff schedule changes that will be implemented pursuant to Schedule XX to the Marrakesh Protocol to GATT 1994, the U.S. schedule of tariff concessions. The increase in the fee will help offset the costs of Customs' commercial operations, which are not now fully covered by the current merchandise processing fee.

SUBTITLE C—CONFORMING AMENDMENTS

Conforming Amendments

(Section 621)

Section 621 contains nine conforming amendments to U.S. trade laws to replace references to the GATT and associated GATT instruments with references to the WTO Agreement and relevant agreements in its annexes, and to allow for appropriate U.S. Government representation in the WTO. These amendments will take effect on the date the WTO Agreement enters into force for the United States.

TITLE VII—REVENUE PROVISIONS

The inclusion of financing provisions in this Uruguay Round agreement implementing legislation is required by the combined effect of provisions in the 1974 Trade Act and the Budget Enforcement Act of 1990.

The 1974 Trade Act established, as a matter of trade policy, that trade agreement implementing bills, considered under the special "fast-track" procedures, shall contain all "necessary or appropriate" provisions to implement the trade agreement. Fifteen years later, the Congress determined that it was necessary to the economic health of the nation that the costs of new entitlement and receipts legislation be offset in order to prevent further increases in annual Federal deficits. Specifically, the Budget Enforcement Act of 1990¹ established a "pay-as-you-go mechanism to ensure that any new entitlement or receipt legislation will not increase the deficit."²

¹Title XIII of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, November 5, 1990.

²Joint Statement of Managers accompanying the Omnibus Budget Reconciliation Act of 1990, H.R. 5835, H. Rept. 101-964, p. 1151.

Under these procedures, new legislation which increases mandatory spending or decreases Federal receipts (for any year through FY 1998) triggers automatic mandatory spending reductions unless the costs of the legislation are offset. This pay-as-you-go policy is further enforced, in the Senate, through a pay-as-you-go requirement that any legislation considered by the Senate must not increase the deficit.³

As set forth below in the CBO cost estimate, the Uruguay Round agreement includes a commitment by the United States to reduce U.S. tariffs which would cause a loss of receipts to the U.S. Treasury. As explained above, the Budget Enforcement Act and Senate Rules require that these costs be offset. Due to this pay-as-you-go requirement, it is both "necessary" and "appropriate" that provisions designed to offset the costs of the Uruguay Round agreement be included in this implementing legislation.

This conclusion is supported by the objectives of the fast-track procedure. A principal objective of the fast-track process is to facilitate the President's negotiating position, by reducing the uncertainties of the legislative process for approval and implementation of trade agreements. Approval and implementation of such trade agreements would become far more uncertain if the budgetary offsets—required by Federal statute and Senate Rules—were not able to be included in the implementing legislation. The fast-track's objective of bringing trade agreements to a vote by the Congress would, in fact, be substantially undermined if provisions necessary to avoid budgetary objections were not permissible components of the implementing legislation.

The Budget Enforcement Act and Senate Rules permit losses in Federal receipts to be offset by mandatory spending reductions and Federal receipt increases. The spending reductions and receipt increases included in this implementing legislation are primarily non-trade-related provisions. Since it would be impossible to comply with the pay-as-you-go requirement by means of trade-related provisions alone,⁴ it is both necessary and appropriate to include non-trade-related financing provisions in this implementing legislation. A precedent for the inclusion of non-trade provisions is the implementing legislation for the NAFTA—the only implementing legislation enacted since the Budget Enforcement Act of 1990—which included both trade and non-trade-related financing provisions.⁵

³This requirement is enforced by a point of order which was first established, as an exercise of the Senate's rulemaking authority, by section 12(c) of the FY 1994 Concurrent Resolution on the Budget, H. Rept. 103-48, and was continued and amended in section 23(b) of the FY 1995 Concurrent Resolution on the Budget, H. Rept. 103-490.

⁴The only trade-related provisions which could serve as budget offsets are (1) tariff increases; and (2) increased customs fees. Tariff increases are not an appropriate financing mechanism for this implementing legislation, since it is the purpose of the agreement to reduce tariffs. With regard to new customs fees—while they provide some financing for this legislation, they cannot be increased in an amount sufficient to fully pay for this legislation, since such an increase would be inconsistent with U.S. obligations under the GATT. Therefore, trade-related provisions, alone, cannot be used to comply with the pay-as-you-go requirements of the Budget Enforcement Act and Senate Rules. Consequently, non-trade-related provisions must be included in this implementing legislation.

⁵The non-trade-related provisions in the NAFTA pertained to the electronic Federal tax deposit system.

SUBTITLE A—WITHHOLDING TAX PROVISIONS

*Withholding on Distributions of Indian Casino Profits to Tribal Members**(Section 701 of the Bill; New Section 3402(r) of the Code)****Present Law***

Generally, Indian tribes are not subject to Federal income tax on their income. In ordinary matters not governed by treaties or remedial legislation, however, Indians are subject to the payment of Federal income tax as are other citizens.

Gaming activities conducted by Indian tribes are classified in 25 U.S.C. 2703. Class I gaming activities are social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in as part of tribal ceremonies. Class II gaming activities generally are bingo, games similar to bingo (*e.g.*, pull tabs, punchboards, tip jars, and instant bingo) and card games either (1) explicitly authorized by the State or (2) not explicitly prohibited by the State, played at any location in the State, and conducted in conformity with any State regulations regarding periods of operation or wagering limitations. Class II gaming activities do not include any banking card games (*e.g.*, baccarat, chemin de fer, or blackjack), slot machines or any electronic or electromagnetical facsimiles of games of chance. Class III gaming activities are all forms of gaming that are not classified as Class I or Class II.

Net revenues from certain gaming activities conducted or licensed by an Indian tribe may be used to make taxable distributions to members of the Indian tribe. The tribe must notify its members of the tax liability at the time the payments are made. 25 U.S.C. 2710(b)(3) and (d)(1). The tribe is not required to withhold on such payments except to the extent backup withholding rules apply under Code section 3406.

Reasons for Change

Distributions of net revenues from gaming activity by an Indian tribe may result in significant tax liability to the tribe's members. Establishing withholding on such payments will more closely match estimated tax payments to ultimate tax liability. For some tribal members, this change may eliminate the need to make quarterly estimated tax payments. For others, it will reduce the likelihood that they will face penalties for underpayment of tax at the time of tax filing.

Explanation of Provision

An Indian tribe that distributes net revenues from gaming activities (except for class I gaming activities as defined in 25 U.S.C. 2703(6) as in effect on the date of enactment of this provision) to its members is required to withhold on such payments in accordance with the following schedule:

- (1) The withholding rate is zero to the extent the payment, when annualized, does not exceed the sum of one personal ex-

emption and the standard deduction for a single person for the calendar year in which the payment is made.

(2) The withholding rate is 15 percent to the extent the payment, when annualized, exceeds the amount determined under (1) but does not exceed the sum of that amount and the amount of taxable income to which, in the case of a single person, the 15 percent tax rate would apply for the calendar year in which the payment is made.

(3) The withholding rate is 28 percent to the extent the payment, when annualized, exceeds the amount determined under (2) but does not exceed the sum of that amount and the amount of taxable income to which, in the case of a single person, the 28 percent tax rate would apply for the calendar year in which the payment is made.

(4) The withholding rate is 31 percent to the extent the payment, when annualized, exceeds the amount determined under (3).

Alternatively, at the election of an Indian tribe, the tribe is allowed to withhold on such payments in accordance with such tables or computational procedures as the Secretary may prescribe.

Effective Date

The provision is effective for payments made after December 31, 1994.

Voluntary Withholding on Certain Federal Payments and on Unemployment Compensation

(Section 702 of the Bill; Sections 3304 and 3402(p) of the Code)

Present Law

Taxpayers may not have income taxes voluntarily withheld from Social Security payments or other taxable Federal payments (e.g., crop disaster payments, Commodity Credit Corporation loans). Any amount received under a Federal or State law that is in the nature of unemployment compensation is includible in the gross income of an individual (Code section 85). In general, there is no withholding on unemployment compensation under present law.

Under Code section 3402(o)(1)(A), any supplemental unemployment compensation benefits paid to an individual are subject to withholding as if they were wages paid by the employer to the employee for a payroll period. Supplemental unemployment compensation benefits are defined as amounts paid to an employee (pursuant to a plan to which the employer is a party) because of the employee's involuntary separation from employment directly resulting from a reduction in force, plant closing, or similar condition, but only to the extent that the benefits are includible in the employee's gross income.

Reasons for Change

Some taxpayers find it burdensome to make quarterly estimated tax payments. These taxpayers may find it more convenient to elect

to have Federal taxes withheld at the time specified payments are made to them.

Explanation of Provision

Certain Federal Payments

The bill requires that taxpayers who receive specified Federal payments be given the option of requesting that the Federal agency making the payments withhold Federal income taxes from the payments. Specified Federal payments subject to the withholding option include (1) Social Security benefits; (2) crop disaster payments; (3) Commodity Credit Corporation loans; and (4) other Federal payments specified by the Secretary of the Treasury. Where a taxpayer requests that the Federal agency making the payments withhold Federal income taxes, the taxpayer would also select the percentage of the payment that is to be withheld. The taxpayer may select withholding at 7 percent, 15 percent, 28 percent, or 31 percent. Treasury regulations may also specify additional percentage rates for withholding. Federal agencies making the payments will not receive any additional information regarding the taxpayer's income as a consequence of this provision.

Unemployment Compensation Benefits

The bill also requires States to allow recipients of unemployment benefits to elect to have Federal income tax withholding from their benefits at a 15-percent rate. The bill also permits (but does not require) States to allow applicants for unemployment benefits to elect to have State and local income tax withholding from their benefits. Administrative expenses for which States can be reimbursed pursuant to section 302 of the Social Security Act could include the cost of conducting Federal income tax withholding.

Effective Date

The provision is effective for payments made after December 31, 1996.

SUBTITLE B—PROVISIONS RELATING TO ESTIMATED TAXES AND PAYMENTS AND DEPOSITS OF TAXES

Treatment of Subpart F and Section 936 Income of Taxpayers Using the Annualized Method for Estimated Tax

(Section 711 of the Bill; Sections 6654(d)(2) and 6655(e) of the Code)

Present Law

Estimated Tax Rule—In General

Taxpayers are subject to an addition to tax for any underpayment of estimated tax. A corporation does not have an underpayment of estimated tax if it makes four equal, timely estimated tax payments that total at least 100 percent of the tax liability shown on its return for the current taxable year. A corporation that is not a "large corporation" (*i.e.*, one that did not have taxable income of \$1 million or more for any of the three preceding taxable years) generally may avoid the addition to tax if it makes four

timely estimated tax payments each equal to at least 25 percent of the tax liability shown on its return for the preceding taxable year. In addition, any corporation may base its first quarterly installment on its prior-year tax liability in order to avoid the addition to tax with respect to that installment.

Individuals generally do not have an underpayment of estimated tax if they make timely estimated tax payments that are at least equal to (1) 100 percent of the tax shown on the individual's return for the preceding year, or (2) 90 percent of the tax shown on the return for the current year. A safe harbor of 110 percent of last year's liability applies, in lieu of the general 100-percent safe harbor, if the taxpayer had adjusted gross income of more than \$150,000 for the prior taxable year.

Estimated Tax Installments Based on Annualized Income

If estimated tax installments fall short under the foregoing rules, a taxpayer may nevertheless be treated as not having an underpayment of estimated tax if the installments are based on a fraction of the "annualized" amount of income earned over a specified period (within the current taxable year) that ends before the due date of the installment. For individuals, annualization periods end with the month ending immediately before the estimated tax installment due date. For corporations, annualization periods exclude the last month of the corporation's taxable year.

Taxable income is placed on an annualized basis under regulations prescribed by the Secretary of the Treasury. Treasury regulations provide guidelines for the treatment of certain partnership items by individuals (Treasury Regulations section 1.6654-2(d)(2)). Under the regulation, in determining an individual's taxable income for an annualization period, an individual partner must take into account certain partnership items for any partnership taxable year ending with or within the partner's taxable year to the extent these items are attributable to months in the partnership taxable year preceding the installment due date.⁶

Subpart F Inclusions

Under the rules of subpart F (Code sections 951-964), if a U.S. shareholder owns the stock of a controlled foreign corporation⁷ on the last day of the corporation's taxable year, then the U.S. shareholder may be required to include in its own income certain income

⁶The regulation provides an example of a calendar-year taxpayer who is a member of a partnership with a taxable year that ends on June 30. In determining taxable income for purposes of computing the installment due on April 15, 1973, the example states that the taxpayer must take into account his distributive share of partnership items for the period July 1, 1972 (the beginning of the partnership taxable year that ends in 1973) through March 31, 1973 (the end of the annualization period for the April 15, 1973 installment date). In determining taxable income for purposes of computing the installment due on June 15, 1973, the taxpayer must take into account his distributive share of partnership items for the period July 1, 1972, through May 31, 1973 (the end of the annualization period for the June 15, 1973 installment date). In determining taxable income for purposes of computing the installment due on September 15, 1973, the taxpayer must take into account his distributive share of partnership items for the period July 1, 1972, through June 30, 1973 (the date on which the partnership taxable year ends).

⁷A controlled foreign corporation generally is defined as any foreign corporation if more than 50 percent of (1) the total combined voting power of all classes of its stock entitled to vote, or (2) the total value of its stock, is owned (directly, indirectly, or constructively) by U.S. shareholders. For this purpose, the term "U.S. shareholder" generally means a U.S. person who owns (directly, indirectly, or constructively), at least 10 percent of the total combined voting power of all classes of voting stock of the foreign corporation.

or earnings of the controlled foreign corporation. For purposes of computing required installments of estimated tax under the annualization method, the IRS has ruled that a taxpayer may treat certain income inclusions under subpart F as income actually earned by the U.S. shareholder on the last day of the controlled foreign corporation's taxable year.⁸ The ruling involved a U.S. corporation that owned all of the stock of a number of controlled foreign corporations. All of the corporations involved used the calendar year as their taxable years. As a result, the U.S. shareholder was not required to take its pro-rata share of subpart F income into account in determining its estimated tax installments based on the annualization method.

Inclusions Pursuant to Section 936(h)

Certain domestic corporations with business operations in the U.S. possessions may elect the use of the section 936 credit. This credit generally eliminates some or all of the U.S. tax on certain income related to their operations in the possessions. If such a corporation (a "936 corporation") is to receive the full benefit of the section 936 credit, and the business operations in the possession relate to certain types of intangible property, then certain shareholders and affiliates of the 936 corporation generally must include in their taxable incomes certain amounts relating to income from the intangible property, either under a general rule that requires all intangible property income to be allocated to the corporation's U.S. shareholders, or under either a profit-split or cost-sharing approach.

Intangible property income inclusions of a 936 corporation's shareholders or amounts allocated to shareholders or affiliates under either the profit-split or the cost-sharing rules may be deemed to occur either at the close of the 936 corporation's taxable year, or on the last day of the taxable year of the shareholder or affiliate in which or with which the taxable year of the 936 corporation ends. Accordingly, in some cases, a shareholder or affiliate of a 936 corporation may utilize the annualization method to avoid penalties for underpayment of estimated tax, yet delay paying tax on intangible property income inclusions until as late as the due date of its annual tax return.

Reasons for Change

It is believed that subpart F income inclusions with respect to a controlled foreign corporation and intangible property income inclusions with respect to a 936 corporation should be taken into account for purposes of estimated tax installments based on annualized income. This would provide similar treatment for these specific types of income as for other types of income.

However, it is recognized that the determinations necessary to properly estimate the amounts of these income inclusions for the current taxable year may be difficult. Accordingly, it is believed appropriate to provide safe harbors, based on income inclusions in prior taxable years, to be used for estimating inclusions of subpart F income and of section 936 intangible property income.

⁸ PLR 9233001 (April 28, 1992).

Explanation of Provision

In General

The bill changes the treatment of inclusions under subpart F and inclusions of section 936 intangible property income for taxpayers that pay estimated tax installments based on the annualized-income method.

Under the bill, amounts includible under subpart F are taken into account for estimated tax purposes in a manner similar to the manner under which items of partnership income are taken into account. Foreign tax credits allocable to such inclusions under subpart F also are taken into account for estimated tax purposes similarly to tax credits allocable to partnership income inclusions. It is intended that foreign tax credits allocable to current-year subpart F inclusions be taken into account for estimated tax purposes under the annualized-income method, notwithstanding the fact that all requirements may not be satisfied for the accrual of the foreign taxes (because the controlled foreign corporation's taxable year for foreign tax purposes may not yet have closed).

Similarly, under the bill, intangible property income, profit-split amounts, and cost-sharing amounts includible in taxable income under section 936 are taken into account for estimated tax purposes in a manner similar to the manner under which items of partnership income are taken into account.

To compute the annualized income installment for a particular taxable year of the taxpayer, the taxpayer is required, under the bill, to take into account items that arise during the taxable year of the controlled foreign corporation or 936 corporation that is relevant to the final computation of tax for that taxable year of the *taxpayer*. However, to compute any particular installment, there is generally taken into account only those items that arise during that portion of such taxable year of the controlled foreign corporation or 936 corporation that precedes the close of the taxpayer's annualization period. It is anticipated that, in prescribing rules for determining amounts on an annualized basis, the Secretary may provide, where appropriate, for the computation of items of income under subpart F or section 936 based on facts in existence for that period.

Thus, under the bill, estimated tax payments generally will be required to be made throughout the year for subpart F inclusions and certain amounts includible under section 936 for the year.

Prior-Year Safe Harbor

For purposes of estimating subpart F income inclusions and section 936 intangible property income, profit-split amounts, and cost-sharing amounts under the annualized-income method, the bill permits taxpayers to use a safe harbor based on a certain percentage of amounts included in taxable income under subpart F and section 936 as shown on the taxpayer's returns for its first or second preceding taxable years. Under the prior-year safe harbor, subpart F amounts that were included in income in the relevant prior year, along with credits allocable to such inclusions, are treated for estimated tax purposes as earned ratably during the current taxable year. The relevant prior year is the second preceding year in the

case of the first and second quarterly installments, and the first preceding year in the case of the third and fourth quarterly installments.⁹ Similarly, under the prior-year safe harbor, intangible property income inclusions of a 936 corporation's shareholders for the relevant prior year and amounts allocated to shareholders or affiliates under either the profit-split or the cost-sharing rules for that year are treated for estimated tax purposes as earned ratably during the current taxable year.

In the case of a corporate taxpayer, the safe harbor for subpart F inclusions and section 936 inclusions generally is based on 115 percent of the relevant prior-year inclusions. However, the safe harbor is based on 100 percent of the relevant prior-year inclusions with respect to any controlled foreign corporation or 936 corporation that the taxpayer does not control as of the beginning of the taxpayer's current taxable year. The taxpayer is treated as controlling a corporation for this purpose if it owns (directly or indirectly, within the meaning of section 958(a)) or is treated as owning (constructively, within the meaning of section 958(b)) more than 50 percent (by vote or value) of the stock in the corporation.

In the case of an individual taxpayer, the safe harbor is based on 100 percent of the relevant prior-year inclusions.

A taxpayer may elect annually whether or not to use the safe harbor for subpart F and section 936 inclusions. Such an election will apply to all such inclusions of the taxpayer.¹⁰

Effective Date

The provision is effective for purposes of determining estimated tax payments for taxable years beginning after December 31, 1994.

Time for Payments and Deposits of Certain Excise Taxes

(Section 712 of the Bill; Sections 5061, 5703, and 6302 of the Code)

Present Law

Federal excise taxes are imposed on a variety of products and services, including the following: alcoholic beverages; tobacco products; firearms; telephone service; air transportation (passengers and freight); highway, rail, aviation, and inland waterway fuels; crude oil, certain chemicals, certain imported chemical substances, and certain ozone-depleting chemicals; ship passenger charges; coal; childhood vaccines; and certain automobiles.

Subject to limited exceptions¹¹, these excise taxes must be remitted to the Federal Government on a semi-monthly basis, generally within a period of nine to 30 days after the end of the semi-monthly period.

⁹ Under the annualized income method, the third quarterly payment will take into account any differences between the income inclusions shown on the taxpayer's return for the second preceding year and such amounts for the taxpayer's first preceding year.

¹⁰ In the case of a taxpayer that files a consolidated return, the election will apply to all subpart F and section 936 inclusions of all members of the affiliated group.

¹¹ For example, small wine producers (generally, producers who paid less than \$1,000 of wine excise tax during the preceding calendar year) may pay the wine excise tax on an annual basis by remitting the tax for the calendar year within 30 days after its end.

Reasons for Change

Requiring excise taxes that must be deposited on a semi-monthly basis to be deposited during the fiscal year to which the taxes relate would provide substantial additional revenue without imposing significant burdens on taxpayers or on the service providers charged with collecting the taxes.

Similarly, a requirement that alcohol and tobacco excise taxes be paid during the fiscal year to which the taxes relate would provide substantial additional revenue over the budget period without imposing significant burdens on taxpayers.

Explanation of Provision

In the case of excise taxes that must be remitted to the Federal Government on a semi-monthly basis, the bill accelerates the due date for deposit of taxes for the period September 16 through September 26 to September 29 (rather than in October, which is in the subsequent fiscal year). Special rules apply to the taxes on ozone-depleting chemicals, communications services, and air transportation. In the case of the tax on ozone-depleting chemicals, deposits of taxes for the second semi-monthly period in August and for the period beginning on September 1 and ending on September 11 are due on or before September 29. In the case of communications services and air transportation taxes deposited on the basis of amounts considered collected, the tax included in amounts billed or tickets sold during the period beginning on September 1 and ending on September 11 must be deposited on or before September 29. It is expected that the Treasury Department will modify existing regulatory safe harbors relating to excise tax deposits to reflect these changes.

In the case of taxes on distilled spirits, wine and beer, and on tobacco products and cigarette papers and tubes, the tax for the period beginning on September 16 and ending on September 26 is due on or before September 29. Under a safe harbor, however, this requirement is satisfied if the taxpayer pays an amount equal to $\frac{1}{12}$ th of the taxpayer's liability for the first semi-monthly period in September. The new requirement does not apply to wine excise taxes that are remitted on an annual basis.

If September 29 is a Saturday, deposits and payments of taxes otherwise due on that date are due on or before September 28. If September 29 is a Sunday, deposit and payments of taxes otherwise due on that date are due on or before September 30.

Special rules apply to taxpayers that are not required to remit taxes by electronic funds transfer for the calendar year. For those taxpayers, deposits of taxes for the period beginning on September 16 and ending on September 25 are due on or before September 28. In addition, the other rules described above are modified to reflect the shorter deposit period and earlier due date applicable to such taxpayers.

Effective Date

The provision is generally effective on January 1, 1995, for taxes other than the taxes on air transportation, and on January 1, 1997,

for the commercial air passenger and freight excise taxes (sections 4261 and 4271).

Reduction in Rate of Interest Paid on Certain Corporate Overpayments of Tax

(Section 713 of the Bill; Section 6621 of the Code)

Present Law

The rate of interest that the IRS pays to taxpayers on overpayments of tax is the sum of the Federal short-term rate plus 2 percentage points (section 6621(a)(1)).

Reasons for Change

Distortions may result if the rates of interest in the Code differ appreciably from market rates. Reducing the overpayment rate for large corporate overpayments of taxes will reduce the possibility of distortions.

Explanation of Provision

The overpayment rate is reduced to the sum of the Federal short-term rate plus one-half percentage point for any portion of an overpayment of tax by a corporation for a taxable period that exceeds \$10,000. (The overpayment rate is the same as under present law for the first \$10,000 of any overpayment of tax by a corporation.) The provision applies to all types of taxes.

Under present law, the Secretary of the Treasury has the authority to credit the amount of any overpayment against any liability under the Code (section 6402). To the extent a portion of tax due is satisfied by a credit of an overpayment, no interest is imposed on that portion of the tax (section 6601(f)). The Secretary should implement the most comprehensive crediting procedures under section 6402 that are consistent with sound administrative practice, and should do so as rapidly as is practicable.

Effective Date

The provision is effective for purposes of determining interest for periods after December 31, 1994, regardless of the taxable period (if any) to which the underlying tax may relate.

SUBTITLE C—EARNED INCOME TAX CREDIT PROVISIONS

Present Law

In General

Eligible low-income workers are able to claim a refundable earned income tax credit (EITC). The amount of the credit an eligible taxpayer may claim depends upon whether the taxpayer has one, more than one, or no qualifying children and is determined by multiplying the credit rate by the taxpayer's earned income up to an earned income threshold. The maximum amount of the credit is the product of the credit rate and the earned income threshold. For taxpayers with earned income (or adjusted gross income, if greater)

in excess of the phaseout threshold, the credit amount is reduced by the phaseout rate multiplied by the amount of earned income (or adjusted gross income, if greater) in excess of the phaseout threshold. The credit is not allowed if earned income (or adjusted gross income, if greater) exceeds the phaseout limit.

The parameters for the EITC depend upon the number of qualifying children the taxpayer claims. For 1994 the parameters are as follows:

	One qualifying child—	Two or more qualifying children—	No qualifying children—
Credit rate	26.30%	30.00%	7.65%
Phaseout rate	15.98%	17.68%	7.65%
Earned income threshold	\$7,750	\$8,425	\$4,000
Maximum credit	\$2,038	\$2,528	\$306
Phaseout threshold	\$11,000	\$11,000	\$5,000
Phaseout limit	\$23,753	\$25,299	\$9,000

The earned income threshold and the phaseout threshold are indexed for inflation; because the phaseout limit depends on those amounts, the phaseout rate, and the credit rate, the phaseout limit will also increase if there is inflation. Earned income consists of wages, salaries, other employee compensation, and net self-employment income.

The credit rates and phaseout rates for the EITC change over time under present law, as shown in the following table.

Year	One qualifying child—		Two or more qualifying children—		No qualifying children—	
	Credit rate	Phase-out rate	Credit rate	Phase-out rate	Credit rate	Phase-out rate
1994	26.30	15.98	30.00	17.68	7.65	7.65
1995	34.00	15.98	36.00	20.22	7.65	7.65
1996 and after	34.00	15.98	40.00	21.06	7.65	7.65

In order to claim the EITC, a taxpayer must either have a qualifying child or must meet other requirements. A qualifying child must meet a relationship test, an age test, and a residence test. Part of the residence test requires that a qualifying child must have the same principal place of abode as the taxpayer for more than one-half of the taxable year (for the entire taxable year in the case of a foster child), and that this principal place of abode must be located in the United States.

In order to claim the EITC without a qualifying child, a taxpayer must not be a dependent and must be over age 24 and under age 65. In addition, the taxpayer's principal place of abode must be located in the United States for more than one-half of the taxable year.

Nonresidents and the EITC

The EITC may be claimed by a taxpayer meeting the above requirements regardless of whether the taxpayer is a U.S. citizen, a resident alien, or a nonresident alien.

Section 7701(b) defines a resident alien for income tax purposes. Aliens who do not meet this definition are nonresident aliens. For income tax purposes, an individual is generally considered a resident if the individual:

(1) has entered the United States as a lawful permanent U.S. resident (the "green card test"); or

(2) is present in the United States for 31 or more days during the current calendar year and has been present in the United States for 183 or more days during a three-year period weighted toward the present year (the "substantial presence test"). (An individual who is present in the United States for fewer than 183 days and establishes that he has a closer connection with a foreign country than with the United States is generally not subject to tax as a resident alien on account of the substantial presence test.)

A nonresident alien may elect to be taxed as a resident alien if one of several elections is made:

(1) Under section 6013(g), a nonresident alien who is married to an individual who is either a citizen or resident alien of the United States at year end may elect to be treated as a resident for the entire year. The election applies to the year for which it is made and all subsequent years until terminated. However, the election will be suspended if neither spouse is a U.S. citizen or resident at any time during a taxable year.

(2) An election under section 6013(h) to be taxed as a resident alien for the entire taxable year may be made by an individual who is a nonresident alien at the beginning of the year and a resident alien at the end of the year and who is married to an individual who is either a citizen or resident of the United States at year end. Thus, this election can be made by a foreign married couple who arrive in the United States during the taxable year and who are resident aliens at year end.

(3) Under section 7701(b)(4), an alien individual may make the so-called "first-year election" to be treated as a resident for a calendar year in which the individual is not otherwise treated as a U.S. resident. To qualify for this election, each of several requirements must be met. The individual must not have been a U.S. resident during the preceding year and must satisfy the substantial presence test for U.S. residency in the following calendar year. The individual must also be present in the United States for at least 31 consecutive days during the year to which the election applies, and be present in the United States, during the period beginning with the first day of that 31-day period and ending with the last day of the election year, for at least 75 percent of the days in that period. An individual who makes the first-year election is treated as a U.S. resident only for that portion of the year that begins on the first day of the period for which the individual satisfies both the 31-day and the 75-percent tests.

*Extension of the Earned Income Tax Credit to Military Personnel
Stationed Outside the United States*

(Section 721 of the Bill; Section 32 of the Code)

Reasons for Change

By including on a W-2 the amount of nontaxable earned income paid during the year by the Department of Defense, the increased information reporting is intended to allow members of the Armed Forces claiming the EITC to determine more accurately the actual amount of EITC to which they are entitled.

Because present-law rules for the EITC require that the taxpayer (and the taxpayer's qualifying child, if any) maintain a principal place of abode within the United States for at least half of the taxable year, low-income members of the Armed Forces who are eligible to claim the EITC if stationed in the United States may not be eligible if stationed outside the United States while serving on extended active duty. The bill would allow members of the Armed Forces who would qualify for the EITC except for their extended active duty outside the United States to qualify for the EITC.

Explanation of Provision

The bill requires that members of the Armed Forces receive annual reports from the Department of Defense of earned income (which includes nontaxable earned income such as amounts received as basic allowances for housing and subsistence).

The bill extends the EITC to United States military personnel stationed overseas. For purposes of determining whether a qualifying child meets the residence test, for any period during which a member of the Armed Forces is stationed outside the United States while serving on extended active duty, the member would be considered as maintaining a place of abode in the United States, thus satisfying the present-law requirement that the principal place of abode for a qualifying child and the member be in the United States. For purposes of determining whether an individual without a qualifying child meets the residence test, a member of the Armed Forces stationed outside the United States on extended active duty would be considered as maintaining a place of abode in the United States.

Effective Date

The increased information reporting is effective for remuneration paid after December 31, 1994. Extension of the EITC to members of the Armed Forces stationed overseas is effective for taxable years beginning after December 31, 1994.

Certain Nonresident Aliens Ineligible for Earned Income Tax Credit

(Section 722 of the Bill; Section 32 of the Code)

Reasons for Change

Because nonresident aliens generally are not required to report their foreign-source income on their U.S. individual income tax re-

turns, it may be possible for some of them to qualify for the EITC on the basis of low U.S. earned income even when their worldwide income exceeds the income phaseout limits for the EITC. The bill prevents nonresident aliens from claiming the EITC unless they are married and agree to subject their worldwide income to U.S. individual income tax by virtue of making the election under sections 6013(g) or (h).

Explanation of Provision

The bill makes individuals who are nonresident aliens for any portion of the taxable year ineligible to claim the EITC unless an election under Code section 6013(g) or (h) is in effect for the taxable year.

Effective Date

The provision is effective for taxable years beginning after December 31, 1994.

Income of Prisoners Disregarded in Determining Earned Income Tax Credit

(Section 723 of the Bill; Section 32 of the Code)

Reasons for Change

The EITC is designed to alleviate poverty and to provide work incentives to low-income individuals. Because of the compulsory nature of much of the work performed by prison inmates, it does not further the objectives of the EITC to include in earned income for EITC calculations any amounts paid for inmates' services.

Explanation of Provision

The bill removes from the definition of earned income in section 32(c)(2) any amount received for services provided by an individual while the individual is an inmate at a penal institution.

Effective Date

The provision is effective for taxable years beginning after December 31, 1993.

SUBTITLE D—PROVISIONS RELATING TO RETIREMENT BENEFITS

Treatment of Excess Pension Assets Used for Retiree Health Benefits

(Section 731 of the Bill; Section 420 of the Code)

Present Law

Under present law, defined benefit pension plan assets generally may not revert to an employer prior to the termination of the plan and the satisfaction of all plan liabilities. Certain procedural requirements also must be met. Any assets that revert to the employer upon such termination are includible in the gross income of the employer and subject to an excise tax. The rate of the excise tax varies depending upon whether or not the employer maintains

a replacement plan or makes certain benefit increases, and can be as high as 50 percent of the amount of the reversion. Upon plan termination, the accrued benefits of all plan participants are required to be 100-percent vested.

Under present law, a pension plan may provide medical benefits to retirees through a section 401(h) account that is part of such plan. Present law permits certain qualified transfers of excess assets from the pension assets in a defined benefit pension plan (other than a multiemployer plan) to the section 401(h) account that is a part of such plan to pay for qualified current retiree health liabilities. The assets transferred are not includible in the gross income of the employer and are not subject to the excise tax on reversions.

Assets transferred in a qualified transfer cannot exceed certain limits. The amount that can otherwise be transferred is reduced by amounts previously contributed to a health benefits account or welfare benefit fund to pay for the qualified current retiree health liabilities. The transferred assets (and any income thereon) are required to be used to pay qualified current retiree health liabilities (either directly or through reimbursement) for the taxable year of the transfer. Transferred amounts are generally required to benefit all participants in the pension plan who are entitled upon retirement to receive retiree medical benefits (other than key employees) through the section 401(h) account. Retiree health benefits of key employees may not be paid (directly or indirectly) out of transferred assets. In order for the transfer to be qualified, accrued retirement benefits under the pension plan must be nonforfeitable as if the plan terminated on the date of transfer.

Amounts not used to pay qualified current retiree health liabilities for the taxable year of the transfer are to be returned at the end of the taxable year to the general pension assets of the plan.

Under a maintenance of effort requirement, an employer that makes a transfer to a section 401(h) account from the defined benefit plan assets is required to maintain employer-provided retiree health expenditures for covered retirees at a minimum dollar level for the taxable year of the transfer and the following 4 taxable years. The minimum dollar level is the higher of the applicable employer costs for each of the 2 taxable years immediately preceding the taxable year of the transfer.

The provision permitting the transfer of excess pension assets to pay current retiree health benefits expires for taxable years beginning after December 31, 1995.

Reasons for Change

It is appropriate to provide a temporary extension of the present-law rule permitting employers to transfer assets set aside for pension benefits to a section 401(h) account for retiree health benefits as long as the security of employees' pension benefits is not thereby threatened. In conjunction with the temporary extension of the provision, it is necessary to modify the maintenance of effort requirement to ensure that employers can take into account cost savings that are realized in the employer's health benefits plans.

Explanation of Provision

The present-law provision permitting excess defined benefit pension plan assets to be used to provide retiree health benefits under a section 401(h) account is extended for 5 years, with a modification to the maintenance of effort requirement and a clarification of the rule relating to amounts previously set aside to pay qualified retiree health liabilities. Under the bill, the employer is required to maintain substantially the same level of employer-provided retiree health coverage for the taxable year of the transfer and the following 4 taxable years. The level of coverage that must be maintained will be based on coverage provided in the year immediately preceding the taxable year of the transfer. For purposes of determining whether there are excess assets in a defined benefit pension plan, the interest rates required to be used under the bill for purposes of minimum funding requirements would apply.

The bill clarifies how amounts that can otherwise be transferred are reduced by amounts previously set aside to pay retiree health liabilities. Under the bill, for transfers occurring after December 31, 1995, in determining qualified retiree health liabilities with respect to a taxable year, such liabilities are reduced by the percentage that the amounts previously set aside are of total future qualified retiree health liabilities. For example, assume that on December 31, 1995, the employer has a welfare benefit fund that has \$2 million in assets to pay retiree health liabilities, the present value of future qualified retiree health liabilities is \$10 million, and qualified retiree health liabilities for 1996 (without regard to any offset) are \$1 million. In determining the amount that can be transferred in 1996, the \$1 million is reduced by 20 percent. No inference is intended as to the proper reduction in transferred amounts under present law.

Effective Date

The provision generally is effective with respect to taxable years beginning after December 31, 1995, and before January 1, 2001. The modification to the maintenance of effort requirement is effective for transfers occurring after the date of enactment.

Rounding Rules for Cost-of-Living Adjustments

(Section 732 of the Bill; Sections 401(a)(17), 415, 402(g) and 408(k) of the Code)

Present Law

Under present law, the dollar limit on benefits under a defined benefit pension plan (\$118,800 for 1994), the limit on elective deferrals under a qualified cash or deferred arrangement (\$9,240 for 1994), and the minimum compensation limit for determining eligibility for participation in a simplified employee pension (SEP) (\$396 for 1994) are adjusted annually for inflation. The dollar limit on annual additions to a defined contribution plan is the greater of \$30,000 or $\frac{1}{4}$ of the dollar limit for benefits under defined benefit pension plans. Thus, the dollar limit will be \$30,000 until the defined benefit pension plan dollar limit exceeds \$120,000. The dol-

lar limit on annual compensation that generally may be taken into account for qualified plan purposes is \$150,000. The \$150,000 limit is indexed in \$10,000 increments.

Reasons for Change

In order to simplify the dollar limits applicable to qualified pension plans, it is necessary to modify the rounding rules so that the dollar limits are indexed in whole dollar increments (\$5,000, \$500, or \$50). However, it is not appropriate to permit the modified rounding rules to reduce any dollar limit below its level under present law.

Explanation of Provision

The provision provides that (1) the dollar limit on benefits under a defined benefit pension plan is indexed in \$5,000 increments, (2) the dollar limit on annual additions under a defined contribution plan is indexed in \$5,000 increments, (3) the limit on elective deferrals is indexed in \$500 increments, and (4) the minimum compensation limit for SEP participation is indexed in \$50 increments.¹² In addition, the provision provides that the cost-of-living adjustment with respect to any calendar year is based on the increase in the applicable index as of the close of the calendar quarter ending September 30 of the preceding calendar year so that the adjusted dollar limits would be available before the beginning of the calendar year to which they apply. No limit is reduced below the limit in effect for plan years beginning in 1994.

Effective Date

The provision is effective for years beginning after December 31, 1994.

Increase in Inclusion of Social Security Benefits Paid to Nonresidents

(Section 733 of the Bill; Section 871(a)(3) of the Code)

Present Law

Treatment of Taxpayers Generally

A portion of Social Security and Railroad Retirement Tier 1 benefits is includible in gross income for taxpayers whose provisional incomes exceed a threshold amount (the "base amount"). For taxpayers whose provisional incomes exceed a second threshold amount (the "adjusted base amount"), a larger portion of such benefits is includible in gross income. For purposes of these computations, a taxpayer's provisional income includes modified adjusted gross income (adjusted gross income plus tax-exempt interest plus certain foreign source income) plus one-half of the taxpayer's Social Security or Railroad Retirement Tier 1 benefit. The base amount

¹² The provision also applies to limits that are indexed in the same manner as these limits or are based on these limits (e.g., the compensation threshold for purposes of determining highly compensated individuals under section 414(q) and the excess benefit limit under the excise tax on excess distributions under section 4980A).

is \$32,000 for married taxpayers filing joint returns, \$25,000 for unmarried taxpayers, and \$0 for married taxpayers filing separate returns. The adjusted base amount is \$44,000 for married taxpayers filing joint returns, \$34,000 for unmarried taxpayers, and \$0 for married taxpayers filing separate returns.

If the amount of provisional income exceeds the base amount but does not exceed the adjusted base amount, then the amount of the inclusion is the lesser of (1) 50 percent of the taxpayer's Social Security or Railroad Retirement Tier 1 benefit, or (2) 50 percent of the excess of the taxpayer's provisional income over the base amount.

If the amount of provisional income exceeds the adjusted base amount, then the amount of the inclusion is the lesser of:

(1) 85 percent of the taxpayer's Social Security or Railroad Retirement Tier 1 benefit or

(2) the sum of:

(a) 85 percent of the excess of the taxpayer's provisional income over the adjusted base amount, plus

(b) the smaller of (i) the amount of benefits that would have been included if the 50-percent inclusion rule (the rule in the previous paragraph) were applied, or (ii) one-half of the difference between the adjusted base amount and the base amount of the taxpayer.

Beginning in 1983 (when benefits were included in income pursuant to the Social Security Amendments of 1983 (the "1983 Act")) and continuing until the Omnibus Budget Reconciliation Act of 1993 (the "1993 Act"), in all cases where provisional income was over the base amount, the amounts included were limited by the lesser of 50 percent of the taxpayer's benefits, or 50 percent of the excess of provisional income over the base amount.

Treatment of Nonresident Alien Individuals

If a nonresident alien individual is engaged in a trade or business within the United States during the taxable year, the individual is subject to tax under the Code, at the normal graduated rates, on net taxable income that is effectively connected with the conduct of the trade or business. U.S. source fixed or determinable annual or periodical income of a nonresident alien individual (for example, salary, wages, annuities, compensation, remuneration, and emoluments) that is not effectively connected with the conduct of a U.S. trade or business generally is subject to tax under the Code at a rate of 30 percent of the gross amount paid. This latter tax generally is collected by means of withholding (hence this tax is often called a "withholding tax"). Withholding taxes are often reduced or eliminated in the case of payments to residents of countries with which the United States has an income tax treaty.

Under rules that have been in the Code since the 1983 Act, for purposes of taxing the income of nonresident alien individuals, the income thresholds for including Social Security and Railroad Retirement Tier 1 benefits do not apply. Instead, 50 percent of any such benefit is included in gross income. Thus, a nonresident alien individual typically may be subject to U.S. withholding tax under the Code at an effective rate of 15 percent on the gross amount of U.S. social security benefits. This tax may be reduced or eliminated

under some treaties. Although the 1993 Act increased the inclusion of benefits in some cases, for taxpayers other than nonresident aliens, to up to 85 percent of the benefits, the 1993 Act did not amend the rule that a nonresident alien individual is required to include 50 percent (and only 50 percent) of these benefits in gross income.

Reasons for Change

It is believed that the maximum effective rate of U.S. taxation applicable to Social Security and Railroad Retirement Tier 1 benefits paid to nonresident aliens should not be less than the corresponding rate applicable to benefits paid to U.S. citizens and resident aliens. Accordingly, it is appropriate to raise the percentage of such benefits included in the gross income of a nonresident alien individual so that once again it will not be lower than the percentage applicable to a U.S. person with income over the applicable thresholds.

Explanation of Provision

The provision increases from 50 percent to 85 percent the amount of Social Security or Railroad Retirement Tier 1 benefits included in the gross income of a nonresident alien individual. Thus, under the provision a nonresident alien individual may be subject to U.S. withholding tax under the Code at an effective rate of 25.5 percent on the gross amount of U.S. Social Security or Railroad Retirement Tier 1 benefits.

The provision does not impose tax contrary to any treaty obligation of the United States. Thus, in cases where taxation of such a benefit would conflict with an existing treaty, the treaty would continue to prevail.

Effective Date

The provision would be effective for benefits paid after December 31, 1994, in taxable years ending after such date.

SUBTITLE E—OTHER PROVISIONS

Partnership Distributions of Marketable Securities

(Section 741 of the Bill; Sections 731 and 737 of the Code)

Present Law

Neither a partnership nor its partners generally recognize gain upon a distribution of partnership property to a partner (section 731(a)(1) and (b)). A partner is required to recognize gain, however, to the extent that the amount of money distributed exceeds the partner's basis in its partnership interest immediately before the distribution (section 731(a)(1)). Thus, in general, if a partnership distributes cash to a partner in an amount that exceeds the adjusted basis of the partner's interest in the partnership, the partner must recognize gain; but if the partnership distributes marketable securities to the partner in lieu of cash, the partner can defer recognizing gain.

A partner's basis in property distributed in a nonliquidating distribution is the lesser of the partnership's adjusted basis in the distributed property or the partner's adjusted basis in the partnership interest (reduced by money distributed in the transaction) (section 732(a)). A partner's adjusted basis in its partnership interest is reduced by the amount of money and the basis of property distributed to him in a non-liquidating distribution (section 733).

In a liquidating distribution, the partner's basis in the distributed property equals the partner's basis in the partnership interest (reduced by money distributed in the transaction) (section 732(b)).

A partner that contributes appreciated property to a partnership is required to include pre-contribution gain in income to the extent that the value of other property distributed by the partnership to that partner exceeds its adjusted basis in its partnership interest (section 737). This rule applies if the distribution is made within 5 years after the contribution of the appreciated property.

Reasons for Change

Concern has arisen that taxpayers can exchange interests in appreciated assets for marketable securities while deferring or avoiding tax on the appreciation, by using the present-law rules relating to partnership distributions. The present-law rules permit a partner to exchange, tax-free, his share of appreciated partnership assets for an increased share of the partnership's marketable securities. This transaction is the virtual economic equivalent of a sale of a partner's share of the partnership's assets. If the taxpayer were to exchange an interest in an appreciated asset for cash, he generally would recognize gain on the appreciated asset; yet if the taxpayer receives a partnership distribution of marketable securities, which are nearly as easily valued and as liquid as cash, he can avoid gain recognition.

This distinction in tax treatment between cash and marketable securities elevates form over substance, causes taxpayers to choose the form of transactions for tax reasons rather than economic reasons, and may not promote accurate income measurement. Rather, the present-law rule merely permits taxpayers to defer or avoid tax.

To limit the deferral or avoidance of taxation upon the receipt of marketable securities by a partner with unrealized appreciation in his partnership interest, the bill provides that the receipt of marketable securities in a partnership distribution causes the partner to recognize gain from the disposition of its partnership interest, to the extent that the value of the securities exceeds the partner's adjusted basis in its partnership interest. Thus, gain is recognized in the same manner as if the partner had received money in lieu of securities.

Exceptions are provided under this rule. It is acknowledged that certain partnerships are formed for the purpose of holding marketable securities for investment or for sale to customers. Thus, an exception is provided in the case of a distribution of marketable securities by an investment partnership to a partner who did not contribute any property to the partnership other than money or securities or other similar property. In addition, it is not intended that a partner be taxed under the provision on the partnership's gain

attributable to his share of the partnership's marketable securities distributed to him, because he has not exchanged his share of any other partnership asset for an increased share of the partnership's marketable securities. Thus, an exception (structured as a limitation on gain recognized under the provision) applies, to the extent that the gain that would otherwise be recognized under the provision does not exceed the distributee partner's share of the partnership's built-in gain (if any) with respect to securities of the type distributed to him. Further, the bill provides an exception for a distribution of marketable securities if the distributed security was contributed by the distributee partner (except to the extent that the value of the distributed security arises from marketable securities or money contributed to an entity to which the distributed security relates¹³). Finally, the bill provides regulatory authority to except distributions when the distributed security was not a marketable security when acquired by the partnership.

Because the partnership tax rules provide a great deal of flexibility, and taxpayers can arrange their affairs so as to take advantage of this flexibility, the bill grants to the Treasury Department regulatory authority to prescribe rules that effectively prevent taxpayers from avoiding the intent of this provision (as well as to provide relief from the application of the provision, where appropriate).

Explanation of Provision

In General

The bill generally provides that, for purposes of determining the amount of gain that a partner recognizes upon the distribution of marketable securities by a partnership, the fair market value of the securities is treated as money.¹⁴ Thus, a partner generally recognizes gain under the provision to the extent that the sum of the fair market value of marketable securities and money received exceeds the partner's basis in its partnership interest.¹⁵ The value of the marketable securities is their fair market value as of the date of the distribution.

Definition of Marketable Securities

In general.—Under the provision, marketable securities means financial instruments and foreign currencies that are, as of the date of the distribution, actively traded (within the meaning of section 1092(d)(1)). For purposes of the definition of marketable securities, a financial instrument includes financial products such as stocks and other equity interests, evidences of indebtedness, options, fu-

¹³ A similar rule is provided under present-law sections 704(c)(1)(B) and 737(d)(1).

¹⁴ While the bill generally (subject to the exceptions provided in the bill) treats marketable securities as money where the term money is used in sections 731(a)(1) and 737, the bill does not change the treatment of marketable securities as property where the term property is used (for example, in determining a partner's net pre-contribution gain under sec. 737(b)).

¹⁵ Under the provision, marketable securities are treated as money only for purposes of sections 731(a)(1) and 737. Marketable securities are not treated as money under other provisions, for example, section 731(a)(2). Any loss on the distribution of marketable securities is not recognized under the provision, but rather is deferred to the same extent it is deferred under present law, by virtue of the present-law rules providing generally for carryover and substituted basis, respectively, of property distributed other than in liquidation (section 732(a)) and of property distributed in liquidation (section 732(b)).

tures and forward contracts,¹⁶ notional principal contracts and derivatives.

In addition, marketable securities include certain other specified items. First, the term includes any interest in a common trust fund or a regulated investment company (RIC) that is offering for sale or has outstanding any redeemable security (within the meaning of the Investment Company Act of 1940). Thus, an interest in an open-ended mutual fund is treated as a marketable security even though, for example, trading in fund shares takes place exclusively through purchase and redemption transactions with the issuer of the fund shares.

Second, marketable securities include any financial instrument that, pursuant to its terms or any other arrangement, is readily convertible into, or exchangeable for, money or marketable securities. For example, under this rule, an in-the-money option to buy marketable securities is treated as a marketable security because the holder can readily convert it to marketable securities by exercising the option.

Third, marketable securities include any financial instrument the value of which is determined substantially by reference to marketable securities. For example, a private notional principal contract that itself is not actively traded, but whose value is determined by reference to a financial instrument that is actively traded, is a marketable security. Similarly, an interest in an index fund that is not itself actively traded¹⁷, but whose value is determined by reference to an index of securities that are actively traded, is a marketable security. As a further example, privately offered stock whose value is determined by reference to actively traded stock of another class or another issuer, is a marketable security.

Fourth, except to the extent provided in regulations, marketable securities include any interest in a precious metal which as of the date of the distribution is actively traded, unless the precious metal was produced, used, or held in the active conduct of a trade or business by the partnership. Thus, for example, monetized or unmonetized gold coins, and gold or silver ingots or bullion, are marketable securities, if they are not produced, used or held in the active conduct of a trade or business by the partnership.

Fifth, except as otherwise provided in regulations, an interest in any entity is a marketable security if substantially all of the assets of the entity consist (directly or indirectly) of marketable securities, money, or both. As under present law (sections 704(c)(1)(B) and 737(d))¹⁸, the provision may not be avoided by distributing interests in such an entity that are not actively traded. The entire interest in such an entity is intended to be treated as a marketable security under this rule, even if the entity (directly or indirectly) holds other assets.

Sixth, the bill provides limited regulatory authority permitting the Treasury Department to treat as a marketable security an in-

¹⁶Commodities (other than precious metals) are not treated as marketable securities under the provision; however, options and futures and forward contracts (whether or not relating to commodities) that are actively traded are treated as marketable securities.

¹⁷An interest in an index fund that is actively traded is a marketable security because it is included as a financial instrument.

¹⁸See H. Rep. 102-1018, Conference Report to accompany H.R. 776, Energy Policy Act of 1992 at 429 (Oct. 5, 1992).

terest in an entity, even though less than substantially all of the entity's assets (directly or indirectly) consist of marketable securities, money, or both. Such an interest in an entity may not, however, be treated under regulations as a marketable security except to the extent of the value of the interest that is attributable to marketable securities, money, or both.

Actively traded.—The term actively traded has the same meaning as under Code section 1092(d). It is intended that Treasury regulations¹⁹ interpreting the meaning of actively traded under section 1092(d) apply.

Exceptions

The bill provides four exceptions to the general rule that gain is recognized upon a partnership distribution of marketable securities to the extent the sum of the value of the marketable securities and money distributed exceeds the partner's basis in its partnership interest.

Securities contributed by the distributee.—The provision generally does not apply to the distribution of a marketable security to a partner if the security was contributed to the partnership by the partner. The provision does, however, apply, to the extent that the value of the distributed security is attributable to marketable securities or money contributed (directly or indirectly) to the entity to which the distributed security relates. For example, if marketable securities are contributed by a partnership to a corporation (or lower tier subsidiary of a corporation) whose stock had been contributed to the partnership by a partner, the provision would apply to the distribution of stock of the corporation back to the contributing partner to the extent the value of such stock is attributable to the marketable securities or money contributed. The provision does not, however, apply (unless otherwise provided in regulations) to the extent that the value of an interest in an entity contributed by the distributee partner is attributable to marketable securities or money that the distributee also contributed to the partnership.

Securities not marketable when acquired.—To the extent provided in regulations, the provision does not apply to a distribution of a marketable security that was not a marketable security when the partnership acquired it. For example, under this regulatory authority, the application of the provision may be suspended, in the case of a distribution of stock of a corporation acquired by the partnership in a private placement, if the corporation subsequently went public and its stock is actively traded at the time the partnership distributes it.

Distributions by investment partnerships.—The provision does not apply to a distribution of marketable securities by an investment partnership to an eligible partner.

Investment partnership.—An investment partnership is a partnership that (1) has never been engaged in a trade or business and (2) substantially all of whose assets consist of specified investment-type assets. A partnership is not treated as engaged in a trade or business by reason of any activity as an investor, trader or dealer in the specified investment-type as-

¹⁹Treas. Reg. 1.1092(d)-1, Oct. 8, 1993.

sets. These activities are intended to include the receipt of any commitment fees, break-up fees, guarantee fees, director's fees or similar fees, that are customary in and incidental to an activity as such an investor, trader or dealer. In addition, regulatory authority is provided to specify other activities in which a partnership may engage without being treated as engaged in a trade or business. For example, it is anticipated that regulations will generally treat the following activities, for purposes of this provision, as not causing a partnership to be treated as engaged in a trade or business: (1) reasonable and customary management services provided to a lower-tier partnership; and (2) incidental services customarily provided in starting up a company in which the partnership holds a significant equity interest.

The specified investment-type assets are (1) money, (2) stock in a corporation, (3) notes, bonds, debentures, or other evidences of indebtedness, (4) interest rate, currency, or equity notional principal contracts, (5) foreign currencies, (6) interests in or derivative financial instruments (including options, forward or futures contracts, short positions, and similar financial instruments) in any other specified investment-type asset or in any commodity traded on a board of trade or commodity exchange, (7) other assets specified in regulations, or (8) any combination of the foregoing.

A look-through rule applies with respect to partnership interests. Except as otherwise provided in regulations, a partnership is treated as holding a proportionate share of the assets of any lower-tier partnership, and as engaging in any trade or business conducted by a lower-tier partnership, and a partner who contributes a partnership interest to another partnership is treated as contributing a proportionate share of the assets of the contributed partnership (and any lower-tier partnerships). Regulations may provide that this look-through rule does not apply (for example, in the case of a limited partnership interest held by a partnership, if the holding partnership does not engage in the management of the limited partnership). The bill provides that if, under regulations, the look-through rule does not apply to a partnership interest, then that partnership interest is treated as if it were a specified investment-type asset listed above (*i.e.*, permitted to be held by an investment partnership).

Eligible partner.—An eligible partner is one that, before the date of the distribution, did not contribute to the partnership any property other than specified investment-type assets permitted to be held by an investment partnership. A partner is not treated as failing to be an eligible partner solely by virtue of having contributed services to the partnership. A partner who is not an eligible partner may not remove the taint from his partnership interest by transferring any portion of his interest to another person in a transaction in which gain or loss is not recognized in whole or in part.

Limitation on gain recognized.—The bill permits a partner to receive a distribution of marketable securities without recognizing the gain that is attributable to his share of the partnership's net

appreciation with respect to securities of the type distributed. For this purpose, a type of securities means a class of securities (for example, residual common stock) of a single issuer.

The bill provides that the amount of marketable securities treated as money is reduced by the excess of (1) the partner's distributive share of any net gain that he would take into account if all the securities (of the type distributed) held by the partnership immediately before the transaction were sold for their fair market value, over (2) the partner's distributive share of any net gain that he would take into account if all the securities (of that type) held by the partnership immediately after the transaction had been sold. In making this determination, the partner's share of net gain is determined immediately before and immediately after the transaction, using the same fair market value for the securities in each case. Thus, in the case of a transaction involving a series of distributions, the partner's share of net gain is unaffected by changes in the value of the distributed securities during the course of the distributions. In addition, the amount of gain allocated to a partner is determined with regard to any basis adjustment under section 743(b) with respect to that partner.

For example, assume that partnership ABC holds 300 shares of the common stock of X corporation, a marketable security, and other assets. A holds a $\frac{1}{3}$ interest in the capital and profits of the partnership. Each share of stock held by the partnership has a basis of \$10 and a value of \$100. A's adjusted basis in its partnership interest is \$5,000. Assume that the partnership distributes all the shares of X corporation to A in liquidation of his partnership interest. Under the general rule of new section 731(c), the \$30,000 value of the X stock would be treated as money for purposes of determining A's gain. Under this gain limitation rule, however, the \$30,000 amount is reduced by \$9,000, the amount of gain that A would have taken into account if the partnership had sold all 300 shares of X stock for a total of \$30,000. Thus, A recognizes a gain of \$16,000 (\$30,000 reduced by \$9,000 (or \$21,000), further reduced by A's \$5,000 basis in his partnership interest).

The Treasury Secretary may issue regulations applying these rules by treating all marketable securities as being of the same type.

Other Rules

Basis of securities distributed.—The bill provides that the adjusted basis of the distributed marketable securities is increased (over the basis as determined under present-law section 732) by the amount of gain recognized by reason of this provision. The amount of gain so recognized is allocated among the distributed marketable securities in proportion to the amounts of unrealized appreciation (determined before the increase in basis under the provision).

For example, assume that a partnership distributes to a partner, in a nonliquidating distribution, marketable security A with a value of \$100 and a basis of \$60, and marketable security B with a value of \$100 and a basis of \$40. The distributee partner's basis in his partnership interest is \$120. Under present law, no gain is recognized, the partner's basis in security A is \$60 and in security B is \$40, and his adjusted basis in his partnership interest is \$20.

Assume that the partner will recognize gain of \$40 under the provisions of the bill.²⁰ Under the bill, 40 percent of the gain (*i.e.*, \$16) is allocated to security A, and 60 percent of the gain (*i.e.*, \$24) is allocated to security B. Thus, the partner's basis in security A is \$76 (*i.e.*, \$60 basis plus \$16 gain allocated), and in security B is \$64 (*i.e.*, \$40 basis plus \$24 gain allocated). This result is the same whether security A and security B are securities of different issuers, of different classes of the same issuer, or blocks of securities of the same class and issuer but with different adjusted bases in the hands of the partnership.

Other basis rules.—The adjusted basis of the partner's partnership interest and the partnership's adjusted basis in its remaining assets are determined without regard to this provision. The bill provides that rules for determining the distributee partner's basis in his partnership interest (section 733) are applied as if no gain were recognized, and no adjustment were made to the basis of property, under this provision. Thus, as under present law,²¹ the distributee partner's basis in his partnership interest is reduced (in a nonliquidating distribution) by the basis of the distributed securities, as determined under section 732 and without regard to the provisions of the bill. Therefore, in the foregoing example, the distributee's basis in his partnership interest, initially \$120, is reduced by the sum of the bases (in the hands of the partnership) of security A (\$60) and security B (\$40), for a total reduction of \$100. After the distribution, his basis in his partnership interest is \$20.

The bill also provides that any increase or decrease (under section 734) in the basis of undistributed property of a partnership with a section 754 election in effect is made as if no gain were recognized, and no adjustment were made to the basis of property, under new section 731(c).

Coordination with section 737.—The bill coordinates this provision with the provisions of present law relating to recognition of pre-contribution gain by a contributing partner (section 737). To the extent that the value of marketable securities distributed is treated as money for purposes of this provision, that amount is also treated as money for purposes of determining the amount of gain recognized under section 737. The amount treated as money may result in gain recognition under new section 731(c), and may therefore reduce the amount of gain otherwise recognized under section 737.

The basis adjustments resulting from gain recognized by reason of this provision are made in accordance with the rules of this provision, and not under the rules of section 737.

For example, in the case of a distribution of both marketable securities and other property to a partner who contributed appreciated property to the partnership, the partner may recognize gain under both new section 731(c) and section 737. The gain arising from the distribution of marketable securities increases the basis of the marketable securities in the hands of the distributee, while

²⁰ The amount of gain recognized under the provision depends on the partner's share of partnership appreciation in securities of the same type (class and issuer) as securities A and B, as discussed above.

²¹ The distribution of marketable securities continues, as under present law, to be treated as a distribution of property for purposes of determining basis.

the section 737 gain arising from the distribution of the other property is allocated as under present law (*i.e.*, to the partner's partnership interest (section 737(c)(1)), rather than to the marketable securities or directly to the other distributed property). As a result, the partner's basis in the distributed securities is determined without reference to the step-up in basis under section 737(c). These rules carry out the intent of the provision not to increase the basis of distributed marketable securities above their fair market value.

For example, assume that partner A contributed property with an adjusted basis of \$100 and a value of \$200 to partnership X. A's basis in its partnership interest is \$100 (section 722). Within five years (assuming no other partnership activity), X distributes to A in a nonliquidating distribution a marketable security (which A did not contribute) with an adjusted basis of \$100 and a value of \$120, together with other property with an adjusted basis of \$0 and a value of \$20. A recognizes \$40 of gain. Assuming that A's \$20 of gain on the distribution of the marketable securities is reduced by \$5 under the limitation on gain recognized rule of new section 731(c)(3)(B), A recognizes \$15 of the gain by reason of new section 731(c) and \$25 by reason of section 737. After the distribution, A's adjusted basis in the marketable security is \$115, that is, \$100 (as determined under section 732(a)(2)), increased by \$15 (the gain recognized by reason of new section 731(c)). A's adjusted basis in its partnership interest is \$25 (\$100 reduced by \$100 (the basis to the partner of the property distributed, computed without regard to section 731(c)), and increased by \$25 (the gain recognized under section 737). A's basis in the other property is \$0, as under present law (section 732(a)). The partnership's adjusted basis in the contributed property is increased by \$25 (section 737(c)(2)).

Character of gain recognized.—The bill provides that, to the extent the basis of any marketable security which is an unrealized receivable or an inventory item (as defined in sections 751(c) and 751(d)(2)) is increased by reason of this provision, the gain recognized is ordinary income.²²

Regulatory Authority

The bill provides that the Treasury Secretary shall promulgate regulations necessary or appropriate to carry out the purposes of this provision, including regulations to prevent the avoidance of the provision. It is intended that these regulations effectively prevent taxpayers from avoiding the intent of this provision, and, where appropriate, provide relief from the application of the provision.

It is intended that regulations address avoidance of the provision through, for example, arrangements involving changes in partnership allocations and distribution rights, multiple distributions, related entities, or otherwise. Thus, for example, regulations may provide that exceptions to the provision do not apply if the partnership allocations are changed to increase a partner's share of marketable securities shortly before a distribution, or to achieve the functional equivalent of a distribution (without an actual distribution) by allocating substantially all the items associated with the

²² Section 751(b) is intended to apply prior to the application of new section 731(c) (see section 731(d), as redesignated by the bill).

security to a particular partner or partners. As another example, regulations may address avoidance of this provision in the case in which a partnership distributes substantially all of its assets (other than marketable securities and money) to some partners, with the practical effect of a distribution of the marketable securities to the other partners. As a further example, regulations may address avoidance of the provision through distributions of property in connection with a pre-arranged purchase of the distributed property, or through transactions involving a distribution of property together with the right to dispose of such property at substantially above its fair market value.

Effective Date

The provision generally applies to partnership distributions after the date of enactment, except that the provision does not apply to any marketable security distributed before January 1, 1995 by the partnership that held the security on July 27, 1994. It is intended that this exception for securities held on July 27, 1994 apply to marketable securities acquired by the partnership after that date and distributed before January 1, 1995, if the basis of such securities is determined by reference to the securities held by the partnership on July 27, 1994 (*e.g.*, securities received in a stock split or reorganization). If a partner receives a distribution of marketable securities otherwise eligible for this exception for securities held on July 27, 1994, and such securities are re-contributed to the partnership so that the exception for securities contributed by the distributee partner (described above) arguably might later apply, then this exception (for securities held on July 27, 1994) is intended not to apply.

A transition rule provides that the provision does not apply to a partnership distribution of marketable securities in liquidation of a partner's interest pursuant to a written contract, binding on July 15, 1994 and at all times thereafter before the distribution, to purchase the partner's interest by a date certain for a fixed value of marketable securities that are specified in the contract or for other property; provided that the transition rule does not apply if the partner has the right unilaterally to elect that the distribution be made other than in marketable securities. A fixed value of marketable securities is intended to mean a value fixed in dollars or another currency. This transition rule does not affect whether sections 737 or 707 apply.

The provision does not apply to a distribution of marketable securities by any publicly traded partnership (defined in section 7704(b)) that as of December 31, 1987 met the definition of an existing partnership (under section 10211(c)(2) of the Revenue Act of 1987, *i.e.*, the effective date rules of section 7704), provided certain requirements are met. The requirements are met if (1) the distribution occurs in a qualified partnership liquidation and if (2) the marketable securities were received by the partnership in a nonrecognition transaction in exchange for substantially all of the assets of the partnership, (3) the marketable securities are distributed by the partnership within 90 days after their receipt by the partnership, and (4) the partnership is liquidated before the beginning of the first taxable year of the partnership beginning after December

31, 1997. A qualified partnership liquidation for this purpose is a complete liquidation of a publicly traded partnership described above, or a complete liquidation of a partnership that is related to such a publicly traded partnership if its liquidation is related to the complete liquidation of such publicly traded partnership.

Taxpayer Identification Numbers Required at Birth

(Section 742 of the Bill; Sections 32 and 6109 of the Code)

Present Law

A taxpayer claiming an exemption for a dependent is required to provide a taxpayer identification number (TIN) on the tax return for any dependent who has attained the age of 1 as of the close of that taxable year (section 6109(e)). A parallel requirement applies to taxpayers with qualifying children claiming the earned income tax credit (EITC) (section 32(c)(3)(D)). An individual's TIN is, in general, that individual's social security number.

Reasons for Change

The requirement that TINs be provided with respect to each dependent claimed on a tax return has significantly reduced the improper claiming of dependents. Requiring that TINs be supplied regardless of the age of the dependent will further reduce the improper claiming of dependents.

Explanation of Provision

Taxpayers claiming dependents must provide a TIN for each dependent, regardless of the dependent's age. A parallel requirement applies to taxpayers with qualifying children claiming the EITC. Some taxpayers may encounter legitimate difficulties in obtaining a TIN within the timeframe necessary for filing a tax return (such as, for example, where a child is being adopted). It is anticipated that the IRS will provide reasonable administrative accommodation in these legitimate situations.

Effective Date

For returns filed with respect to tax year 1995, taxpayers must provide TINs for all dependents and qualifying children for EITC purposes who were born on or before October 31, 1995. For returns filed with respect to tax year 1996, taxpayers must provide TINs for all dependents and qualifying children born on or before November 30, 1996. For returns filed with respect to tax year 1997, and all subsequent years, taxpayers must provide TINs for all dependents and qualifying children, regardless of their age.

Extension of Internal Revenue Service User Fees

(Section 743 of the Bill; Section 10511 of the Revenue Act of 1987)

Present Law

The Internal Revenue Service (IRS) provides written responses to questions of individuals, corporations, and organizations relating to

their tax status or the effects of particular transactions for tax purposes. The IRS responds to these inquiries through the issuance of letter rulings, determination letters, and opinion letters. The IRS generally charges a fee for requests for a letter ruling, determination letter, opinion letter, or other similar ruling or determination. The legislation that requires the establishment of this fee program provides that it is not to apply to requests made after September 30, 1995.

Reasons for Change

The IRS user fee program provides an appropriate mechanism whereby those directly benefitting from government services pay a fee that partially offsets the costs of providing those services. Consequently, the program should be extended.

Explanation of Provision

The IRS user fee program is extended for five years.

Effective Date

The provision applies to requests made after September 30, 1995, and before October 1, 2000.

Modification of Substantial Understatement Penalty for Corporations Participating in Tax Shelters

(Section 744 of the Bill; Section 6662 of the Code)

Present Law

Under present law, a 20-percent penalty applies to any portion of an underpayment of income tax required to be shown on a return that is attributable to a substantial understatement of income tax. For this purpose, an understatement is considered "substantial" if it exceeds the greater of (1) 10 percent of the tax required to be shown on the return, and (2) \$5,000 (\$10,000 in the case of a corporation other than an S corporation or a personal holding company). Generally, the amount of an "understatement" of income tax is the excess of the tax required to be shown on the return, over the tax shown on the return (reduced by any rebates of tax). The substantial understatement penalty does not apply if there was a reasonable cause for the understatement and the taxpayer acted in good faith with respect to the understatement (the "reasonable cause exception"). The determination as to whether the taxpayer acted with reasonable cause and in good faith is made on a case-by-case basis, taking into account all pertinent facts and circumstances.

In determining whether an understatement is substantial, the understatement generally is reduced by the portion of the understatement that is attributable to an item for which there was substantial authority or adequate disclosure. In the case of tax shelter items, however, the understatement is reduced only by the portion of the understatement that is attributable to an item for which there both was substantial authority and with respect to which the taxpayer reasonably believed that the claimed treatment of the

item was more likely than not the proper treatment. Disclosure made with respect to a tax shelter item does not affect the amount of an understatement.

A tax shelter is any partnership or other entity, any investment plan or arrangement, or any other plan or arrangement if the principal purpose of such partnership, entity, plan or arrangement is to avoid or evade Federal income tax. An item of income, gain, loss, deduction or credit is a tax shelter item if the item is directly or indirectly attributable to the principal purpose of the tax shelter.

Reasons for Change

While tax shelters for individuals have been significantly curtailed recently through legislation (such as, for example, the passive activity loss rules), there appear to be a growing number of aggressive tax shelter transactions involving corporate taxpayers. The substantial understatement penalty may not effectively deter these abusive corporate tax shelter transactions. Accordingly, the standards applicable to corporate tax shelters are tightened.

Explanation of Provision

With respect to corporate taxpayers, the bill eliminates the exception to the substantial understatement penalty regarding tax shelter items for which the taxpayer had substantial authority and reasonably believed that its treatment was more likely than not the proper treatment. Thus, if a corporate taxpayer has a substantial understatement that is attributable to a tax shelter item, the substantial understatement penalty applies with respect to the understatement, unless the "reasonable cause exception" applies.

A determination by a taxpayer or a professional tax advisor that the substantial authority and more likely than not standards are satisfied will be an important factor in assessing whether the "reasonable cause exception" applies, but it will not be enough, by itself, to establish that the "reasonable cause exception" does in fact apply. For example, reliance on the opinion of a professional tax advisor may be unreasonable where the advisor makes inappropriate legal or factual assumptions, does not address all relevant issues, or inappropriately relies on representations or agreements to take certain actions made by the taxpayer or other parties.

It is the intent of the provision that the standards applicable to corporate shelters be tightened; consequently, in no instance would this modification result in a penalty not being imposed where a penalty would have been imposed under prior law.

Effective Date

The provision applies to transactions occurring after the date of enactment.

Modification of Authority to Set Terms and Conditions for Savings Bonds

(Section 745 of the Bill; Section 3105 of Title 31 of the United States Code)

Present Law

The Department of Treasury has the authority to issue savings bonds and to design the key features of those bonds, including their investment yield. The Treasury also has the authority to change the investment yield for outstanding bonds, although never below the minimum investment yield guaranteed at issuance through the original maturity date. For Series E bonds, the investment yield must be at least four percent per year compounded semiannually. (Series EE bonds are the only Series E bonds currently issued.)

Series EE savings bonds are noncallable, nontransferable, registered securities redeemable anytime after six months from the date of issue. Prior to March 1993, Treasury regulations provided for investment yields that exceeded four percent per year and increased with holding periods of between six months and five years. Currently, bonds held less than five years pay the statutory minimum investment yield of four percent per year. Bonds held five years or longer pay a market-based investment yield of 85 percent of an average of applicable yields for the holding period on outstanding Treasury securities with approximately five years remaining to maturity or four percent, whichever is greater.

Reasons for Change

It is desirable that the Department of the Treasury have greater flexibility in structuring savings bonds than present law allows. The statutory minimum investment yield of four percent is an unnecessary constraint. It also can make these bonds a more expensive source of federal borrowing during periods when interest rates are lower than four percent. At such times, the statutory minimum can encourage investors to use Series EE bonds as higher-than-market alternatives to other short-term financial instruments, such as money market funds. This is contrary to a goal of the savings bond program, which is intended to encourage long-term savings. Repeal of the statutory minimum investment yield would allow for low-cost Treasury borrowing and would better further the goals of the savings bond program.

Explanation of Provision

The bill repeals the present-law requirement that United States Series E savings bonds pay investment yields of at least four percent per year, compounded semiannually.

Effective Date

The provision is effective for bonds issued on or after October 31, 1994.

SUBTITLE F—PENSION PLAN FUNDING AND PREMIUMS

I. OVERVIEW OF PRESENT LAW

Defined Benefit Pension Plans

A defined benefit pension plan is a type of employer-sponsored retirement plan that provides benefits to participants based upon a formula specified in the plan. For example, a defined benefit pension plan could provide a benefit equal to a percentage of an employee's average compensation multiplied by the number of years of service with the employer. A defined benefit pension plan could also provide a flat dollar benefit based on years of service, or a specified percentage of final or average compensation. The key feature of such a plan is that the benefit promised is based on the plan formula, not on the assets or investment experience of the plan.

In order to help ensure that the promised benefits are paid to plan participants, defined benefit pension plans are subject to minimum funding requirements under both the Internal Revenue Code (the Code) and title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA), which require the employer sponsoring the plan to make certain contributions to fund the plan. These requirements are discussed in detail below.

Pension Benefit Guaranty Corporation

As enacted in ERISA, as well as under present law, the minimum funding requirements permit an employer to fund defined benefit pension plan benefits over a period of time. Thus, it is possible that a plan may be terminated at a time when plan assets are not sufficient to provide all benefits earned by employees under the plan. In order to protect plan participants from losing retirement benefits in such circumstances, the Pension Benefit Guaranty Corporation (PBGC), a corporation within the Department of Labor, was created in 1974 by ERISA to provide an insurance program for benefits under most defined benefit pension plans maintained by private employers. According to the PBGC's annual report for fiscal year 1993, the single-employer insurance program covers more than 32 million participants in about 64,000 defined benefit pension plans.

Termination of Underfunded Pension Plans

Prior to 1986, an employer generally could, subject to contractual obligations, terminate a single-employer defined benefit pension plan at any time without regard to the financial health of the employer and without regard to the level of assets in the plan. If a single-employer defined benefit pension plan was terminated with assets insufficient to pay benefits at the level guaranteed by the PBGC, the employer was liable to the PBGC for the lesser of the insufficiency or an amount equal to 30 percent of the employer's net worth.

Under these rules, employers that wanted to rid themselves of unfunded liabilities could simply terminate the plan, and the PBGC would be liable for benefits. The PBGC was in some cases prevented from recouping its liability from the employer, even if

the employer was financially sound. The plan termination rules were amended to prevent such transferring of liabilities to the PBGC by the Single-Employer Pension Plan Amendments Act of 1986 (SEPPAA) and were modified further by the Pension Protection Act of 1987.

Under present law, a defined benefit pension plan with assets insufficient to provide for benefit liabilities can be terminated voluntarily by the employer only if the employer and members of the controlled group of the employer are in financial distress (a distress termination). In general, benefit liabilities include all fixed and contingent liabilities to plan participants and beneficiaries.

Following a distress termination, the PBGC pays out all benefits under the plan, including guaranteed benefits and those not guaranteed. The amount of benefits in excess of guaranteed benefits that are paid to plan participants depends on the level of plan funding and the amount the PBGC is able to recover from the employer. The employer is liable to the PBGC for the full amount of unfunded benefit liabilities.

Guaranteed Benefits

The PBGC guarantees vested retirement benefits (other than those that vest solely on account of the plan termination), up to a maximum benefit of \$2,556.82 per month for plans terminating in 1994. The dollar limit is indexed annually for inflation. The guarantee is reduced for benefits starting before age 65, and does not apply to certain types of ancillary benefits. In the case of a plan or a plan amendment that has been in effect for less than 5 years before a plan termination, the amount guaranteed is generally phased in by 20 percent a year.

Sources of PBGC Funding

The PBGC is funded by assets in terminated plans, amounts recovered from employers who terminate underfunded plans, premiums paid with respect to covered plans, and investment earnings. All covered plans are required to pay a flat per-participant premium and underfunded plans are subject to an additional variable premium based on the level of the underfunding.

As initially enacted in ERISA, covered plans were required to pay an annual flat premium to the PBGC of \$1.00 per plan participant. The flat-rate per-participant premium has been increased several times since the enactment of ERISA, and is currently \$19 per participant in 1994.

The variable rate premium was enacted by the Pension Protection Act of 1987. It was believed that underfunded plans should bear a greater share of the premium than well-funded plans because they pose a greater risk of exposure to the PBGC. The amount of the variable rate premium is \$9.00 per each \$1,000 of unfunded vested benefits, up to a maximum of \$53 per participant. Thus, the maximum total per-participant premium for an underfunded plan is \$72 per year.

II. REASONS FOR CHANGE

Financial Status of the PBGC

As of September 30, 1993, the PBGC reported a deficit of \$2.9 billion in the single-employer insurance program. This is an increase over the \$2.7 billion deficit reported as of the end of the prior fiscal year. The PBGC also estimated in its 1993 annual report that approximately \$53 billion in unfunded liabilities existed in single-employer defined benefit pension plans in 1992. Approximately 72 percent of this underfunding, or approximately \$38 billion, is concentrated in single-employer plans sponsored by just 50 companies, primarily in the steel, automobile, tire, and airline industries.

The PBGC has estimated its future financial status under a variety of assumptions. The single-employer program deficit could range from \$1.9 billion by the end of 2003 if losses are relatively low, to \$13.8 billion by the end of 2003 if losses are high.

In a study released by the U.S. General Accounting Office (GAO) in December 1992,²³ GAO reported that the 44 plans with the largest claims against the PBGC for calendar years 1986-88 had aggregate unfunded liabilities at termination of \$2.7 billion. These unfunded liabilities were \$990 million, or 58 percent, higher than the \$1.7 billion in unfunded liabilities reported by the 44 plans on their last, pretermination annual filing with the Internal Revenue Service. GAO termed this additional unfunded liability a "hidden liability" to the PBGC because it was not reported by plans before termination.

Hidden liabilities can result from several causes. Most of the \$990 million in hidden liability reported in the GAO study was due to PBGC's higher estimate of plan liabilities as a result of PBGC's use of actuarial assumptions that were different than the assumptions used by plan sponsors. Hidden liabilities also can result because of the payment of shutdown²⁴ or special early retirement benefits, earlier-than-anticipated retirements, and PBGC's receipt of fewer assets than reported by the plans.

Reasons for PBGC's Financial Status

The chronic underfunding of some defined benefit pension plans poses a significant risk to the PBGC. The PBGC's single-employer insurance program has a \$2.9 billion deficit. Furthermore, the overall level of underfunding is rapidly increasing among single employer plans and now exceeds \$50 billion. Of this amount, reasonably possible future claims against the PBGC exceed \$13 billion. These claims, and the continued underfunding of pension benefits threaten the future solvency of the PBGC and may lead to a taxpayer bailout if the Federal Government is required to pay pension benefits to participants of underfunded pension plans which terminate.

²³ U.S. General Accounting Office, *Hidden Liabilities Increase Claims Against Government Insurance Program* (GAO/HRD-93-7), December 30, 1992.

²⁴ Shutdown benefits are benefits payable only upon the closing of a facility or termination of the plan sponsor's business operations. Since plan actuaries cannot predict the probability of such occurrences, shutdown benefits are only partially funded, at best.

There is concern that the sponsors of underfunded defined benefit pension plans continue to promise additional pension benefits without funding the plans' existing unfunded pension liabilities. Under present law, new pension liabilities can be added to an underfunded defined benefit pension plan before old liabilities are funded. Companies in financial difficulty sometimes use benefit increases as a means to increase compensation when they cannot afford to pay higher current wages. Workers may be willing to accept such unfunded future pension promises because they are at least partially insured by the PBGC and workers recognize that the immediate costs to their employers of higher wages makes such wage increases unlikely.

Under present law, sponsors of underfunded defined benefit pension plans are not required to fund their plans within a reasonable time. Under present law, plan sponsors are allowed to fund their pension liabilities over an extended period of time. Some companies have taken advantage of the flexibility under the present-law rules and have chosen to maintain their plans at significantly underfunded levels. Some companies have used this funding flexibility to maintain chronically underfunded plans whose financial condition has not improved since the passage of ERISA nearly 20 years ago. In a few cases, companies have terminated plans with no remaining assets without ever violating present-law minimum funding standards.

The PBGC lacks sufficient information from defined benefit pension plan sponsors with which to determine the risks it bears as the result of underfunded defined benefit pension plans. Under present law, the PBGC can subpoena information from plans and plan sponsors for the purpose of carrying out its responsibilities under ERISA. However, this subpoena process is rarely used because it is costly, labor intensive and time consuming. As a result, the PBGC has used this authority only in cases involving negotiations with financially troubled plan sponsors. The PBGC has not used its subpoena authority for purposes of day-to-day policy or operational reviews of ongoing plans.

As reported by the GAO, following plan termination, plan underfunding typically is nearly 60 percent greater than previously reported by the plan sponsor on its latest Form 5500 filed with the IRS. In addition, the level of underfunding tends to rise rapidly shortly before termination of a defined benefit pension plan. In these situations, the PBGC is unable to take prompt action to protect the Government and plan participants from further loss because it lacks necessary financial information. Thus, the PBGC needs full and timely access to the records of the defined benefit pension plans that it insures, in much the same manner as the Federal Deposit Insurance Corporation (FDIC) has access to information on the financial institutions it insures.

The PBGC's deficit has increased, in part, because premiums paid to the PBGC are not sufficient to cover its operations. The PBGC's premium income continues to be insufficient to cover the costs of actual and expected plan terminations for which the PBGC is responsible. Further, the PBGC's variable rate premium does not properly reflect the risk assumed by the PBGC in providing insurance for severely underfunded defined benefit pension plans.

Under present law, plan participants are not fully aware of the extent to which their defined benefit pension plans are underfunded and that not all benefits are fully insured by the PBGC. There are certain disclosure requirements applicable to defined benefit pension plan sponsors which allow participants to monitor and understand benefits under their plan. Plans are required to provide participants with a summary plan description, which typically provides a boilerplate summary of pension benefit guarantees and a summary annual report, which should indicate whether minimum funding standards have been met and the extent of underfunding if a plan is less than 70 percent funded. Despite these varied reporting requirements, participants are not given clear and understandable information about (1) the extent to which their plan is underfunded and (2) which of their benefits are insured by the PBGC, and the extent to which such benefits are insured, should their underfunded plan terminate.

Results of Bill

The bill is designed to improve the funding of single-employer defined benefit pension plans and reduce the potential exposure of the PBGC. The bill also is intended to reduce or eliminate the PBGC's operating deficit and to reduce the defined benefit pension system's unfunded liabilities for which the Federal Government is potentially responsible.

Under the bill, pension plan sponsors will be required to meet their existing pension commitments in a reasonable period of time. The funding requirements will ensure that sponsors of underfunded defined benefit pension plans contribute amounts sufficient to improve the financial condition of the plans or, at a minimum, prevent plan funding from deteriorating. Further, the bill will allow employers that sponsor both underfunded defined benefit pension plans and defined contribution plans to fully fund their underfunded defined benefit plans more rapidly.

It is important to require that plan sponsors provide participants in defined benefit pension plans that are underfunded with a simple notice each year stating the extent to which the plan is underfunded, and an explanation of which benefits will or will not be guaranteed by the PBGC and the extent of the PBGC's guarantee, if the plan is terminated.

The bill provides the PBGC with better access to the records of certain troubled plans that it insures. This will allow the PBGC to take prompt action to protect participants, the PBGC, and taxpayers from any additional losses.

The bill's provision phasing out of the present-law cap on the additional premium for underfunded plans contained in the bill will require poorly funded plans, which pose the greatest risk to the PBGC, to pay their fair share of premiums. The phase out also will encourage underfunded plans to contribute more or otherwise reduce underfunding in order to avoid the payment of additional premiums.

III. RETIREMENT PROTECTION ACT OF 1994

A. Part I—Pension Plan Funding

Minimum Funding Requirements

(Sections 751 and 761 of the Bill; Sections 412(c), (l), and (m) of the Code; and Sections 204, 302(d), and (e) of ERISA)

Present Law*In General*

ERISA and the Code impose both minimum and maximum defined benefit pension plan funding requirements. The minimum funding requirements are designed to provide at least a certain level of benefit security by requiring the employer to make certain minimum contributions to the plan. The requirements recognize that, in an on-going plan, pension liabilities are generally a long-term liability. Thus, benefits are not required to be immediately funded, but can be funded over a long period of time.

The maximum funding limitations are designed to limit and allocate efficiently the loss of Federal tax revenue associated with the special tax treatment afforded qualified retirement plans. Thus, annual deductible contributions to a defined benefit pension plan are limited to an amount that is not significantly greater than the amount that would normally be necessary under the employer's long-term actuarial funding method.

The minimum and maximum funding requirements provide the employer considerable flexibility in determining the amount of the contribution that must, or can, be made in any given year. The minimum required or maximum permitted contribution that can be made depends on the funding method used by the plan and the actuarial assumptions used by the plan actuary.

In response to concerns about the financial status of underfunded pension plans, the minimum funding standards were modified, and special additional funding requirements were added for certain underfunded pension plans, by the Pension Protection Act of 1987.

The minimum and maximum funding requirements, and the special rules for underfunded pension plans, are discussed in detail below.

Minimum Funding Standard

In general.—Under the Code and ERISA, certain defined benefit pension plans are required to meet a minimum funding standard for each plan year. As an administrative aid in the application of the funding standard, each defined benefit pension plan is required to maintain a special account called a "funding standard account" to which specified charges and credits (including credits for contributions to the plan) are to be made for each plan year. If, as of the close of a plan year, the account reflects credits equal to or in excess of charges, the plan is treated as meeting the minimum funding standard for the year. Thus, as a general rule, the minimum contribution for a plan year is determined as the amount by which the charges to the account would exceed credits to the account if no contribution were made to the plan.

Accumulated funding deficiencies.—If, as of the close of any plan year, charges to the funding standard account exceed credits to the account, then the excess is referred to as an “accumulated funding deficiency.” Unless a minimum funding waiver is obtained, an employer who is responsible for contributing to a plan with an accumulated funding deficiency is subject to a 10-percent nondeductible excise tax on the amount of the deficiency (Code section 4971). If the deficiency is not corrected within the “taxable period,” then an employer who is responsible for contributing to the plan is also subject to a nondeductible excise tax equal to 100 percent of the deficiency. The taxable period is the period beginning with the end of the plan year in which there is a deficiency and ending on the earlier of (1) the date of a mailing of a notice of deficiency with respect to the 10-percent tax or (2) the date on which the 10-percent tax is assessed by the Internal Revenue Service. If the employer responsible for contributing to the plan is a member of a controlled group, each member of the group is jointly and severally liable for the excise tax.

For example, if the balance of charges to the funding standard account of a plan for a year would be \$200,000 without any contributions, then a minimum contribution in that amount would be required to meet the minimum funding standard for the year to prevent an accumulated funding deficiency. If the total contribution is not made, then the employer would be subject to an excise tax equal to 10 percent of the deficiency for the year. If the deficiency were not corrected within the specified period, then the 100-percent excise tax would be imposed on such employer.

Funding methods.—

In general.—A defined benefit pension plan is required to use an acceptable actuarial cost method to determine the elements included in its funding standard account for a year. Generally, an actuarial cost method breaks up the cost of benefits under the plan into annual charges consisting of two elements for each plan year. These elements are referred to as (1) normal cost, and (2) supplemental cost.

Normal cost.—The normal cost for a plan for a year generally represents the cost of future benefits allocated to the year by the funding method used by the plan for current employees and, under some funding methods, for separated employees. Specifically, it is the amount actuarially determined that would be required as a contribution by the employer to maintain the plan if the plan had been in effect from the beginning of service of the included employees and if the costs for prior years had been paid, and all assumptions as to interest, mortality, time of payment, etc., had been fulfilled. The normal cost will be funded by future contributions to the plan (1) in level dollar amounts, (2) as a uniform percentage of payroll, (3) as a uniform amount per unit of service (e.g., \$1 per hour), or (4) on the basis of the actuarial present values of benefits considered accruing in particular plan years.

Supplemental cost.—The supplemental cost for a plan year is the cost of future benefits allocated to the year that would not be met by normal costs and employee contributions. The most common supplemental cost is that attributable to past service

liability, which represents the cost of future benefits under the plan (1) on the date the plan is first effective, or (2) on the date a plan amendment increasing plan benefits is first effective. Under some funding methods, there is no past service liability component.

Other supplemental costs may be attributable to net experience losses, changes in actuarial assumptions, and amounts necessary to make up funding deficiencies for which a waiver was obtained. Supplemental costs must be amortized over a range of years specified under the Code and ERISA.

Acceptable methods.—Normal cost and supplemental cost are key elements in computations under the minimum funding standard. Although these costs may differ substantially, depending upon the actuarial cost method used to value a plan's assets and liabilities, they must be determined under an actuarial cost method permitted by ERISA. ERISA enumerates six acceptable actuarial cost methods and provides that additional methods may be permitted under Treasury regulations. Normal costs and supplemental costs under a plan are computed on the basis of an actuarial valuation of the assets and liabilities of a plan. An actuarial valuation is required once every plan year. More frequent valuations may be required by the IRS.

Charges and credits to the funding standard account.—

In general.—Under the minimum funding standard, the portion of the cost of a plan that is required to be paid for a particular year depends upon the nature of the cost. For example, the normal cost for a year is generally required to be funded currently. On the other hand, costs with respect to past service (for example, the cost of retroactive benefit increases), experience losses, and changes in actuarial assumptions, are spread over a period of years.

Normal cost.—Each plan year, a plan's funding standard account is charged with the normal cost assigned to that year under the particular acceptable actuarial cost method adopted by the plan. The charge for normal cost will require an offsetting credit in the funding standard account. Usually, an employer contribution is required to create the credit.

For example, if the normal cost for a plan year is \$150,000, the funding standard account would be charged with that amount for the year. Assuming that there are no other credits in the account to offset the charge for normal cost, an employer contribution of \$150,000 will be required for the year to avoid an accumulated funding deficiency.

Past service liability.—There are 3 separate charges to the funding standard account that may arise as the result of past service liabilities. The first applies to a plan under which past service liability has increased due to a plan amendment made after January 1, 1974; the second applies only to a plan that came into existence after January 1, 1974; and the third applies only to a plan in existence on January 1, 1974. Past service liabilities result in annual charges to the funding standard account for a specified period of years. Assuming that there are no other credits in the account to offset a charge for past serv-

ice liability, an employer contribution will be required for the year to avoid an accumulated funding deficiency.

In the case of a plan that was in existence on January 1, 1974, the funding standard account is charged annually with a portion of the past service liability determined as of the first day of the plan year of which the funding standard applied to the plan (generally the plan year beginning in 1976). In the case of a single-employer plan, the amount of the liability with which the account is charged for a year is based on amortization of the past service liability over a period of 40 plan years. The liability is required to be amortized (in much the same manner as a 40-year mortgage) in equal annual installments over the 40-year funding period unless the plan becomes fully funded.

A plan that was not in existence on January 1, 1974, is generally required to determine past service liability as of the first day of its first plan year beginning after September 2, 1974 (the date ERISA was enacted). This liability is required to be amortized by a single-employer plan in equal annual installments over a period of 30 plan years. Accordingly, if there are no other credits in the account to offset the charge for this past service liability, and if the plan does not become fully funded, annual employer contributions will be required for 30 plan years to offset charges for this past service liability.

With respect to all plans (whether or not in existence on January 1, 1974), if a net benefit increase takes place as the result of a plan amendment, then the unfunded past service liability attributable to the net increase is determined that year and amortized over a period of 30 years.

For example, assume that a plan uses the calendar year as the plan year. Further assume that during 1987 the plan is amended to increase benefits and that the net result of plan amendments for 1987 is that the past service liability under the plan is increased by \$500,000. In addition, the plan's actuary uses an interest rate of 8 percent in determining plan costs. The 30-year schedule requires that \$44,414 be charged to the funding standard account each year to amortize the past service liability.

Accordingly, for each year in the 30-year period beginning with 1987, the plan's funding standard account is charged with the amount of \$44,414. If there are no other credits in the account to offset the charge for past service liability, an employer contribution of \$44,414 would be required for each of the 30 years to avoid an accumulated funding deficiency unless the plan becomes fully funded.

Gains and losses from changes in assumptions.—If the actuarial assumptions used for funding a plan are revised and, under the new assumptions, the accrued liability of a plan is less than the accrued liability computed under the previous assumptions, the decrease is a gain from changes in actuarial assumptions. If the new assumptions result in an increase in the accrued liability, the plan has a loss from changes in actuarial assumptions. The accrued liability of a plan is the actuarial present value of projected pension benefits under the plan that

will not be funded by future contributions to meet normal cost. Under the funding standard, the gain or loss for a year from changes in actuarial assumptions is amortized over a period of 10 plan years, resulting in credits or charges to the funding standard account.

Experience gains and losses.—In determining plan funding under an actuarial cost method, a plan's actuary generally makes certain assumptions regarding the future experience of a plan. These assumptions typically involve rates of interest, mortality, disability, salary increases, and other factors affecting the value of assets and liabilities. If, on the basis of these assumptions, the contributions made to the plan result in actual unfunded liabilities that are less than anticipated by the actuary, then the excess is an experience gain. If the actual unfunded liabilities are greater than those anticipated, then the difference is an experience loss. For a single-employer plan, experience gains and losses for a year are amortized over a 5-year period.

Waived funding deficiencies.—Under the funding standard, the amount of a waived funding deficiency is amortized over a period of 5 plan years, beginning with the year following the year in which the waiver is granted. Each year, the funding standard account is charged with the amount amortized for that year unless the plan becomes fully funded. The interest rate used for purposes of determining the amortization on the waived amount is the greater of (1) the rate used in computing costs under the plan, or (2) 150 percent of the mid-term applicable Federal interest rate (AFR) in effect for the first month of the plan year.

Switchback liability.—ERISA provides that certain plans may elect to use an alternative minimum funding standard account for any year in lieu of the funding standard account. ERISA prescribes specified annual charges and credits to the alternative account. No accumulated funding deficiency is considered to exist for the year if a contribution meeting the requirements of the alternative account is made, even if a smaller contribution is required to balance charges and credits in the alternative account than would be required to balance the funding standard account for a plan year.

During years for which contributions are made under the alternative account, an employer must also maintain a record of the charges and credits to the funding standard account. If the plan later switches back from the alternative account to the funding standard account, the excess, if any, of charges over credits at the time of the change ("the switchback liability") must be amortized over a period of 5 plan years.

Reasonableness of actuarial assumptions.—All costs, liabilities, interest rates, and other factors are required to be determined on the basis of actuarial assumptions and methods (1) each of which is reasonable individually or (2) which result, in the aggregate, in a total plan contribution equivalent to a contribution that would be obtained if each assumption were reasonable. In addition, the assumptions are required to reflect the actuary's best estimate of experience under the plan.

Special Rules for Underfunded Plans

In general.—A special funding rule applies to underfunded single-employer defined benefit pension plans (other than plans with no more than 100 participants on any day in the preceding plan year). This special funding rule was adopted in the Pension Protection Act of 1987 due to concerns about the solvency of the defined benefit pension plan system and because of concerns that the generally applicable funding rules were not in all cases sufficient to ensure that plans would be adequately funded.

Calculation of minimum required contribution.—With respect to plans subject to the special rule, the minimum required contribution is, in general, the greater of (1) the amount determined under the normal funding rules, or (2) the sum of (a) normal cost, (b) the amount necessary to amortize experience gains and losses over 5 years and gains and losses resulting from changes in actuarial assumptions over 10 years, and (c) the deficit reduction contribution plus the amount required with respect to benefits that are contingent on unpredictable events. In no event is the amount of the contribution to exceed the amount necessary to increase the funded ratio of the plan to 100 percent.

The deficit reduction contribution is the sum of (1) the unfunded old liability amount, and (2) the unfunded new liability amount. Calculation of these amounts is based on the plan's current liability.

Current liability.—The term "current liability" generally means all liabilities to employees and their beneficiaries under the plan determined as if the plan terminated. However, the value of any "unpredictable contingent event benefit" is not taken into account in determining current liability until the event on which the benefit is contingent occurs.

The interest rate used in determining the current liability of a plan, as well as the contribution required under the special rule, is required to be within a specified range. The permissible range is defined as a rate of interest that is not more than 10 percent above or below the weighted average of the rates of interest on 30-year Treasury securities for the 4-year period ending on the last day before the beginning of the plan year for which the interest rate is being used. The weights are established in IRS Notice 88-37. The annual rate of interest on 30-year Treasury securities is the rate published by the Board of Governors of the Federal Reserve System. The Secretary may, where appropriate, allow a lower rate of interest except that such rate may not be less than 80 percent of the average rate discussed above.

Unfunded current liability means, with respect to any plan year, the excess of (1) the plan's current liability over (2) the value of the plan's assets reduced by any credit balance in the funding standard account. The funded current liability percentage of a plan for a plan year is the percentage that (1) the value of the plan's assets (reduced by any credit balance in the funding standard account) is of (2) the plan's current liability.

Unfunded old liability amount.—The unfunded old liability amount is, in general, the amount necessary to amortize the unfunded old liability under the plan in equal annual installments (until fully amortized) over a fixed period of 18 plan years (begin-

ning with the first plan year beginning after December 31, 1988). The "unfunded old liability" with respect to a plan is the unfunded current liability of the plan as of the beginning of the first plan year beginning after December 31, 1987, determined without regard to any plan amendment adopted after October 16, 1987, that increases plan liabilities (other than amendments adopted pursuant to certain collective bargaining agreements).

Unfunded new liability amount.—The unfunded new liability amount for a plan year is the applicable percentage of the plan's "unfunded new liability." Unfunded new liability means the unfunded current liability of the plan for the plan year, determined without regard to (1) the unamortized portion of the unfunded old liability (and the unamortized portion of the unfunded liability from certain benefit increases) and (2) the liability with respect to any unpredictable contingent event benefits, without regard to whether or not the event has occurred. Thus, in calculating the unfunded new liability, all unpredictable contingent event benefits are disregarded, even if the event on which that benefit is contingent has occurred.

If the funded current liability percentage is less than 35 percent, then the applicable percentage is 30 percent. The applicable percentage decreases by .25 of one percentage point for each 1 percentage point by which the plan's funded current liability percentage exceeds 35 percent. For example, if a plan's funded current liability percentage is 39 percent, 29 percent of the plan's unfunded new liability for the plan year must be included in the calculation of the deficit reduction contribution for the plan year.

Unpredictable contingent event benefits.—The value of any unpredictable contingent event benefit is not considered until the event has occurred. If the event on which an unpredictable contingent event benefit is contingent occurs during the plan year and the assets of the plan are less than current liability (calculated after the event has occurred), then an additional funding contribution (over and above the minimum funding contribution otherwise due) is required.

Unpredictable contingent event benefits include benefits that depend on contingencies that, like facility shutdowns or reductions or contractions in workforce, are not reliably and reasonably predictable. The event on which an unpredictable contingent event benefit is contingent is generally not considered to have occurred until all events on which the benefit is contingent have occurred.

The amount of the additional contribution is generally equal to the greater of (1) the unfunded portion of the benefits paid during the plan year (regardless of the form in which paid), including (except as provided by the Secretary) any payment for the purchase of an annuity contract with respect to a participant with respect to unpredictable contingent event benefits, and (2) the amount that would be determined for the year if the unpredictable contingent event benefit liabilities were amortized in equal annual installments over 7 years, beginning with the plan year in which the event occurs.

The rule relating to unpredictable contingent event benefits is phased in for plan years beginning in 1989 through 2001.

Small plan rule.—The special rules for underfunded plans do not apply to plans with 100 or fewer employees. In the case of a plan with more than 100 but no more than 150 participants during the preceding year, the amount of the additional deficit reduction and unpredictable contingent amount benefit contribution is determined by multiplying the otherwise required additional contribution by 2 percent for each participant in excess of 100.

Full Funding Limit

To limit and allocate efficiently the loss of Federal tax revenue associated with the special tax treatment afforded qualified plans, ERISA and the Code limit the amount of annual contributions that can be made to a defined benefit plan.

One limitation is the full funding limit, under which no contribution is required under the minimum funding rules to the extent the plan is at the full funding limit. Before 1988, the full funding limit was 100 percent of an employer's accrued liability, as determined under the plan's funding method. However, because of concerns that employers could manipulate the limit by changing actuarial assumptions, the Pension Protection Act of 1987 amended ERISA and the Code to create a new full funding limit. The new full funding limit is equal to the lesser of the old funding limit (accrued liability) or 150 percent of the employer's current liability. Current liability is all liabilities to participants and beneficiaries under the plan determined as if the plan terminated. It represents only benefits accrued to date, and is not dependent on the actuarial funding method. As a result, the new full funding limit can be lower than the old full funding limit.

If the employer contributes an amount equal to the full funding limit, the funding standard account is credited so that the employer is not subject to the underfunding excise tax, even though the funding standard account would otherwise be left with a deficit for the year. In addition, the full funding limit affects the deductibility of employer contributions to qualified plans.²⁵

Time for Making Contributions

Under present law, the required minimum funding contribution for a plan year must be made within 8½ months after the end of the plan year. If the contribution is made by such due date, the contribution is treated as if it were made on the last day of the plan year. In the case of single-employer defined benefit pension plans, 4 installments of estimated contributions are required for the plan year with the total contribution due within 8½ months after the end of the plan year. The amount of each required installment is 25 percent of the lesser of (1) 90 percent of the amount required to be contributed for the current plan year or (2) 100 percent of the amount required to be contributed for the preceding plan year. If a plan sponsor fails to make a required installment, additional interest is charged to the funding standard account.

²⁵The effect of the full funding limit on the deductibility of employer contributions is described below.

Explanation of Provision

Special Funding Rules for Underfunded Plans

In general.—The bill changes the special funding rules for underfunded single-employer defined benefit plans (other than plans with no more than 100 participants on any day in the preceding plan year) that were adopted in the Pension Protection Act of 1987. In general, the bill (1) provides (a) a permanent rule that exempts from the special funding rules applicable to underfunded plans, plans that have a funded current liability percentage of at least 90 percent and certain plans that have a funded current liability percentage between 80 percent and 90 percent, and (b) transition rules under which certain other plans are exempt, (2) modifies the calculation of the minimum required contribution applicable to underfunded plans, (3) changes the permissible range of interest rates and requires uniform mortality assumptions for the purpose of determining a plan's current liability, (4) accelerates the funding of a plan's "unfunded new liability," (5) changes the calculation of the additional funding contribution required on account of an unpredictable contingent event, (6) provides an elective transition rule for sponsors of underfunded plans to protect against possibly large increases in their minimum required contributions on account of the proposed changes in the special funding rules, and (7) changes the manner in which sponsors of defined benefit pension plans determine the full funding limit of their plans.

Certain underfunded plans exempt from the special funding rules.—

Permanent rules.—The bill provides two exceptions to the special funding rules for underfunded plans. First, such rules do not apply to a plan which for any plan year has a current funded liability percentage of at least 90 percent. This rule is referred to as the "90-percent exemption."

Second, the special funding rules for underfunded plans do not apply for a plan year if (1) the funded current liability percentage for the plan year is at least 80 percent and (2) the funded current liability percentage for each of the two immediately preceding plan years (or each of the second and third immediately preceding plan years) is at least 90 percent. This rule is referred to as the "volatility rule."

For purposes of these exemptions, the funded current liability percentage is determined using the highest interest rate in the permissible range and the mortality assumptions contained in the bill. In addition, assets are not reduced by credit balances in the funding standard account.

The following example illustrates the exceptions to the special funding rules for underfunded plans.

Example 1: Assume that the funded current liability percentage (determined as specified under the bill) for Plan A for each of the plan years beginning on January 1, 1996, 1997, 1998, and 1999 is as follows: 95%, 95%, 75%, and 80%. For plan years 1996 and 1997, the plan is not subject to the additional funding rules for underfunded plans because the funded current liability percentage is at least 90%. The plan is subject to the additional funding rules for

plan year 1998 because the funded current liability percentage is below 80%. The plan is not subject to the additional funding rules for plan year 1999, because it satisfies the volatility rule.

Transition rules.—The bill provides two transition rules under which certain plans are exempt from the new rules for underfunded pension plans.

The first rule applies for purposes of determining whether a plan is subject to the new rules in plan years beginning in 1995 and 1996. A plan is not subject to the new rules for a plan year beginning in 1995 or 1996 if (1) in that year, the plan's funded current liability percentage is at least 80 percent, and (2) the plan meets a transition test in any two of the plan years beginning in 1992, 1993, and 1994. The transition test need not be satisfied by the same method in each year. The transition test is met for a plan year if, for the plan year, the plan met one of the following requirements (under the law as then in effect):

(1) the plan did not have an additional charge under the special funding rules for underfunded plans (or would not have had such a charge if the plan used the highest interest rate within the permissible range²⁶ and assets are determined by taking into account credit balances in the funding standard account);

(2) the plan's full funding limit was zero; or

(3) the amount required to be contributed under the special rules for underfunded plans (*i.e.*, the amount of the deficit reduction contribution) did not exceed the lesser of .5 percent of current liability or \$5 million.

The second rule applies for purposes of determining whether a plan is subject to the new rules for plan years beginning in 1996 and 1997.²⁷ A plan is not subject to the new rules for a plan year beginning in 1996 or 1997 if (1) in that year, the plan's funded current liability percentage is at least 80 percent, (2) the plan's current liability percentage for the plan year beginning in 1995 was at least 90 percent, and (3) in the plan year beginning in 1994, the plan met one of the three transition requirements described above.

Calculation of minimum required contribution.—The bill changes the manner in which underfunded plans calculate their minimum required contribution for a plan year. Under the bill, amounts necessary to amortize experience gains and losses and gains and losses resulting from changes of actuarial assumptions are no longer considered in the calculation of the minimum required contribution for underfunded plans. According to the PBGC, one reason that the minimum required contribution for underfunded plans adopted in the Pension Protection Act of 1987 has not been effective in increasing contributions to underfunded plans is because experience gains or gains from changes in actuarial assumptions are counted twice under present law, *i.e.*, to reduce the minimum required con-

²⁶ For plan years beginning in 1992, 1993, and 1994, the highest rate within the permissible range is 110 percent of the 4-year weighted average of the rates on 30-year Treasury securities.

²⁷ For plan years beginning in 1996, a plan may satisfy either the first or the second transition rule.

tribution for underfunded plans and as a credit to the funding standard account under the normal funding rules. Thus, under the bill, the minimum required contribution for underfunded plans is, in general, the greater of (1) the amount determined under the normal funding rules, or (2) the deficit reduction contribution plus the amount required with respect to benefits that are contingent on unpredictable events.

Further, the bill adds a third and fourth component to the calculation of the deficit reduction contribution under present law. Under the bill, the deficit reduction contribution is the sum of (1) the unfunded old liability amount, (2) the unfunded new liability amount, (3) the expected increase in current liability due to benefits accruing during the plan year, and (4) the amount needed to amortize the increase in current liability due to certain future changes in the required mortality tables. The third component replaces the normal cost component of the calculation under present law. The fourth component is discussed below.

In addition, the bill provides that the amount of the minimum required contribution for underfunded plans cannot exceed the amount necessary to increase the funded current liability percentage of the plan to 100 percent taking into account all charges and credits to the funding standard account and the expected increase in current liability attributable to benefits accruing during the plan year.

Changes in interest rates and mortality assumptions.—

In general.—As under present law, the calculation of the deficit reduction contribution for underfunded plans is based on the plan's current liabilities. Under the bill, a plan's current liability is determined as under present law, except that the bill (1) lowers the maximum interest rate that can be used to determine the current liability, and (2) requires all underfunded plans to use the same mortality table to determine current liability.

Interest rate.—For plan years beginning on or after January 1, 1999, the bill reduces the highest permissible rate that may be used to calculate current liability to 105 percent of the weighted average of the rates of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year. For years beginning after 1994 and before 1999, the maximum permitted interest rate is the following percentage of such 4-year weighted average rate: plan years beginning in 1995, 109 percent; plan years beginning in 1996, 108 percent; plan years beginning in 1997, 107 percent; and plan years beginning in 1998, 106 percent.

Mortality tables.—Under the bill, in the case of plan years beginning after December 31, 1994, the mortality table used to determine current liability is to be prescribed by the Secretary based upon the 1983 Group Annuity Mortality Table (GAM 83 mortality table). Such mortality table will be effective until the later of plan years beginning in 2000 or such time as the Secretary prescribes new tables by regulations. Any tables prescribed by the Secretary are to reflect the actual experience of pension plans and projected trends in such experience. In prescribing tables, the Secretary is to take into account the results of independent studies on mortality of individuals covered by pension plans. The Secretary is required

to review the new tables at least every five years and update them as necessary to reflect changes in pension plan experience and trends. Increases in liability due to changes in mortality assumptions in the first year in which new mortality tables are effective are to be amortized over 10 years in equal installments.

Plans are permitted to use a different mortality table for certain participants who are entitled to benefits on account of disability ("disabled participants"). For plan years beginning in 1995, plans may use their own mortality assumptions for disabled participants (under the plan's definition of disability) provided such assumptions meet the general requirement that actuarial assumptions be reasonable. For plan years beginning on or after January 1, 1996, the Secretary is to prescribe mortality tables for disabled participants. The Secretary is to prescribe two tables: one table for persons who become entitled to disability benefits (under the plan's definition of disability) before the plan year beginning in 1995; and another table for persons who become eligible for disability benefits in a plan year beginning on or after January 1, 1995. The separate disability table may not be used with respect to persons who become entitled to disability benefits under the plan on or after January 1, 1995, unless such persons are disabled within the meaning of Title II of the Social Security Act.

Amortization of increases in current liability under the bill.— Under the bill, increases in current liability attributable to the bill's changes in interest rates and mortality assumptions for the 1995 plan year are treated as an "additional unfunded old liability amount" and are amortized in equal annual installments over 12 years beginning with the 1995 plan year. The additional unfunded old liability amount is the difference between the current liability of the plan as of the beginning of the 1995 plan year using (1) the interest and mortality assumptions contained in the bill and (2) the mortality assumption and relative interest rate used to determine current liability for the 1993 plan year. For example, if the plan used 110 percent of the weighted average in the 1993 plan year, the relative interest rate for this calculation would be 110 percent of the weighted average in the 1995 plan year.

As an alternative to amortization of only the change in current liability due to changes in interest and mortality assumptions, an employer may make an irrevocable election to expand the 12-year amortization to the entire increase in current liability attributable to plan years beginning after December 31, 1987 and before January 1, 1995.

The increase in liability for this optional rule would be measured as the amount by which the plan's unfunded current liability as of the beginning of the 1995 plan year, valued using the new specified interest and mortality assumptions, exceeds the unamortized portion of the unfunded old liability under the plan as of the beginning of the 1995 plan year. This increase would be treated as unfunded old liability and amortized over 12 years beginning with the first plan year beginning on or after January 1, 1995. If an election is made to amortize this amount and the plan would otherwise be subject to the special rules for underfunded plans, the amount charged to the funding standard account under section 302(d) of ERISA and section 412(l) of the Code for plan years beginning after

December 31, 1994 and before January 1, 2002, would not be less, for any year, than the amount that would have been required under those sections if current law had remained in effect.

Acceleration of unfunded new liability.—Under present law, if a plan's funded current liability percentage is 35 percent or less, 30 percent of the plan's unfunded new liability for the plan year must be included in the calculation of the deficit reduction contribution for the plan year. The bill increases the 35 percent threshold under present law to 60 percent. Thus, under the bill, if a plan's funded current liability percentage is 60 percent or less, 30 percent of the plan's unfunded new liability for the plan year would be included in the calculation of the deficit reduction contribution for the plan year. Under the bill, the 30 percent amount decreases by .40 of one percentage point for each percentage point by which the plan's funded current liability percentage exceeds 60 percent, to a minimum of 18 percent for a plan that is 90-percent funded.

Unpredictable contingent event benefits.—The bill adds a third component to the calculation of the additional funding contribution required on account of an unpredictable contingent event. Under the bill, the amount of the additional funding contribution is equal to the greater of the amounts determined under present law or the additional contribution that would be required if the unpredictable contingent event benefit liabilities were included in the calculation of the plan's unfunded new liability for the plan year. Under present law, for purposes of calculating the unfunded new liability for a plan year, all unpredictable contingent event benefits are disregarded.

In addition, the bill limits the present value of the additional funding contribution with respect to one event to the unpredictable contingent event benefit liabilities attributable to that event.

Transition rule.—The bill provides an elective transition rule for sponsors of underfunded plans to protect against possibly large increases in their minimum required contributions on account of changes in the special funding rules. Under the transition rule, the minimum required contribution for a plan year cannot be less than the minimum required contribution determined under present law.

Relief under the transition rule depends on the plan's funded current liability percentage. This relief is based upon the amount necessary to increase the plan's funded current liability percentage by a specified percentage by the end of the plan year, including the expected increase in current liability due to benefits accruing and the expected benefit payments during the plan year. The specified percentages and the initial funded current liability percentage are not adjusted to reflect the changes in the maximum permitted interest rate scheduled for plan years beginning before January 1, 2000.

Changes in full funding limit.—The bill changes the manner in which sponsors of defined benefit pension plans determine the full funding limit to conform to IRS practice. The bill retains the present-law rules relating to the determination of a defined benefit pension plan's full funding limit but also provides that the expected increase in current liability due to benefits accruing during the plan year be included when determining the employer's current liability. The bill allows plans to determine their 150 percent of cur-

rent liability limit for full funding limit purposes without regard to the modifications of the interest rate and mortality assumptions set forth in the bill.

The bill also provides that the full funding limit is not less than 90 percent of the plan's current liability (using the modifications to the interest rate and mortality assumptions set forth in the bill). In determining whether a plan is at this 90 percent limit, plan assets are not reduced by credit balances in the funding standard account.

It is intended that reporting requirements will be revised as necessary to implement the revised funding rules, for example, to reflect the volatility rules, the liquidity requirement (discussed below), the revised full funding limitation, and the transition rules.

Plan Liquidity Requirement

In general, the bill requires underfunded single-employer defined benefit pension plans to make quarterly contributions sufficient to maintain liquid plan assets, *i.e.*, cash and marketable securities, at an amount approximately equal to three times the total trust disbursements for the preceding 12-month period.

Under the bill, the plan liquidity requirement applies to underfunded single-employer defined benefit pension plans (other than small plans)²⁸ that (1) are required to make quarterly installments of their estimated minimum funding contribution for the plan year, and (2) have a liquidity shortfall for any quarter during the plan year. A plan has a liquidity shortfall if its liquid assets as of the last day of the quarter are less than the base amount for the quarter. Liquid assets are cash, marketable securities and such other assets as specified by the Secretary of the Treasury. The base amount for the quarter is an amount equal to the product of three times the adjusted disbursements from the plan for the 12 months ending on the last day of the last month preceding the quarterly installment due date. If the base amount exceeds the product of two times the sum of adjusted disbursements for the 36 months ending on the last day of the last month preceding the quarterly installment due date, and an enrolled actuary certifies to the satisfaction of the Secretary of the Treasury that the excess is the result of nonrecurring circumstances, such nonrecurring circumstances are not included in the base amount. For purposes of determining the base amount, adjusted disbursements mean the amount of all disbursements from the plan's trust, including purchases of annuities, payments of single sums, other benefit payments, and administrative expenses reduced by the product of the plan's funded current liability percentage for the plan year and the sum of the purchases of annuities, payments of single sums, and such other disbursements as the Secretary of the Treasury provides in regulations.

Under the bill, the amount of the required quarterly installment for defined benefit pensions plans that have a liquidity shortfall for any quarter is the greater of the quarterly installment as determined under present law or the liquidity shortfall. The amount of

²⁸ A plan is a small plan if it had 100 or fewer participants on each day during the plan year (as determined in Code section 412(1)(6)).

the liquidity shortfall must be paid in the form of liquid assets. It may not be paid by the application of credit balances in the funding standard account. The amount of any liquidity shortfall payment when added to prior installments for the plan year cannot exceed the amount necessary to increase the funded current liability percentage of the plan to 100 percent taking into account the expected increase in current liability due to benefits accruing during the plan year.

If a liquidity shortfall payment is not made, then the plan sponsor will be subject to a nondeductible excise tax equal to 10 percent of the amount of the outstanding liquidity shortfall. A liquidity shortfall payment will no longer be considered outstanding on the earlier of (1) the last day of a later quarter for which the plan does not have a liquidity shortfall or (2) the date on which the liquidity shortfall for a later quarter is timely paid. If the liquidity shortfall remains outstanding after four quarters, the excise tax increases to 100 percent.

The bill amends ERISA to prohibit fiduciaries from making certain payments from defined benefit pension plans during the period in which the plan has a liquidity shortfall. Prohibited payments include (1) plan distributions in excess of the monthly amount paid under a single life annuity (plus any social security supplements) to plan participants or beneficiaries whose annuity starting date (as defined under present law)²⁹ occurs during the period in which there is a liquidity shortfall, (2) purchases of benefit annuities from insurers, or (3) other payments as provided by the Secretary of the Treasury. The bill also amends ERISA to include a civil penalty for violations of the prohibited payment rule. Under the bill, if a fiduciary makes a prohibited distribution from the plan, he or she will be subject to a civil penalty for each prohibited distribution equal to the lesser of the amount of the distribution or \$10,000. Finally, the bill amends the Code to provide that compliance with ERISA's prohibited payment rules will not result in plan disqualification for tax purposes.

Effective Date

The provisions generally apply to plan years beginning after December 31, 1994.

ERISA Citations

(Section 751(a)(11) of the Bill; Section 404(g)(4) of the Code)

Present Law

Under present law, contributions to tax-qualified pension plans are deductible within limits. The Code provides that amounts paid by an employer or a member of its controlled group under the following provisions of ERISA are treated as plan contributions subject to the deduction rules of the Code (Code section 404(g)(1)): (1) section 4041(b) of ERISA (relating to standard terminations); (2)

²⁹ Under present law, an individual's annuity starting date is the first day of the first period for which an amount is payable as an annuity or in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitle the individual to such benefit (section 417(f)(2) of the Code).

section 4062 of ERISA (relating to liability to the PBGC in the case of a distress termination); (3) section 4063 of ERISA (relating to liability of a substantial employer for withdrawal from single-employer plans under multiple controlled groups); (4) section 4064 of ERISA (relating to liability on termination of single-employer plans under multiple controlled groups; and (5) part I of subtitle E of title IV of ERISA (relating to liability upon withdrawal from a multiemployer plan). The Code provides that the references to these sections of ERISA are to these sections as in effect on the date of enactment of the Single Employer Pension Plan Amendments Act of 1986 (SEPPAA). The amounts referred to in such sections have generally been increased since the enactment of SEPPAA.

Explanation of Provision

The bill provides that the references to ERISA in Code section 404(g) are to ERISA as in effect on the date of enactment of the bill.

Effective Date

The provision is effective on the date of enactment.

Contributing Sponsor

(Section 761(a)(11) of the Bill; Section 4001(a)(13) of ERISA)

Present Law

Under present law, for purposes of the PBGC termination insurance program, the contributing sponsor of a plan is defined as a person (1) who is responsible, in connection with such plan, for meeting the funding requirements under section 302 of ERISA or under section 412 of the Code, or (2) who is a member of the controlled group of a person described in (1), has been responsible for meeting such funding requirements, and has employed a significant number (as may be defined by the PBGC) of participants under such plan while such person was so responsible. Under the Pension Protection Act of 1987, all members of a contributing sponsor's controlled group are responsible for the minimum funding requirements.

Explanation of Provision

The bill defines contributing sponsor for purposes of title IV of ERISA to mean the person responsible for making minimum funding contributions to the plan under section 302 of ERISA or section 412 of the Code, without regard to the controlled group rules. All members of a contributing sponsor's controlled group remain liable for making the minimum funding contribution.

Effective Date

The provision is effective as if included in the Pension Protection Act of 1987.

Limitation on Changes in Current Liability Assumptions

(Sections 752 and 762 of the Bill; Section 412(c) of the Code; and Section 302(c) of ERISA)

Present Law

Under present law, in determining plan funding under an actuarial cost method, a plan's actuary makes certain assumptions regarding the future experience of a plan. These assumptions typically involve rates of interest, mortality, disability, salary increases, and other factors affecting the value of assets and liabilities. A plan's actuary may revise these assumptions to reflect the actual experience of the plan. Actuarial assumptions must be reasonable both individually and in the aggregate and must reflect the actuary's best estimate of experience under the plan.

Explanation of Provision

The bill prohibits certain underfunded plans from changing the actuarial assumptions used to determine current liability for a plan year (other than interest rate and mortality assumptions) unless the new assumptions are approved by the Secretary of the Treasury. Under the bill, approval of changes in actuarial assumptions applies to a single-employer defined benefit pension plan if: (1) the plan is subject to the termination insurance program under Title IV of ERISA; (2) the aggregated unfunded vested benefits of all underfunded plans maintained by the employer and members of the employer's controlled group exceed \$50 million; and (3) the change in assumptions decreases the plan's unfunded current liability for the current plan year by (a) more than \$50 million or (b) more than \$5 million and at least 5 percent of the current liability.

Effective Date

The provision is effective with respect to changes in actuarial assumptions for plan years beginning after October 28, 1993. In addition, any changes in actuarial assumptions for plan years beginning after December 31, 1992, and before October 29, 1993, that would have been subject to the approval requirements set forth in the bill will not be effective for plan years beginning after 1994 unless approved by the Secretary of the Treasury.

Anticipation of Bargained Benefit Increases

(Sections 753 and 763 of the Bill; Section 412(c) of the Code; and Section 302 of ERISA)

Present Law

Under final Treasury Regulations, a defined benefit plan's funding method is not considered reasonable if it anticipates changes in plan benefits that become effective, whether or not retroactively, in a future plan year or that become effective after the first day of, but during, a current plan year. However, the regulations contain an elective exception to this general rule for collectively bargained plans. Under the regulations, a collectively bargained plan's fund-

ing method is considered reasonable if the plan elects on a consistent basis to anticipate benefit increases scheduled to take effect during the term of the collective bargaining agreement applicable to the plan (Treas. Reg. 1.412(c)(3)-1(d)).

Explanation of Provision

The bill requires sponsors of collectively bargained plans to recognize any negotiated benefit increases scheduled to take effect in a future plan year in the plan year in which the collective bargaining agreement is entered into for purposes of the normal funding rules but not the special rules for underfunded plans.

Effective Date

The provision applies to plan years beginning after December 31, 1994, with respect to collective bargaining agreements in effect on or after January 1, 1995.

Modification of Quarterly Contribution Requirement

(Sections 754 and 764 of the Bill; Section 412(m) of the Code; Section 302(e) of ERISA)

Present Law

Under present law, the required minimum funding contribution for a plan year must be made within 8½ months after the end of the plan year. If the contribution is made by such due date, the contribution is treated as if it were made on the last day of the plan year. In the case of single-employer defined benefit pension plans, 4 installments of estimated contributions are required for the plan year with the total contribution due within 8½ months after the end of the plan year. The amount of each required installment is 25 percent of the lesser of (1) 90 percent of the amount required to be contributed for the current plan year or (2) 100 percent of the amount required to be contributed for the preceding plan year. If a plan sponsor fails to make a required installment, additional interest is charged to the funding standard account.

Explanation of Provision

Under the bill, single-employer defined benefit plans with at least a 100-percent funded current liability percentage in the preceding plan year are not required to make quarterly estimated contributions during the current plan year.

Effective Date

The provision is effective for plan years beginning after the date of enactment.

*Exceptions to Excise Tax on Nondeductible Contributions**(Section 755 of the Bill; New Section 4972(c)(6) of the Code)***Present Law**

The Code imposes a limit on the amount of deductible contributions that can be made annually to a defined benefit pension plan. Contributions necessary to pay normal costs (as defined under the funding rules) generally are fully deductible. Contributions necessary to fund supplemental costs generally are deductible only to the extent necessary to cover such costs amortized over 10 years. However, the amount of the deduction an employer can claim for the year cannot exceed the full funding limitation for that year, except that a special deduction rule applies to underfunded defined benefit pension plans. In the case of a single-employer defined benefit pension plan which has more than 100 participants during the plan year, the maximum amount deductible is not less than the plan's unfunded current liability as determined under the minimum funding rules. For purposes of determining whether a plan has more than 100 participants during a plan year, all defined benefit pension plans maintained by the same employer or any member of the employer's controlled group (within the meaning of sections 414(b), (c), (m), and (o) of the Code) are treated as one plan but only employees of such member or employer are taken into account.

The Code also imposes limits on the amount of deductible contributions that can be made annually if an employer sponsors both a defined benefit pension plan and a defined contribution plan that covers some of the same employees. Under the combined plan deduction limits, the total deduction for all plans for a plan year is generally limited to the greater of (1) 25 percent of compensation or (2) the contribution necessary to meet the minimum funding requirements of the defined benefit pension plan for the year. For underfunded single-employer defined benefit pension plans with more than 100 participants for the plan year, the maximum deductible contribution for the year is not less than the plan's unfunded current liability as determined under the minimum funding rules.

There is a 10-percent nondeductible excise tax imposed on contributions in excess of the applicable deduction limit (Code section 4972).

Explanation of Provision

Under the bill, nondeductible contributions to a terminating single-employer defined benefit pension plan subject to Title IV of ERISA with less than 101 participants for the year are not subject to the excise tax on nondeductible contributions to the extent such nondeductible contributions do not exceed the plan's unfunded current liability as determined under the minimum funding rules.

In addition, employer contributions to one or more defined contribution plans that are nondeductible because they exceed the combined plan deduction limits are not subject to the 10-percent nondeductible excise tax to the extent such contributions do not exceed 6 percent of compensation in the year for which the contribu-

tions are made. The 6-percent of compensation limit is determined on an aggregate basis. For example, if an employer makes contributions to two defined contribution plans under the rule, the excise tax does not apply as long as the contributions are less than 6 percent of the aggregate compensation of participants in both plans. For purposes of this rule, the combined plan deduction limits are first applied to contributions to the defined benefit pension plan. If contributions exceed the 6-percent limit, only those in excess of 6 percent are subject to the excise tax. This provision applies only if the defined benefit pension plan is a single-employer defined benefit pension plan that has more than 100 participants. Amounts that are not subject to the excise tax in the year contributed shall not be taken into account for purposes of applying the 6-percent limit in any future year.

Effective Date

The provision waiving the excise tax for nondeductible contributions to a terminating single-employer defined benefit pension plan is effective for taxable years ending on or after the date of enactment. The provision waiving the excise tax for nondeductible contributions to certain defined contribution plans is effective for taxable years ending on or after December 31, 1992.

Prohibition on Benefit Increases where Plan Sponsor is in Bankruptcy

(Section 766 of the bill; Section 401(a) of the Code; Section 204 of ERISA)

Present Law

Under present law, there is no restriction on the adoption of plan amendments that increase benefits when a plan is underfunded.

Explanation of Provision

The bill amends the Code and ERISA to prohibit an employer in bankruptcy from adopting an amendment to an underfunded plan that increases benefits unless the benefit increase does not become effective until after the effective date of the employer's plan of reorganization. The prohibition does not apply to amendments that (1) provide reasonable, de minimis increases in liabilities for employees of the debtor, (2) repeal an amendment made within the first 2½ months of a plan year that would reduce accruals for that plan year, as permitted under section 302(c) (8) of ERISA, or (3) are needed to meet the qualification requirements contained in the Code.

Effective Date

The provision is effective with respect to plan amendments adopted on or after the date of enactment.

Single Sum Distributions

(Section 767 of the bill; Sections 411(a)(11), 417(e), and 415(b) of the Code; and Section 203(e) and 205(g) of ERISA)

*Determination of Present Value***Present Law**

Under the Code and ERISA, if the present value of a participant's nonforfeitable accrued benefit exceeds \$3,500, the benefit cannot be distributed (*i.e.*, cashed out) without the consent of the participant. In addition, if the present value of a joint and survivor annuity exceeds \$3,500 it cannot be distributed without the consent of the participant and the participant's spouse. For purposes of these rules, present value is calculated by using an interest rate no greater than (1) the rate that would be used (as of the date of the distribution) by the PBGC for purposes of determining the present value of a lump-sum distribution on plan termination if the vested accrued benefit (using such rate) is not in excess of \$25,000, or (2) 120 percent of such PBGC rate if the vested accrued benefit exceeds \$25,000.

Explanation of Provision

Under the bill, present value for purposes of the cash-out rules must be no less than the present value determined by using the mortality table that is to be prescribed by the Secretary of the Treasury based upon the "prevailing commissioners' standard table" used to determine reserves for group annuity contracts issued on the date as of which present value is determined. The prevailing commissioners' standard table means, with respect to any contract, the most recent commissioners' standard tables prescribed by the National Association of Insurance Commissioners which are permitted to be used in computing reserves for that type of contract under the insurance laws of at least 26 States when the contract was issued (section 807(d)(5)(A) of the Code). Currently, the prevailing commissioners' standard table used to determine reserves for annuity contracts is the GAM 83 mortality table. Future changes in the prevailing table will only apply to the calculation of present value when the Secretary of the Treasury issues guidance making such changes applicable.

In addition, present value for purposes of the cash-out rules must be no less than the present value determined by using the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such earlier time as provided in Treasury regulations. The annual rate of interest on 30-year Treasury securities is the rate published by the Board of Governors of the Federal Reserve System.

A plan will not violate the prohibition on the reduction of accrued benefits merely because it calculates benefits in accordance with the provision.

Effective Date

The provision is generally effective for plan years beginning after December 31, 1994, except that an employer can elect to treat the provision as being effective on or after the date of enactment.

Under a transition rule for distributions from plans in effect on the date of enactment of the bill, until the earlier of the first plan year beginning after 1999 or the later of when a plan amendment applying the provision is adopted or made effective, the bill requires present value to be calculated as under present law, using the interest rate valuation methodology for lump-sum distributions under PBGC regulations in effect on September 1, 1993, the present-law Code and ERISA rules, and the current plan provisions (provided they are consistent with present law).

Limitation on Maximum Benefits

Present Law

The Code provides limits on contributions and benefits under tax-qualified pension plans. In the case of a defined benefit pension plan, the maximum annual benefit payable is generally the lesser of (1) 100 percent of average compensation or (2) \$118,800 for 1994. The dollar limit is adjusted annually for cost-of-living increases.

If the benefit under the plan is payable in a form other than a single life annuity, then the benefit must generally be converted to the actuarial equivalent of a single life annuity for purposes of applying the limit on benefits. If the benefit is payable before social security retirement age, the dollar limit on annual benefits is reduced so that the limit is actuarially equivalent to a benefit beginning at the social security retirement age. These adjustments are made using an assumed interest rate that is not less than the greater of 5 percent or the rate specified in the plan. Similarly, if the benefit is payable after social security retirement age, then the limit is actuarially increased. This adjustment is made using an assumed interest rate that is not greater than the lesser of 5 percent or the rate specified in the plan.

Explanation of Provision

The bill provides that the mortality table required to be used for purposes of adjusting any benefit or limitation in applying the limit on maximum benefits is to be prescribed by the Secretary of the Treasury based upon the "prevailing commissioners' standard table" used to determine reserves for group annuity contracts issued on the date as of which the adjustments described in this provision are made. The prevailing commissioners' standard table means, with respect to any contract, the most recent commissioners' standard tables prescribed by the National Association of Insurance Commissioners which are permitted to be used in computing reserves for that type of contract under the insurance laws of at least 26 States when the contract was issued (section 807(d)(5)(A) of the Code). Currently, the prevailing commissioners' standard table used to determine reserves for annuity contracts is the GAM 83 mortality table. Future changes in the prevailing table will only apply to the adjustments described in this provision when

the Secretary of the Treasury issues guidance making such changes applicable. In addition, in adjusting benefits that are payable in a form other than a single life annuity, if the benefit is subject to the joint and survivor annuity rules, the interest rate is the same interest rate used to calculate benefits under those rules (as described above).

A plan will not violate the prohibition on reduction in accrued benefits merely because it calculates benefits in accordance with the provision.

Effective Date

The provision is effective for limitation years beginning after December 31, 1994, except that an employer can elect to treat the provision as being effective on or after the date of enactment. Benefits accrued as of the last day of the last plan year beginning before January 1, 1995, will not have to be reduced merely because of the provision. A plan does not have to be amended to comply with the provision until a date to be specified by the Secretary of the Treasury, provided the plan complies with the proposal in operation.

Adjustments to Lien for Missed Minimum Funding Contributions
(Section 768 of the Bill; Section 412(n) of the Code; Section 302(f) of ERISA)

Present Law

Under present law, in the case of a single-employer defined benefit pension plan with a funded current liability percentage of less than 100 percent, a lien arises on all controlled group property in favor of the plan 60 days after the due date of an unpaid required contribution where the cumulative missed contributions exceed \$1 million. The amount of the lien is the amount of the cumulative missed contributions in excess of \$1 million.

Explanation of Provision

The bill (1) eliminates the 60-day waiting period before the lien arises, (2) eliminates the \$1 million exclusion on amounts subject to the lien, and (3) provides that the lien applies only to plans covered by the PBGC termination insurance program. Thus, for example, the lien provision does not apply to plans maintained by a professional services employer which do not have more than 25 active participants or to plans maintained exclusively for substantial owners.³⁰

Effective Date

The provision is effective for required contributions that become due on or after the date of enactment.

³⁰Substantial owner is defined generally as an individual who (1) owns the entire interest in an unincorporated trade or business, (2) in the case of a partnership, is a partner who owns more than 10 percent of the capital or profits interests in the partnership, or (3) in the case of a corporation, owns more than 10 percent in value of the voting stock of the corporation or all the stock of the corporation.

*Special Funding Rule for Certain Plans**(Section 769 of the Bill)***Present Law**

Under certain circumstances, the PBGC may restore the operation of a plan that has terminated to the sponsor of the plan. Treasury regulations set forth rules regarding the funding of plans that have been terminated and then restored by the PBGC.

Explanation of Provision

The bill provides that any changes made by the bill to the funding rules of the Code or ERISA do not apply to certain plans. In particular, such changes do not apply to a plan that, on the date of enactment, is subject to a restoration payment schedule order issued by the PBGC and that meets the requirements of Treasury regulations.

Such changes do not apply to a plan maintained by an affected air carrier (as defined in section 4001(a) of ERISA) and assumed by a new plan sponsor pursuant to the terms of a written agreement with the PBGC dated January 5, 1993, and approved by the U.S. Bankruptcy Court on December 30, 1992.

The bill also provides that for the first 5 plan years beginning after December 31, 1994, certain amortization amounts are not taken into account in the calculation of offsets under section 412(l)(1)(A)(ii) of the Code (and the corresponding section of ERISA). The amortization amounts that are not taken into account are those established for plan years beginning after December 31, 1987, and before January 1, 1993, by reason of nonelective changes under the frozen entry age actuarial cost method.³¹ An example of a nonelective change is a change in the method to redetermine the unfunded liability so as to prevent the calculation of a normal cost under the method that was negative.³²

Effective Date

The provision is effective on the date of enactment.

B. Part II—Amendments Relating to Title IV of ERISA*Reportable Events**(Section 771 of the Bill; Section 4043 of ERISA)***Present Law**

Under present law, the plan administrator is required to notify the PBGC of the occurrence of certain events, called reportable events, that may indicate possible risk to the financial status of the plan or the PBGC insurance program. The plan administrator is to

³¹ This method is also known as the frozen initial liability method.

³² Under this funding method, the normal cost is generally determined by dividing (1) the actuarial present value of future benefits less the sum of the actuarial value of the assets and the unfunded liability by (2) a weighted temporary annuity factor that spreads the cost of the plan over future years. If the sum of the actuarial value of assets and the unfunded liability exceed the present value of future benefits, the normal cost under the method will be negative.

notify the PBGC within 30 days after the plan administrator knows or has reason to know that a reportable event has occurred. If an employer making contributions under a plan knows or has reason to know that a reportable event has occurred, the employer is to notify the plan administrator of the reportable event.

Explanation of Provision

The bill provides that a contributing sponsor that knows or has reason to know that a reportable event has occurred (as well as the plan administrator) is responsible for reporting the event to the PBGC, and repeals the requirement that an employer notify the plan administrator of reportable events.

The bill adds a number of new events to the list of reportable events. Under the bill, a reportable event occurs: (1) when a person ceases to be a member of the controlled group; (2) when a contributing sponsor or a member of a contributing sponsor's controlled group liquidates in a case under title 11, United States Code, or under any similar Federal law or law of a State or political subdivision of a State; (3) when a contributing sponsor or a member of a contributing sponsor's controlled group declares an extraordinary dividend or redeems, in any 12-month period, an aggregate of 10 percent or more of the total combined voting power of all classes of stock entitled to vote, or an aggregate of 10 percent or more of the total value of shares of all classes of stock, of a contributing sponsor and all members of its controlled group; (4) when, in any 12-month period, an aggregate of 3 percent or more of the benefit liabilities of a plan covered by the PBGC insurance program are transferred to a person that is not a member of the contributing sponsor's controlled group or to a plan maintained by a person that is not a member of the contributing sponsor's controlled group.

A contributing sponsor is required to notify the PBGC of the occurrence of one of the new reportable events at least 30 days in advance of the effective date of the event if (1) as of the close of the preceding plan year, aggregate unfunded vested benefits of plans maintained by the contributing sponsor (or controlled group members) exceed \$50 million, and (2) the funded vested benefit percentage of the plans is less than 90 percent.³³ This advance notice requirement does not apply to an event if the contributing sponsor or the member of the contributing sponsor's controlled group to which the event relates is a person subject to the reporting requirements of section 13 or section 15(d) of the Securities Exchange Act of 1934 or is a subsidiary (as defined for purposes of such Act) of a person subject to such reporting requirements.

Any information provided to the PBGC with respect to a reportable event generally is exempt from public disclosure.

Effective Date

The provision is effective for events occurring 60 days or more after the date of enactment.

³³ For these purposes, plans with no unfunded vested benefits and plans not subject to title IV of ERISA are disregarded.

*Certain Information Required to be Furnished to the PBGC**(Section 772 of the Bill; new Section 4010 of ERISA)****Present Law***

The PBGC receives certain financial information from plans pursuant to required filings with the Department of Labor and other Governmental agencies.

Explanation of Provision

The bill authorizes the PBGC to require certain contributing sponsors and controlled group members to submit to the PBGC such information as the PBGC may specify by regulation. The required information may include information that the PBGC determines is necessary to determine plan assets and liabilities and copies of audited financial statements. A contributing sponsor or controlled group member is subject to these information requirements if: (1) the total unfunded vested benefits of all underfunded plans sponsored by the controlled group exceed \$50 million; (2) missed funding contributions exceed \$1 million and the conditions for imposing a lien for missed contributions have been met; or (3) there are outstanding minimum funding waivers in an amount exceeding \$1 million, any portion of which remains unpaid. Any information required to be provided to the PBGC under the provision would be exempt from public disclosure.

Effective Date

The provision is effective on the date of enactment.

Enforcement of Minimum Funding Requirements*(Section 773 of the bill and Section 4003(e) of ERISA)****Present Law***

Under present law, the Secretary of the Treasury generally interprets and administers the minimum funding requirements. An excise tax applies with respect to the failure to satisfy the minimum funding requirements. In addition, plan participants and fiduciaries may bring suit under ERISA to enforce the minimum funding requirements. The Secretary of Labor may also bring suit to enforce the minimum funding requirements if requested to do so by a plan participant, fiduciary, or the Secretary of the Treasury. The PBGC enforces a lien that arises in favor of the plan if missed required contributions exceed \$1 million.

Explanation of Provision

The bill gives the PBGC the authority to bring suit to enforce the minimum funding standards if the amount of missed required contributions exceeds \$1 million. The bill does not change existing authority of the Department of the Treasury or the Department of Labor.

Effective Date

The provision is effective for minimum funding contributions that become due on or after the date of enactment.

Phase Out of Variable Rate Premium Cap

(Section 774 of the Bill; Section 4006(a)(3) of ERISA)

Present Law

Single-employer defined benefit pension plans covered by the termination insurance program are required to pay a flat per-participant premium of \$19. In addition, underfunded single-employer defined benefit pension plans are required to pay an additional premium based on the amount of underfunding for vested benefits. The additional premium is \$9 per \$1,000 of underfunding, and is capped at \$53 per participant. Thus, the maximum per-participant premium for an underfunded plan is \$72.

In determining the amount of underfunding for purposes of the additional premium, benefits are valued using an interest rate equal to 80 percent of the annual yield on 30-year Treasury securities for the month preceding the month in which the plan year begins. The value of plan assets is determined using the actuarial basis used for valuing assets for minimum funding purposes.

Explanation of Provision

The bill phases out the cap on the additional premium for underfunded plans over three years, beginning with plan years beginning on or after July 1, 1994. For plan years beginning on or after July 1, 1994, but before July 1, 1995, the maximum additional premium is \$53 per participant, plus 20 percent of the amount of the total premium (determined without regard to the cap) in excess of \$53. For plan years beginning on or after July 1, 1995, but before July 1, 1996, the maximum additional premium is \$53 per participant, plus 60 percent of the amount of the total premium (determined without regard to the cap) in excess of \$53.

The bill also modifies the interest rate and asset valuation method to be used for purposes of determining the additional premium. For plan years beginning on and after July 1, 1997, the interest rate is 85 percent of the 30-year Treasury rate. For plan years beginning during or after the first year in which the successor mortality tables to GAM 83 as prescribed by the Secretary are first effective, the interest rate is 100 percent of the 30-year Treasury rate and assets are valued at market value.

Effective Date

The provision is generally effective as described above. In the case of regulated public utilities engaged in providing electric energy, gas, water, or sewerage disposal services (as defined in Code section 7701(a)(33)(A)(i)), no premiums in excess of those under present law are payable until the first plan year beginning on or after the earlier of January 1, 1998, or the date that the regulated utility begins to collect from customers rates that reflect the cost incurred for additional premiums pursuant to a final and

nonappealable determination by all public utility commissions that the increased premium costs are recoverable from customers of the utility.

Disclosure to Participants

(Section 775 of the Bill; and New Section 4011 of ERISA)

Present Law

ERISA requires that plan participants be provided with certain information. One of these requirements is that, if the plan is less than 70 percent funded, the annual report regarding the plan must include the funded percentage of the plan. Plan administrators must also provide participants with a summary plan description (SPD) that advises participants of their rights, obligations, and eligibility for benefits under the plan. If the benefits are guaranteed by the PBGC, the SPD must include a summary of ERISA's guarantee provisions and a statement that more information may be obtained from the PBGC or the plan administrator. Department of Labor regulations include a safe harbor statement that can be included in the SPD to satisfy the requirements regarding the PBGC guarantee.

Explanation of Provision

The bill amends title IV of ERISA to require that the plan administrator of a plan that must pay the additional premium applicable to underfunded plans must notify plan participants of the plan's funded status and the limits on the PBGC's guarantee should the plan terminate while underfunded, unless the plan is exempt from the special funding rules for underfunded plans (other than on account of the number of plan participants). For purposes of this exception to the disclosure requirement, a plan's funded current liability percentage is determined without subtracting any credit balance in the plan's funding standard account from assets. The notice will have to be provided in the time and manner prescribed by the PBGC.

Effective Date

The provision is effective for plan years beginning after the date of enactment.

Missing Participants

(Section 776 of the bill and new Section 4031 of ERISA)

Present Law

Under present law, one of the requirements of a standard termination is that the plan administrator distribute plan assets by purchasing irrevocable commitments from an insurer in satisfaction of all benefit liabilities that must be in annuity form and by otherwise providing all benefit liabilities that need not be provided in annuity form. Under PBGC rules, if the plan administrator has been unable to locate participants after having made a reasonable effort to do

so, the administrator must either purchase irrevocable commitments to provide benefits for each participant who has not been located or, in certain circumstances, deposit the amounts in a bank.

Explanation of Provision

The bill provides special rules for payment of benefits in the case of participants under a plan terminating in a standard termination whom the plan administrator cannot locate after a diligent search ("missing participants"). The plan administrator is required to (1) transfer a participant's designated benefit to the PBGC or purchase an annuity from an insurer to satisfy the benefit liability to the participant, and (2) provide the PBGC with such information and certifications with respect to such benefits or annuity as the PBGC may specify. Any amounts transferred to the PBGC under the provision are treated as assets under a plan trustees by the PBGC.

After a missing participant whose benefit was transferred to the PBGC is located, if the plan could have distributed the benefit to the participant in a single sum without participant or spousal consent, the PBGC will pay the participant a single sum benefit equal to the benefit paid to the PBGC, plus interest as specified by the PBGC. In other cases (*i.e.*, if the plan could not have distributed the benefit in a single sum without consent), the PBGC will pay a benefit based on the designated benefit and the actuarial assumptions prescribed by the PBGC at the time that the PBGC received the designated benefit. The PBGC will make such payments available in the same forms and at the same times as a guaranteed benefit would be paid, except that the PBGC can make a benefit available in the form of a single sum if the plan provided such a benefit.

A designated benefit is the single sum benefit the participant would receive (1) under the plan's actuarial assumptions in the case of a distribution that can be made without participant or spousal consent, (2) under the PBGC assumptions in effect on the date that the designated benefit is transferred to the PBGC, in the case of a plan that does not pay any single sums other than those that can be made without consent, or (3) under the assumptions of the PBGC or the plan, whichever provides the higher single sum, in the case of a plan that does pay a single sum other than those that do not require consent.

The qualification requirements of the Code are amended to provide that a plan will not be treated as failing to satisfy those requirements merely because it provides for benefits to missing participants as provided in the bill.

Effective Date

The provision is effective with respect to distributions that occur in plan years beginning after final regulations implementing the provision are adopted by the PBGC.

Modification of Maximum Guarantee for Disability Benefits

(Section 777 of the Bill; Section 4022(b) of ERISA)

Present Law

The PBGC guarantee generally applies to a disability benefit if the benefit is in the form of an annuity payable because of permanent and total disability and the participant became disabled before the plan termination date. As is the case with other benefits, the PBGC guarantee is reduced if the benefit begins before age 65.

Explanation of Provision

Disability benefits are exempted from the age reduction in the maximum PBGC insurance amount, if the participant has been determined to be entitled to social security benefits on account of disability.

Effective Date

The provision is effective for terminations for which a notice of intent to terminate is filed or for which the PBGC institutes termination proceedings on or after the date of enactment.

Procedures to Facilitate the Distribution of Termination Benefits

(Section 778 of the Bill; Sections 4041(b) and (c) of ERISA)

Remedies for Noncompliance with Requirements for Standard Terminations

Present Law

Under present law, a single-employer defined benefit pension plan can terminate in a standard termination only after the plan administrator notifies participants of the termination, issues individual benefit notices to participants, and files a notice with the PBGC that includes an enrolled actuary's certification of sufficiency. The PBGC has 60 days to review the proposed termination. If the PBGC does not issue a notice of noncompliance nullifying the proposed termination, the plan administrator may distribute plan assets.

If the plan administrator fails to give all participants advance notice of how their benefits were computed or fails to fully comply with other procedural requirements designed to protect participants, the PBGC generally is required to issue a notice of noncompliance and nullify the termination.

Explanation of Provision

The bill provides that the PBGC is not required to issue a notice of noncompliance (and nullify a termination) in the case of failure to meet procedural requirements with respect to the termination if it determines that it would be inconsistent with the interests of participants and beneficiaries to issue the notice.

Effective Date

The provision applies with respect to standard terminations for which the PBGC has not, as of the date of enactment, issued a notice of noncompliance that has become final, or otherwise issued a final determination that the plan termination is nullified.

Distress Termination Criteria for Banking Institutions

Present Law

Under present law, a plan may terminate in a distress termination only if the contributing sponsor and each member of the controlled group of the contributing sponsor meet one of three financial distress standards. One of the standards of financial distress is that the entity is liquidating in bankruptcy or insolvency proceedings under title 11 of the United States Code or under any similar law of a State or political subdivision of a State.

Explanation of Provision

The bill provides that a proceeding under title 11 of the United States Code or any similar Federal law qualifies as a standard for distress criteria. This standard applies, for example, to bank insolvency receivership actions.

Effective Date

The provision is effective as if included in the SEPPAA. Thus, it is effective with respect to notices of intent to terminate filed with the PBGC on or after January 1, 1986.

TITLE VIII—PIONEER PREFERENCES

The provisions in Title VIII are within the jurisdiction of the Committee on Commerce, Science, and Transportation.

D. VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with section 133 of the Legislative Reorganization Act of 1946, the Committee states that S. 2467 was ordered favorably reported, without amendment, by a vote of 19-to-0.

E. REGULATORY IMPACT OF THE BILL

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee states that the bill will not significantly regulate any individuals or businesses, will not impact on the personal privacy of individuals, and will result in no significant additional paperwork.

PART II. REPORT OF THE COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

The Committee on Agriculture, Nutrition, and Forestry to which was referred the bill S. 2467, having considered the same, reports the bill without recommendation.

A. BRIEF EXPLANATION

The provisions of the Agriculture, Sanitary and Phytosanitary Measures, and Standards Titles of S. 2467 are briefly described below.

The bill, pursuant to Article 4 of the Agreement on Agriculture, prohibits the imposition under section 22 of the Agricultural Adjustment Act of any quantitative limitation or fee on imports of a World Trade Organization (WTO) Member. The United States will convert its import quotas under section 22 to tariff rate quotas for imports from WTO Members.

The Meat Import Act of 1979 is repealed and replaced by a tariff rate quota on beef imports. The President may proclaim an increase in the tariff-rate quota for beef if the President determines that an increase is necessary to implement bilateral agreements between the United States and Argentina and the United States and Uruguay.

The bill repeals sections 701 and 703 of the Trade Agreements Act of 1979, and amends Section 702 of the Act to implement tariffication commitments of the United States regarding imports of cheese and chocolate crumb.

The bill directs the President to take such action as may be necessary to ensure that imports of goods subject to the tariff rate quotas established by the agreement do not disrupt the orderly marketing of commodities in the United States.

The bill also allows the President to increase, on a temporary basis, tariff rate quotas for agricultural products due to inadequate supply. The Secretary of Agriculture shall monitor the domestic supply of agricultural products subject to tariff rate quotas and shall advise the President when the total domestic supply of such products may be inadequate to meet domestic demand at reasonable prices.

The bill provides special agricultural safeguard authority, consistent with Article 5 of the Agreement, to the President. The President shall publish a list of special safeguard agricultural goods, determine the appropriateness of imposing a price-based safeguard or a volume-based safeguard, the amount of any duty to be imposed, the period such duty shall be in effect, and any other terms and conditions applicable to the duty. The Secretary of Agriculture shall advise the President on the exercise of this authority.

The bill amends the Agricultural Trade Act of 1978 to remove the unfair trade practices limitation on the use of the Export En-

hancement Program (EEP). The EEP is to be used to encourage the commercial sale of United States agricultural commodities in world markets at competitive prices.

The bill extends funding for the EEP through 2001, and requires that the program be administered, as determined by the President, in a manner consistent with the obligations undertaken by the United States in the Uruguay Round Agreements.

Likewise, the bill amends the Agricultural Trade Act of 1978 by removing the "adverse effects of unfair foreign trade practices" limitation on the use of Market Promotion Program funds by the Secretary of Agriculture.

The bill amends the Food Security Act of 1985 to extend authorization for the Dairy Export Incentive Program (DEIP) through 2001.

The bill also amends the Food Security Act of 1985 to authorize the Secretary of Agriculture to sell dairy products for export consistent with the obligations undertaken by the United States as set forth in the Uruguay Round Agreements if the disposition of the commodities will not interfere with the usual marketings of the United States nor disrupt world prices of agricultural commodities and patterns of commercial trade.

The bill reaffirms the commitment of the United States to providing food aid to developing countries. The bill expresses the sense of Congress that the President should initiate consultations with other donor nations to consider appropriate levels of food aid commitments and that the United States should increase its contribution of bona fide food assistance to developing countries consistent with the Agreement on Agriculture.

The bill amends the Omnibus Budget Reconciliation Act of 1993 (which amended the Agricultural Budget Adjustment Act of 1938 and the Agricultural Act of 1949), if the President proclaims a tariff-rate quota on tobacco imports pursuant to Article XXVIII of the General Agreement on Tariffs and Trade (GATT). Current U.S. domestic-content requirements for cigarettes, the types of imported tobacco subject to budget deficit assessments (BDA), and the continuation of BDAs and inspection fees on imported tobacco would all be affected if the President makes such a proclamation.

In amending the Tariff Act of 1930, the bill makes available duty drawback for imported tobacco subject to the over-quota rate of duty established under a tariff rate quota.

The bill also grants authority to the President, after consultation with the Committee on Finance and the Committee on Ways and Means, to proclaim the reduction or elimination of any duty on cigar binder and filler tobacco, wrapper tobacco, or oriental tobacco set forth in Schedule XX.

The bill requires the President to report to Congress on the extent to which Canada is complying with its obligations under the Uruguay Round Agreements with respect to dairy and poultry products and with its related obligations under the NAFTA.

The bill also requires the Secretary of Agriculture to conduct a study to determine the effects of the Uruguay Round Agreements on the Federal milk marketing order system.

The bill makes available additional program funding in fiscal year 1995 to be used by the Commodity Credit Corporation (CCC)

consistent, as determined by the President, with the Uruguay Round Agreement obligations of the United States, 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.

The bill amends the Trade Agreements Act of 1979 to require the standards information center of the Department of Commerce to make available relevant documents about the sanitary or phytosanitary measures maintained by a Federal agency or agency of a State or local government. Such documentation also includes procedures for risk assessment, the determination of the levels of appropriate sanitary and phytosanitary protection, and the membership, participation, and bilateral and multilateral arrangements of Federal Government and State and local governments regarding sanitary and phytosanitary measures.

The bill amends the Railway Car inspection Act of 1942 to strike specific reference to Mexico.

The bill amends the Federal Plant Pest Act to remove the requirement for a general or specific permit issued by the Secretary of Agriculture to accompany the movement through the United States or import into the United States of any plant pest. Movement of plant pests within the United States or imported into the United States must now be in accordance with such regulations as the Secretary may promulgate to prevent the dissemination into the United States, or interstate, of plant pests.

Likewise, the bill amends the Plant Quarantine Act to remove the requirement for a permit issued by the Secretary of Agriculture to accompany the import or entry into the United States of any nursery stock. Import or entry of nursery stock into the United States must now be in accordance with such regulations as the Secretary may promulgate to prevent the dissemination into the United States of plant pests.

The bill amends the Honeybee Act of 1922 to remove the prohibition of imports of honey bees and honeybee semen into the United States. The Secretary of Agriculture is now granted authority to prohibit or restrict the importation or entry of honeybees or honeybee semen into the United States to protect the health of honeybees and prevent the introduction of undesirable germ plasm and species of honeybees into the United States.

The bill amends the Federal Noxious Weed Act of 1974 so that movement into or through the United States of any noxious weeds, as identified by regulation by the Secretary of Agriculture, shall be in accordance with such conditions as the Secretary may prescribe by regulation to prevent the dissemination into the United States, or interstate, of such noxious weeds. This amendment removes the general prohibition on movement into or through the United States of noxious weeds.

The bill amends the Tariff Act of 1930 to expand the Secretary of Agriculture's authority to permit the importation of certain animals and types of meat from a region if the Secretary determines that the region is and is likely to remain a region of low prevalence for rinderpest and foot-and-mouth disease.

The bill amends the Act of August 30, 1890, to grant the Secretary of Agriculture general authority to prohibit or restrict by regulation the importation or entry into the United States of certain animals that are diseased, infected or have been exposed to an infection.

The Act of August 30, 1890, is further amended to make discretionary on the part of the Secretary of Agriculture the inspection of any imported animal covered under this Act for the purposes described in the Act. Likewise the prohibition or restriction from placement on any vessel of animals for export found to be a threat to other animals because of disease or infection is made discretionary on the part of the Secretary. The bill further strikes the Secretary's authority to waive any provision of subsection (a) of the Act for shipments between the United States and Canada and Mexico.

The bill amends the Act of May 6, 1970, to expand the Secretary's authority to cooperate beyond North America with other countries, breeders' organizations, or individuals regarding importation of animals into and through the international animal quarantine station of the United States and to charge and collect reasonable fees for use of the facilities of such station from importers.

The bill amends the Poultry Products Inspection Act to require that all poultry, poultry parts, or poultry products imported into the United States capable for use as human food demonstrate through inspection a level of sanitary protection equivalent to that achieved under United States standards. These imports shall also have been processed in facilities and under conditions that achieve a level of sanitary protection equivalent to that achieved under United States standards. The bill also provides direction to the Secretary of Agriculture for use in determining whether a standard of an exporting country is equivalent in achieving a level of sanitary protection achieved under the United States standard.

Likewise, the bill amends the Federal Meat Inspection Act to require certification by the Secretary of Agriculture prior to importation into the United States that foreign plants exporting carcasses or meat or meat products have complied with requirements that achieve a level of sanitary protection equivalent to that achieved under United States requirements and all other provisions of this Act and regulations issued under this Act. The bill also provides direction to the Secretary of Agriculture for use in determining whether a standard of an exporting country is equivalent in achieving a level of sanitary protection achieved under the United States standard.

The bill also amends the Trade Agreements Act of 1979 to improve public information about the activities of international standard-setting organizations. The Act is also amended to codify in U.S. law the definition of equivalence under Article 4 of the Agreement on the Application of Sanitary and Phytosanitary Measures (S&P Agreement).

The bill also adds a new section to the Trade Agreements Act of 1979 to codify generally in U.S. law the definition of equivalence under Article 4 of the S&P Agreement. The bill further instructs the Food and Drug Administration (FDA) to provide public notice

and opportunity for comment prior to determining that a foreign country's S&P measure is equivalent to an FDA S&P measure.

B. PURPOSE AND NEED

S. 2467 approves and implements the Uruguay Round Agreement negotiated by the United States and other members of the General Agreement on Tariffs and Trade (GATT).

The implementing bill makes certain changes in United States law that are necessary or appropriate to implement the agreement. This report discusses sections 401 through 405, sections 411 and 412, sections 421 through 426, sections 431 and 432, section 441, and section 451 of the implementing bill, covering the Agreement on Agriculture and the S&P Agreement and the Agreement on Technical Barriers to Trade.

Most changes in United States law and regulation implementing the Agreement will apply only with respect to members of the GATT. United States law and practice with respect to other countries, their nationals, and firms will generally be left undisturbed.

C. COMMITTEE CONSIDERATION

The Committee held a hearing on April 20, 1994, to discuss the implications of the proposed Uruguay Round Agreement.

Witnesses at the hearing included: Agriculture Secretary Mike Espy and the U.S. Trade Representative, Michael Kantor.

The Committee met on October 4, 1994, and approved a motion to report S. 2467 "The Uruguay Round Agreements Act" without recommendation. Senators Feingold, Heflin, and Helms asked to be recorded as voting no.

D. ROLL CALL VOTES

In accordance with paragraphs 7(b) of Rule XXVI of the Standing Rules of the Senate, it is announced that no roll call votes were taken with respect to Committee action on S. 2467.

Summary

The Agreement on Agriculture will reduce the subsidies and other market-distorting practices that have limited U.S. agricultural exports to markets around the world. It strengthens multilateral rules for trade in agricultural products and requires WTO Members to reduce protection against imports, trade-distorting domestic support programs, and export subsidies. U.S. negotiators proceeded in the belief that making agricultural trade more market-oriented will result in higher commodity prices and increased incomes for U.S. producers.

The Agreement provides multilaterally agreed rules and disciplines for agricultural trade in three principal areas: (1) market access, (2) domestic support measures, and (3) export subsidies. In many cases, the operation of these rules is linked to particular commitments by each WTO Member contained in that WTO Member's schedule annexed to the Marrakesh Protocol to the GATT 1994. Each WTO-Member schedule sets forth the Member's commitments regarding access to its market for imports of agricultural products and the maximum amount of domestic support and export

subsidies made available to its agricultural products. The Agriculture Agreement also establishes a Committee on Agriculture that will monitor the implementation of WTO Members' commitments.

The S&P Agreement explicitly recognizes that countries have a legitimate need for regulations to protect human, animal, and plant life and health (which includes food safety regulations), and to establish the level of protection of life and health that they deem appropriate. The provisions of the S&P Agreement are designed to preserve the ability of governments, which include state and local governments, to act in this area while guarding against the use of unjustified S&P measures as a way to protect domestic industry. The Agreement sets up requirements and procedures that are intended to distinguish between legitimate and protectionist measures. The Agreement also will facilitate harmonizing these measures among WTO Members, where appropriate. At the same time, the Agreement safeguards the ability of governments to protect human, animal, and plant life and health, including inspecting imported goods to determine they are safe.

The S&P Agreement relies on whether a sanitary or phytosanitary measure has a basis in science and is based on a risk assessment. A strict requirement for non-discriminatory treatment is not possible for S&P measures, since such measures frequently discriminate against imported goods or goods from a particular foreign country because those goods pose a different risk of a plant or animal pest or disease. Under the S&P Agreement, discrimination is allowed as long as it is not arbitrary or unjustifiable.

E. SECTION-BY-SECTION ANALYSIS

Section 22 Amendments

(Section 401)

The implementing bill amends section 22 of the Agricultural Adjustment Act and other laws that refer to section 22 to conform with Article 4.2 and other provisions of the Uruguay Round Agreement.

Section 401(a)(1) of the implementing bill amends section 22 to prohibit the application of quantitative import limitations or fees on products from WTO Members. In the case of wheat, however, section 22 fees may be imposed through September 11, 1995, in recognition of the Memorandum of Understanding between the United States and Canada, which became effective on September 12, 1994.

The bill preserves Presidential authority to impose quantitative limitations or fees under section 22 with respect to imports of agricultural products from countries that are not WTO Members.

Section 401(b) makes conforming amendments to several trade laws to reflect the conversion of current section 22 import restrictions to tariff-rate quotas pursuant to Schedule XX. In addition, section 401(b) amends the special import quotas for cotton provided in section 103B of the Agricultural Act of 1949 (which complement the existing section 22 import quotas on cotton by permitting increased cotton imports under certain conditions) to convert these

quotas from quantitative quotas to tariff-rate quotas. This change is necessary to implement tariffication.

Section 401(b) also makes technical amendments to simplify the names of the tariff-rate quotas, so that the tariff-rate quota under section 103B(a)(5)(F) will be referred to henceforth as the "special import quota" and the tariff-rate quota under section 103B(n) will be referred to as the "limited global import quota."

Cheese and Chocolate Crumb Imports

(Section 402)

The bill makes the necessary amendments to sections 701, 702, and 703 of the Trade Agreements Act of 1979 (1979 Act) to implement U.S. tariffication commitments. Sections 701 and 703 of the 1979 Act currently impose certain non-tariff restrictions on the importation of cheese and chocolate crumb. The bill repeals sections 701 and 703, because the United States will convert these restrictions to tariff-rate quotas.

Section 402 of the bill also amends section 702 of the 1979 Act to remove the provision requiring the President to impose quantitative restrictions on cheese where price-undercutting conditions exist. Imposing a quantitative import restriction would be inconsistent with the obligations of Article 4.2 of the Agreement on Agriculture. Additional U.S. note 13 to Chapter 4 of Schedule XX, however, specifically states, in connection with U.S. tariff-rate quotas for cheeses, that the United States retains the right to impose fees on within-quota quantities where the price-undercutting conditions of section 702 exist.

Meat Import Act

(Section 403)

The Meat Import Act of 1979 generally requires quantitative limits on the importation of meat articles (defined as certain types of beef, veal, goat, and sheep meat) into the United States if it is estimated that imports will exceed a specified trigger level. The import-limiting effect of the Meat Import Act has been achieved through the negotiation of voluntary restraint agreements with major supplier countries on the covered products. Section 403 of the implementing bill repeals the Meat Import Act to conform to U.S. commitments under the Agreement on Agriculture not to maintain this type of quantitative import restriction and replaces the Act with a tariff-rate quota.

Administration of Tariff-Rate Quotas

Section 404

The President has broad authority under section 22 of the Agricultural Adjustment Act and the Meat Import Act of 1979 to administer the import restrictions provided under those Acts. The bill provides the President with similar authority to administer the tariff-rate quotas replacing these measures.

Orderly Marketing and Inadequate Supply

Section 404(a) of the implementing bill requires the President to take such action as may be necessary to ensure that imports under the new tariff-rate quotas do not disrupt the orderly marketing of agricultural commodities in the United States. Under this authority, the President could, for example, issue licenses or otherwise act to avoid having the entire in-quota quantity of a commodity enter at one time, which could disrupt the orderly marketing of the commodity in the United States. However, in administering the tariff-rate quotas on cheese or dairy products in Schedule XX, the Administration will not auction licenses to import in-quota quantities.

Section 404(b) of the bill authorizes the President to expand temporarily the in-quota quantity of a tariff-rate quota where there would otherwise be an inadequate supply of an agricultural product due to natural disaster, disease, or major national market disruption. The language for this authority is drawn from the language in the Meat Import Act of 1979 and is analogous to the authority the President has exercised with respect to section 22 import restrictions. In making any decisions with respect to cotton under this authority, the President will take into account whether any special import quota or limited global import quota for cotton is in effect.

Under section 404(c) of the implementing bill, the Secretary of Agriculture will, as appropriate, monitor the domestic supply of products subject to tariff-rate quotas and advise the President when conditions exist for action under the "inadequate supply" provision of section 404(b).

Coverage of Tariff Rate Quotas

Section 404(d) of the implementing bill establishes authority for the President to modify the coverage of tariff-rate quotas under several circumstances.

First, section 404(d) authorizes the President to exempt certain items from the over-quota rate of duty. These exclusions generally continue the exclusions currently provided in U.S. note 2 to subchapter IV of HTSUS chapter 99.

Second, section 404(d) authorizes the President, subject to the congressional consultation and layover requirements of section 115 of the bill, to modify the coverage of a tariff-rate quota in the event of a reclassification of an item by the Customs Service. From time to time, the Customs Service may change an article's tariff classification. When the reclassification changes the coverage of a tariff-rate quota, it may be necessary to modify the tariff-rate quota to maintain the coverage negotiated in the Uruguay Round. For example, a reclassification may result in removing an article from the coverage of the tariff-rate quota, creating an unintended loophole. Conversely, a reclassification might bring within the coverage of a tariff-rate quota an article that was not intended to be covered.

Third, section 404(d) authorizes the President to allocate the in-quota quantity of a tariff-rate quota among supplying countries, and to modify the allocation. The President currently has authority both under section 22 of the Agricultural Adjustment Act and the Meat Import Act of 1979 to allocate quotas under those acts among supplying countries. The bill provides the President with authority

to allocate the tariff-rate quotas that take the place of those quotas pursuant to tariffication under the Uruguay Round.

Fourth, section 404(d) authorizes the President to increase the tariff-rate quota for beef to implement agreements reached with Uruguay and Argentina in March 1994. Under these side agreements, the United States has agreed to increase the in-quota quantity of the tariff-rate quota for beef to provide Uruguay and Argentina with 20,000 tons of access in the event that the United States determines that fresh, chilled, and frozen beef from these countries meets U.S. health and safety standards.

Finally, with respect to the U.S. sugar tariff-rate quota, which is found in Schedule XX, section 404(d) authorizes the President to re-proclaim additional U.S. note 3 to HTSUS chapter 17. Note 3, which provides for the administration of the current tariff-rate quota for sugar, was proclaimed under the authority of the existing sugar tariff-rate quota. Since the United States will impose a new tariff-rate quota pursuant to its Uruguay Round commitments, the President will re-proclaim Note 3, but modify it to reflect the changes in the tariff-rate quota resulting from tariffication. These modifications include deleting Note 3's reference to establishing the quota period, and changing the provisions in Note 3 on duty drawback, since section 404(e)(5)(A) of the bill limits the availability of drawback of over-quota tariff amounts for a tariff-rate quota on an agricultural product.

Conforming Amendments

Section 404(e) amends the Caribbean Basin Economic Recovery Act (CBERA), the Andean Trade Preference Act (ATPA), the Generalized System of Preferences (GSP) statute, and General Note 3(a) to the HTSUS (relating to insular possessions) to specify that any special duty preference afforded under these laws will be applicable only to the in-quota amount of a tariff-rate quota. Over-quota imports from CBERA, ATPA, or GSP countries, or U.S. insular possessions, will in all cases be subject to the higher rate of duty.

Section 313 of the Tariff Act of 1930 provides for the drawback of customs duties paid on the entry or withdrawal of goods from warehouse for consumption in the United States. Making duty drawback freely available for imports entering at the over-quota rate of a tariff-rate quota would remove the protection that tariff-rate quotas are intended to provide. That is because exports would operate as a "credit" that would allow additional duty-free imports above the quantities eligible for the in-quota rate and hence expand the access levels negotiated with U.S. trading partners.

Accordingly, for over-quota duties paid, section 404(e)(5)(A) of the implementing bill restricts drawback to that available under section 313(j)(1) of the Tariff Act of 1930. Under subsection (j)(1), drawback is only available on the product's supervised destruction or exportation in the same condition in which it was imported. The effective date for section 404(e)(5)(A) is the earlier of January 1, 1995, or the date of entry into force of the WTO Agreement for the United States. For tobacco products only, manufactured, direct-identification duty drawback under section 313(a) will also be available to tobacco products subject to an over-quota tariff rate in

the event that the President imposes a tariff-rate quota under the authority provided in section 421 of the bill.

Section 404(e) also makes a conforming amendment to section 358e(f) of the Agricultural Adjustment Act of 1938 to reflect the authority provided under section 403(b) of the bill to increase temporarily the in-quota quantity of a tariff-rate quota.

Special Agricultural Safeguard Authority

(Section 405)

Section 405 of the bill provides the President authority to implement the special safeguard provisions of Article 5 of the Agreement on Agriculture. In implementing section 405, the Administration recognizes that the special safeguard for agricultural goods must operate in a timely and effective manner. The Committee expects that the Secretary of Agriculture and the President will act as necessary to preserve and maintain the benefits of the safeguard authority for U.S. agricultural producers. The Committee also anticipates that the President will work closely with the Secretary to use the special agricultural safeguard authority. The special safeguard will operate in conformity with Article 5 of the Agreement.

Export Programs

(Section 411)

Export Enhancement Program

Section 301 of the Agricultural Trade Act of 1978 requires the CCC to operate the EEP. While the United States and other agricultural exporting countries agreed to reduce export subsidies in the Uruguay Round, and the Agreement on Agriculture establishes annual ceilings by commodity group with respect to both the quantity and the budgetary outlays for export subsidies, there are no additional constraints on export subsidies.

Accordingly, section 411(a) of the implementing bill extends the EEP through 2001, while requiring the CCC to administer the program in a manner consistent with the U.S. Uruguay Round commitments. The bill also removes the requirement in U.S. law that EEP be used only to discourage unfair trade practices. No similar statutory change is required for four U.S. export subsidy programs—the DEIP, the Sunflowerseed and Cottonseed Oil Assistance programs, and CCC dairy export sales—because there are no similar statutory restrictions on their operations. The Committee expects the Administration to use its best efforts to utilize fully all export-assistance programs for the benefit of U.S. agricultural producers.

Combatting subsidized competition in third WTO Member markets will remain a priority for the United States for two reasons. First, the European Union, in general, has higher export subsidy ceilings than does the United States, though it is also subject to the same percentage reduction commitments as is the United States. Therefore, there will continue to be a need to protect U.S. export markets abroad from subsidized competition. Secondly, the Agreement on Agriculture requires further multilateral negotiations on

trade-distorting agricultural subsidies and import protection in five years. The use of U.S. subsidies in the interim should help induce the European Union and others to agree on further reductions in those negotiations.

The CCC will also administer egg EEP initiatives in a manner to maximize benefits to the entire U.S. egg industry. In particular, the CCC will make efforts to enable the U.S. egg industry to maintain a strong presence in Hong Kong.

Dairy Export Incentive Program (DEIP).—Section 153 of the Food Security Act of 1985 requires the CCC to operate a DEIP. The program operates in a manner similar to the EEP, but is limited to dairy products. Section 411(b) of the implementing bill extends the DEIP through 2001. The Committee directs the Secretary of Agriculture to make the maximum level of dairy export sales under the DEIP consistent with United States obligations under the Uruguay Round Agreement.

CCC Dairy Export Sales.—Section 1163(a) of the Food Security Act of 1985 currently requires the Secretary of Agriculture annually through fiscal year 1995 to sell for export not less than 150,000 metric tons of dairy products, including not less than 100,000 metric tons of butter and not less than 20,000 metric tons of cheese, out of CCC-owned stocks. Because export sales of these products by CCC under section 1163(a) are usually at world prices, which normally are lower than domestic U.S. prices, the export sales are subject to U.S. export subsidy volume and budgetary outlay commitments under the Agreement.

To ensure conformity with U.S. Uruguay Round commitments, section 411(c) of the implementing bill amends section 1163 to authorize, rather than mandate CCC to make such sales, and to remove the minimum sales level requirements described above.

Market Promotion Program (MPP).—Section 203 of the Agricultural Trade Act of 1978 establishes a MPP. Section 411(d) of the implementing bill provides that MPP assistance need no longer be targeted at the unfair trade practices of U.S. trading partners. This requirement was removed since other countries that subsidize their agricultural exports do not have similar restrictions. Furthermore, such restrictions are not required by the Agreement on Agriculture.

The Export Credit Guarantee Program, one of U.S. agriculture's most effective tools, is among the programs exempt from reduction commitments under the Agreement on Agriculture. However, current use of this program is well below both historic and authorized levels. Recent political, economic, and social changes are creating private sectors in many countries throughout the world that could participate in agricultural trade with the United States if financing were available. The Committee expects the CCC will consider how to restructure and fully utilize export credit and guarantee programs, taking into account the importance of these newly emerging markets.

Food Aid.—Section 411(e) of the bill responds to the Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries. Section 411(e) reaffirms the U.S. commitment to provide food aid, and expresses the sense of the Congress that the President should initiate consultations with other

donor nations to consider appropriate levels of food aid commitments to meet the legitimate needs of developing countries. It also expresses the sense of the Congress that the United States should increase its contribution of bona fide food assistance to developing countries, consistent with the Agreement on Agriculture.

Other Conforming Amendments

(Section 412)

Several statutes (Public Law 98-332, Public Law 98-151, and 7 U.S.C. 1853) currently mandate the use of export subsidies for various agricultural products. Section 412 of the implementing bill repeals these provisions to avoid any potential conflict with U.S. export subsidy reduction commitments.

Authority for Certain Actions Under Article XXVIII

(Section 421)

Section 421 of the bill authorizes the President to proclaim tariff increases under section 125 of the Trade Act of 1974 on certain tobacco products up to 350 percent *ad valorem* above the rates existing on January 1, 1975, for those products.

Tobacco Imports

(Section 422)

Section 422 of the bill addresses several provisions of section 1106 of the Omnibus Budget Reconciliation Act of 1993, which amended the Agricultural Adjustment Act of 1938 and the Agricultural Act of 1949, concerning tobacco. The section's provisions will enter into force only if the President proclaims a tariff-rate quota pursuant to Article XXVIII of the GATT. If the President issues such a proclamation, the bill would make section 1106(a) of the 1993 Act inapplicable with respect to cigarette production after 1994. Section 1106(a) requires U.S. cigarette producers to use at least 75 percent U.S. tobacco in the manufacture of their cigarettes or pay a domestic marketing assessment.

Second, if the President issues a proclamation, section 422 would make budget deficit assessments on imported flue-cured, burley, and other kinds of tobacco identical to such assessments on the same kinds of domestic tobacco. In effect, this would exempt oriental tobacco from these assessments; oriental tobacco is not produced in the United States. Third, the bill would authorize the President to waive the budget deficit assessments and no-net cost assessments on imports, and waive the provision on inspection fees applicable to imports under section 1106, if the President determines that applying such waivers are necessary or appropriate pursuant to an international agreement entered into by the United States.

*Tobacco Proclamation Authority**(Section 423)*

Section 423 of the bill provides authority to proclaim the reduction or elimination of any duty on cigar binder and filler tobacco, wrapper tobacco, or oriental tobacco, following consultations with the Ways and Means and Finance Committees.

*Report to Congress on Access to Canadian Dairy and Poultry Markets**(Section 424)*

Section 424 of the bill addresses access to Canadian dairy and poultry markets. No later than six months after entry into force of the Uruguay Round agreements, the President is required to submit a report to Congress on the extent to which Canada is complying with its obligations under the Uruguay Round agreements and its related obligations under the North American Free Trade Agreement with respect to dairy and poultry products.

*Study of Milk Marketing Order System**(Section 425)*

Section 425 of the bill requires the Secretary of Agriculture to conduct a study of the effects of the Uruguay Round Agreements on the Federal milk marketing order system. The Secretary is required to report to Congress no later than six months after the entry into force of the WTO Agreement for the United States.

*Additional Program Funding**(Section 426)*

Section 426 of the bill makes funds available for CCC programs. These funds are in addition to appropriated funds made available to CCC. CCC programs that could receive funding under section 426 include export promotion, foreign market development, export credit programs, and programs to develop, commercialize, and market alternative uses for agricultural products.

The Committee takes seriously the Administration's commitment to provide additional funding for CCC programs as provided for in correspondence between the President and the Committee Chairman, and the Acting Director for Management and Budget and the Committee Chairman. The Committee directs the Administration to honor its agreement with the agriculture community to utilize fully the funding made available under this section.

S&P

*Sanitary and Phytosanitary Measures**(Section 431)*

Section 431(a) amends section 414 of the Trade Agreements Act of 1979 to implement the transparency provisions of Article 7 and

Annex B of the S&P Agreement. Section 414 of the 1979 Act established a standards information center in the Department of Commerce that collects and makes available to the public information regarding product standards, including those at the local, state, and federal levels. The center currently serves as the inquiry point under the NAFTA for sanitary and phytosanitary measures in the United States.

The amendment adds a new subsection (c) to section 414, expanding the responsibilities of the center to ensure that it meets the requirements for inquiry points set out in Annex B of the S&P Agreement. Under the amendment, the center will make available to the public: (1) Federal, State, and local S&P measures of general application; (2) Federal, State, and local agency procedures for risk assessment; (3) determinations by such agencies concerning the levels of protection they consider appropriate; and (4) documents regarding membership and participation of the Federal, State, and local governments in international and regional S&P organizations and systems.

The center will continue to refer all inquiries regarding agricultural products (including inquiries on sanitary and phytosanitary measures) to the Department of Agriculture.

Section 431 of the bill also makes technical changes in a number of statutes to conform to U.S. obligations under the Agreement. The changes made by section 431 will not affect current Agriculture Department practice in this area, nor will it prevent the Department from applying specific S&P measures where necessary to respond to varying S&P conditions in different countries.

Railway Car Inspection

The Act of January 31, 1942, authorizes the Secretary of Agriculture to regulate the entry into the United States from Mexico of railway cars and other vehicles and freight, express, baggage, and other materials to prevent the introduction of insect pests and plant diseases. The entry of railway cars and other vehicles and materials from other countries is currently regulated pursuant to other general grants of authority.

Section 431(b) of the bill deletes the phrase "from Mexico" so that the same provision governs the entry of railway cars and other vehicles and materials entering the United States from any country.

Federal Plant Pest Act

Section 103 of the Federal Plant Pest Act prohibits the movement of any plant pest into or through the United States, or interstate, unless the Secretary of Agriculture authorizes the movement under a permit. However, no permit is required for imports from Canada, although such imports must be made in accordance with regulations issued by the Secretary. Section 104 of the Federal Plant Pest Act similarly prohibits the mailing of any letter, parcel, box, or other package containing any plant pest unless it is accompanied by a permit.

Section 431(c) amends sections 103 and 104 of the Act to remove the requirement for a permit, while retaining the Secretary's authority to require a permit where the Secretary considers it necessary to protect against plant pests.

The blanket permit requirement is being removed since in some circumstances the plant pest may not pose a risk to the United States. For example, the plant pest may already be prevalent in the United States or it may only affect plants grown outside the United States.

Plant Quarantine Act

Section 431(d) of the bill makes a change to the Act of August 20, 1912, (the Plant Quarantine Act) similar to the change made to the Federal Plant Pest Act. Section 1 of the Plant Quarantine Act makes it unlawful to import any nursery stock into the United States except under permit issued by the Secretary of Agriculture. Section 2 imposes certain notification and inspection requirements with respect to imports of nursery stock. The Secretary may waive the permit requirement, however, for imports of nursery stock from Canada, and may exempt imports from Canada from the notification and inspection requirements.

Section 431(d) amends section 1 of the Plant Quarantine Act to remove the blanket permit requirement, while retaining the Secretary's authority to require a permit where the Secretary considers it necessary to protect against plant pests or diseases. Section 431(d) also amends section 2 of the Plant Quarantine Act to allow the Secretary to exempt imports from the notification and inspection requirements. These amendments are being made for the same reason as that for the amendments to the Federal Plant Pest Act.

Honeybee Importation

Section 1 of the Act of August 31, 1922, (the Honeybee Act) generally prohibits the importation of honeybees and honeybee semen to prevent the introduction and spread of diseases, parasites, and undesirable species of honeybees. The Act also authorizes the Secretary to permit imports from specific regions of Canada and Mexico that the Secretary determines to be free of such diseases, parasites, and undesirable species.

Section 431(e) of the bill amends the Honeybee Act to authorize the Secretary of Agriculture to prohibit or restrict the importation or entry of honeybees and honeybee semen to protect against the introduction and spread of honeybee diseases and parasites or undesirable species of honeybees. This change will permit the entry of honeybees and honeybee semen from regions of countries (not just Mexico and Canada) that the Secretary determines to be free of such diseases, parasites, and undesirable species.

Federal Noxious Weed Act

Section 4 of the Federal Noxious Weed Act of 1974 prohibits the importation of noxious weeds unless the imports are from Canada or under permit issued by the Secretary of Agriculture.

Section 431(f) of the bill amends the Act to remove the permit requirement, while retaining the Secretary's authority to require a permit when the Secretary considers it necessary to protect against noxious weeds.

Tariff Act of 1930

Section 306 of the Tariff Act of 1930 generally prohibits the importation of certain animals and meat products from countries where the Secretary of Agriculture determines that rinderpest or foot-and-mouth disease exists, although the Act permits imports from regions of those countries that the Secretary of Agriculture determines are, and are likely to remain, free of those diseases.

Section 431(g) of the bill amends section 306 to authorize the Secretary to allow imports from areas of low prevalence of the diseases as well, subject to the terms and conditions that the Secretary determines appropriate to protect against the introduction of rinderpest and foot-and-mouth disease into the United States.

The amendment made by section 431(g) implements Article 6 of the S&P Agreement, which recognizes the concepts of pest- or disease-free regions or regions of low pest or disease prevalence.

Act of August 30, 1890

Section 6 of the Act of August 30, 1890, generally prohibits the importation of cattle, sheep, and swine that are diseased or infected with any disease or that have been exposed to infection within 60 days before they are exported, but provides an exception for imports from Mexico and Canada and imports of certain cattle for slaughter from the British Virgin Islands to the U.S. Virgin Islands in accordance with regulations issued by the Secretary of Agriculture. Section 10 generally requires the Department of Agriculture to inspect all imported animals to determine whether they are infected with contagious diseases, and prohibits the export by vessel of animals that are infected or have been exposed to infection, but permits the Secretary to waive these requirements for animals shipped between the United States and Canada or Mexico.

Sections 431(h) and (i) of the bill amend sections 6 and 10, respectively, of the Act, to authorize rather than require the Secretary of Agriculture to: (1) prohibit or restrict the importation and entry of cattle, sheep, and swine infected with or exposed to disease; (2) inspect any animals imported into the United States; and (3) prohibit or restrict the exportation by vessel of animals infected with or exposed to disease.

Act of May 6, 1970

Section 1 of the Act of May 6, 1970, authorizes the Department of Agriculture to establish and maintain an international quarantine station in the United States. The Act also authorizes the Department to cooperate with U.S. breeder organizations, persons in the United States, and other North American countries regarding the importation of animals through this quarantine station.

Section 431(j) of the bill amends the Act to permit the Department to cooperate with any foreign countries or breeder organization or individual regarding the importation of animals through this quarantine station. This amendment eliminates any discrimination against U.S. trading partners in the use of the quarantine station.

Poultry Products Inspection Act

Section 17(d) of the Poultry Products Inspection Act requires that before any poultry or poultry products that are capable of use as human food can be imported into the United States, they must be subjected to the "same" inspection standards as those applied to poultry or poultry products produced in the United States, and must have been processed in facilities and under conditions that are the "same" as those under which similar products are processed in the United States. In the case of Mexico and Canada, poultry and poultry product imports must comply either with this provision or be subject to equivalent inspection standards and be processed in facilities and under conditions that are at least equivalent to those under which products are processed in the United States.

Section 431(k) of the implementing bill amends section 17(d) of the Poultry Products Inspection Act to require that before any poultry or poultry products that are capable of use as human food can be imported into the United States, they must be subjected to inspection standards and be processed in facilities and under conditions that achieve a level of sanitary protection equivalent to that achieved under U.S. standards. This amendment implements the equivalence provisions of Article 4 of the S&P Agreement.

Federal Meat Inspection Act

Section 20 of the Federal Meat Inspection Act establishes an inspection regime for meat imported into the United States. Subsection 20(e)(1) requires that the Secretary of Agriculture annually certify to Congress that foreign plants that export carcasses, meat, or meat products to the United States have complied with requirements at least equal to the inspection and building construction standards and all other provisions of the Act and regulations issued under the Act. In the case of Mexico and Canada, meat imports must comply either with this provision or comply with requirements equivalent to U.S. requirements.

Section 431(l) of the implementing bill amends section 20(e) of the Federal Meat Inspection Act to require that the Secretary of Agriculture annually certify to Congress that foreign plants that export carcasses, meat, or meat products to the United States have complied with requirements that achieve a level of sanitary protection equivalent to that achieved under U.S. requirements with regard to all inspection, building construction standards, and all other provisions of the Act and regulations issued under the Act. This amendment implements the equivalence provisions of Article 4 of the S&P Agreement.

For both the Poultry Products Inspection Act and the Federal Meat Inspection Act, the Secretary of Agriculture conducts a review of the poultry and meat inspection systems, respectively, of a foreign country to determine the country's eligibility to export poultry, and meat and meat products to the United States. These system reviews involve, among other things, a review of the sanitary requirements imposed by the foreign country's laws and regulations. The implementing bill describes the basis upon which the Secretary, in making eligibility determinations, may determine that a foreign country's poultry and meat inspection system is equivalent to the U.S. poultry and meat inspection systems. The Secretary

may treat as equivalent to a U.S. sanitary requirement a foreign country's requirement if the country provides scientific evidence or other information that the requirement achieves the level of sanitary protection achieved under the U.S. requirement.

International Standard-Setting Activities

(Section 432)

Section 432 of the implementing bill amends Title IV of the Trade Agreements Act of 1979 to improve public information about the activities of international standard-setting organizations. The President will designate an agency to be responsible for publishing an annual public notice of the activities of each international standard-setting organization. However, the agency representing the United States with respect to each sanitary or phytosanitary standard under consideration by an international standard-setting organization will provide an opportunity for public comment on the standard.

Section 432 of the implementing bill also adds a new section 492 to Title IV of the 1979 Act to codify generally in U.S. law the definition of equivalence under Article 4 of the S&P Agreement. New section 492 provides that an agency may not determine that a S&P measure of another country is equivalent to a U.S. measure unless the S&P measure provides at least the same level of S&P protection as the U.S. measure. This change makes explicit that implementation of the equivalence provisions of the S&P Agreement results in imports that are just as safe or healthy as domestic goods. In practice only the Department of Agriculture (USDA), Food and Drug Administration (FDA) and the Environmental Protection Agency (EPA) make equivalency determinations, since they are the agencies in the federal government that maintain S&P measures.

The amendment made by section 432 also requires the FDA to provide public notice and opportunity for comment prior to determining that a foreign country's S&P measure is equivalent to a FDA S&P measure. USDA and EPA already provide notice and comment on their equivalency determinations.

The Federal Seed Act

(Section 441)

Section 441 amends the Federal Seed Act to remove the requirement that imported seeds containing a minimum of alfalfa and/or red clover be stained. The Secretary of Agriculture will now have authority to determine, after a public hearing, whether the seed of alfalfa or red clover from any foreign country is not adapted for general agricultural use in the United States.

The amendments in section 441 are necessary to replace the omnibus staining requirement, which is not a sanitary or phytosanitary measure since it is not based on health or safety concerns, with a science-based procedure for determining the adaptability of imported alfalfa and red clover seeds to agricultural use in the United States.

PART III. REPORT OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS

On October 5, 1994, the Senate Committee on Governmental Affairs voted unanimously to report, without recommendation, section 102 of Subtitle A, Title I and Subtitle E of Title III of S. 2467—legislation to implement the Uruguay Round Trade Agreement. Section 102 and Subtitle E address U.S. Federalism and Government Procurement Code issues, respectively. These subjects fall under the Committee's jurisdiction.

Section 102 addresses issues concerning the protection of U.S. sovereignty and law under the new agreement. In particular, section 102 contains provisions and establishes procedures to ensure that the authority of the World Trade Organization (WTO) does not supersede the sovereign powers of State governments as established by the 10th Amendment to the U.S. Constitution.

Earlier in the year, the National Association of Attorneys General had written the Administration raising concerns that the powers of the WTO would impinge upon State sovereignty. Other State and local government associations raised similar concerns. The Administration worked with Congress to draft section 102 and to include it in the implementing legislation.

Section 102(b)(2) states, "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." Further, section 102(c)(1) states, "No person other than the United States 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 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."

In its Statement of Administrative Action, the Administration affirms that the WTO will not have the power to preempt State law. Further, no private party or foreign government will have the right to sue a State for a purported violation of the Agreement. Only the U.S. Government would have this right (as is the case with U.S. law) in instances where State law conflicts with terms of the Uruguay Round Agreement. The U.S. Attorney General may initiate such an action, but only as a "last resort" and only after consultations between the President and the respective State's Governor have failed to yield an appropriate alternative.

In addition, the Administration has committed to establishing intergovernmental processes and mechanisms to ensure that the

concerns of State and local governments are addressed during the deliberations of the WTO. The U.S. Trade Representative (USTR) will expand the scope and activity of the intergovernmental advisory committee previously established under the Omnibus Trade and Tariff Act of 1984. To further coordinate and facilitate these consultations, the USTR will designate within the Office of the USTR a WTO Coordinator for State Matters. The Coordinator will carry out the functions established by the bill for the transmittal of information and advice from the States to the USTR and for informing the States on an on-going basis of WTO-trade matters that may effect them.

Section 102(b)(1)(C) of the legislation sets out procedures to ensure that representatives of the States are kept involved at each stage of any consultations or dispute settlement proceedings at the WTO that effect State law. The USTR must notify the chief legal officer (usually the State Attorney General) of the involved State within seven days after the request for consultations is made under the dispute settlement process. The USTR will consult with the chief legal officer (or other representative designated by the State) throughout the consultation period and during any subsequent panel, Appellate Body, or other proceeding, and also consider the State's views in the formulation of U.S. negotiating positions. When a State measure is at issue under WTO proceedings, the USTR shall invite the State representative to sit in on panel proceedings and hearings as part of the part of the official U.S. delegation as well as make presentations, where appropriate, to the panel.

The addition of section 102 to the implementing legislation has satisfied a number of the organizations who had raised earlier concerns over the WTO's impact on State law and sovereignty. In late summer, both the National Governors' Association and the National Association of Attorneys General wrote the Administration endorsing the Agreement and urging passage of the implementing legislation.

This Committee takes very seriously the issue of Federalism, the proper balance of Federal and State powers under our system of government. We encourage and expect this Administration, along with future Administrations, to fully and faithfully carry out the provisions of section 102 and its implementing procedures as discussed in the Statement of Administrative Action.

Subtitle E makes the necessary changes to U.S. law in order implement agreements reached by the member nations of the GATT Government Procurement Code. The primary objective of the GATT Procurement Code is to ensure the establishment of government procurement systems based on the principles of transparency, openness, and fairness. There are currently 22 member nations who are signatories to the Code. There will be one new addition to the Code (South Korea); two other countries have decided to leave (Hong Kong and Singapore).

Highlights of the new Code are as follows:

(1) *Expanded Coverage*.—Thirty-seven State governments have voluntarily agreed to be covered by the Code's provisions. Several Port Authorities have joined also. The United States will include Federally-owned utilities (TVA, Bonneville, REA) and in return the European Community has opened up its util-

ity market. Government construction and services will be covered for the first time.

(2) *Lower thresholds.*—A threshold of \$182,000 for waiver of buy national requirements for central government purchases will be in place. U.S. minority and small business set-asides would not be affected, nor would procurements necessary for national security. Construction contracts would be covered for the first time (\$7 million threshold).

(3) *Unfair practices.*—As is the case under current law, the President would still identify those nations on an annual basis that maintain unfair and discriminatory government procurement practices. In addition, the President must include on that list those nations that fail to adequately enforce anti-bribery and corruption laws in the awarding of government contracts. Once a country is listed, the President must enter into formal negotiations with the listed country. If no resolution is reached in 18 months, then the President must apply sanctions. The new Code also prohibits offsets and requires member nations to establish a domestic bid challenge system.

(4) *New technologies.*—The Agreement will not impede the use of new information management and other technologies to improve the efficiency of government procurement systems. This had been an earlier concern of the Committee regarding the government procurement provisions under the North American Free Trade Agreement.

(5) *Consistency with U.S. Government procurement reform.*—The Administration has been careful to ensure that the changes to the Code are consistent with those sought in the recently passed government procurement reform legislation.

This Committee has been very active in the last Congress in passing legislation to streamline the U.S. government procurement system. Changes to our procurement system to improve its efficiency will be made on an on-going basis and over a period of time. The Committee encourages the Administration to remain cognizant of these changes during its participation in future deliberations among Member nations of the GATT Procurement Code. Further, the Committee would like to see a more sustained effort by the USTR to expand membership in the Code. The Committee is disappointed with Hong Kong's and Singapore's decision to resign from the Code and would encourage an aggressive effort by USTR during future Code deliberations to expand its membership.

PART IV. STATEMENT OF THE COMMITTEE ON THE JUDICIARY

TITLE V—INTELLECTUAL PROPERTY

The Uruguay Round Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) establishes comprehensive standards for the protection of intellectual property and the enforcement of intellectual property rights in WTO member countries. Each WTO member country is required to apply the substantive obligations of the world's most important intellectual property conventions, supplement those conventions with substantial additional protection, and ensure that critical enforcement procedures will be available in each member country to safeguard intellectual property rights.

There are two outstanding flaws with TRIPs. First, developing countries are given five to 11 years to comply with their TRIPs obligations. Second, derogations to the principle of national treatment were not eliminated. Nonetheless, once in force, worldwide intellectual property protection should be significantly improved.

SUBTITLE A—COPYRIGHT PROVISIONS

Rental Rights in Computer Programs

(Section 511)

TRIPs requires WTO member countries to provide exclusive "rental rights" (the right for authors or their successors in title to authorize or prohibit commercial rental to the public of originals or copies of their copyrighted works) for computer programs and cinematographic works. Current U.S. law provides rental rights for computer programs. However, under the Computer Software Rental Amendments Act of 1990 (17 U.S.C. 109 note) such rights are set to expire on October 1, 1997. Therefore, section 511 of the implementing bill eliminates the October 1, 1997 sunset provision of the computer rental provision providing authors of computer programs and their successors in title rental rights on a permanent basis.

The Agreement also provides that member countries need not provide rental rights for cinematographic works unless rental has led to widespread copying that is having a material effect on the author's exclusive right of reproduction of the work. Because the rental of motion pictures has not caused a widespread problem of copying in the United States, rental rights for motion pictures are unnecessary.

Penalties for Unauthorized Fixation of and Trafficking in Sound Recordings and Music Videos of Live Musical Performances

(Sections 512 and 513)

TRIPs requires WTO Members to allow performers to prevent the unauthorized fixation in sound recordings or music videos of their live performances and to prevent the reproduction of such recordings. The implementing legislation creates new Federal criminal and civil penalties against such "bootlegging" of sound recordings. Although current State laws and judicial decisions provide some protection, these new provisions will provide uniform Federal enforcement.

Section 512 of the bill amends Title 17 to provide that bootleggers are subject to civil remedies under the Copyright Act. In addition, section 513 makes bootlegging "knowingly and for purposes of commercial advantage or private gain" a crime. It is intended that the legislation will not apply in cases where First Amendment principles are implicated, such as where small portions of an unauthorized fixation of a sound recording are used without permission in a news broadcast or for other purposes of comment or criticism.

Restored Works

(Section 514)

The legislation includes language to restore copyright protection to certain foreign works from countries that are members of the Berne Convention or WTO that have fallen into the public domain for reasons other than the normal expiration of their term of protection.

The Agreement requires WTO countries to comply with Article 18 of the Berne Convention. While the United States declared its compliance with the Berne Convention in 1989, it never addressed or enacted legislation to implement Article 18 of the Convention. Article 18 requires that the terms of the convention apply to all works that have fallen into the public domain by reasons other than the expiration of its term of protection. (Examples include failure to file a timely renewal application and failure to affix a copyright notice).

The bill would automatically restore copyright protection for qualifying works of authors from Berne or WTO countries one year after the WTO comes into being. In order for the restored copyright to be enforced against a "reliance party," it is necessary for the author or copyright owner (rightholder) of the foreign work to either file a "notice of intent" with the Copyright Office during the 24 months after the effective date of the Uruguay Round Agreement or provide actual notice (for the life of the copyright term) directly by notifying the reliance party. Reliance parties then have one year from publication of the constructive notice or receipt of the actual notice to continue to use or sell off copies of the work that have been restored to a foreign author or rightholder. Reproduction of the work during this period is not permitted. After this period, reli-

ance parties are subject to remedies for infringement, except in certain cases.

Section 104A(d)(3) provides additional protection to a reliance party who used a restored foreign work to create a derivative work because a one year sell off period might be an inadequate period to recoup the investment. In the case of a derivative work that was created based upon a foreign work that was in the public domain but has been restored, the reliance party may continue to sell the derivative work in exchange for providing reasonable compensation to the owner of the restored copyright. In the event that an agreement cannot be reached regarding compensation a district court may determine reasonable compensation, based upon the contribution made by the reliance party as well as the author of the underlying restored work. The court is to take into consideration any damage to the market for the restored work.

SUBTITLE B—TRADEMARK PROVISIONS

Definition of Abandonment

(Section 521)

Under current U.S. law, a trademark or service mark is considered “abandoned” when its use has been discontinued with the intent not to resume its use. Furthermore, non-use for two consecutive years is prima facie evidence of abandonment. The TRIPs Agreement requires that a registration may be canceled only after three years of non-use. Accordingly, section 521 of the bill amends section 45 of the Trademark Act to provide that three consecutive years of non-use will constitute prima facie evidence of abandonment.

Nonregistrability of Misleading Geographical Indications for Wines and Spirits

(Section 522)

TRIPs requires WTO member countries to refuse or invalidate a registration of any trademark consisting of a geographic indication identifying wines or spirits not originating in the place indicated. Section 522 of the bill amends section 2 of the Trademark Act to provide that marks for wines or spirits are not registerable to the extent they include a geographical indication if in fact, the wines or spirits do not originate in that geographic area. Such marks will be refused registration when the relevant TRIPs obligation becomes effective which is one year after the WTO Agreement comes into effect. Any mark containing a geographical indication that is currently registered or in use, or that is registered or in use during the period before the relevant TRIPs obligation becomes effective, may be maintained.

As amended, section 2 of the Trademark Act will prohibit the registration of marks for wines and spirits that contain a geographical indication which refers to a place other than where a good actually originates. “Geographical indications” are defined in TRIPs as “indications which identify a good as originating in the territory of a Member, or a region or locality in that territory,

where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin." It is intended that this definition will be applied in the context of trademark registration and that a "geographical indication" as used in this provision will be interpreted to comprise only those areas which have a reputation for being associated with the specific goods at issue. Obscure areas or those that do not have a reputation or other characteristics generally associated with wines or spirits should not be prohibited from registration.

SUBTITLE C—PATENT PROVISIONS

Treatment of Inventive Activity

(Section 531)

TRIPS requires that patents be available without discrimination as to the place of invention. Current law prohibits the use of evidence based on activity occurring outside of the United States, Canada or Mexico to prove a date of invention. The bill amends section 104 of Title 35 to remove this restriction with respect to inventive activity that occurs within WTO member countries. This will allow a patent applicant or patentee to establish a date of invention using evidence of inventive activity occurring in any WTO member country.

The bill also provides that when a party in a proceeding before the Patent and Trademark Office (PTO), a court or another competent authority requests information from a WTO member country relevant to the date of invention by an opposing party, and the information is not made available to the same extent as it could be made available in the United States, the adjudicative body must "draw appropriate inferences" or take other action permitted by statute, rule, or regulation in favor of the party that requested but who could not obtain the information. The NAFTA Implementation Act provided such treatment for information requested from Mexico or Canada.

The legislation also extends section 104(a)(2) to address inventive activity by individuals in government service, where the activity takes place outside their home country. Under current law, an individual in government service can rely on evidence of inventive activity outside the United States to prove a date of invention. This privilege was extended to domiciles of NAFTA members by the NAFTA Implementation Act. The implementing bill extends this privilege to domiciles of any WTO member country.

These changes to section 104 will apply to all patent applications filed on or after the date the relevant TRIPs obligation becomes effective which is one year from the entry into force of the WTO Agreement with respect to the United States. The provision also specifies that an applicant for patent or a patentee may not establish a date of invention that is earlier than one year after the entry into force of the WTO Agreement with respect to the United States by reference to knowledge, use or activity in a WTO country other than provided in sections 119 and 365 of Title 35.

*Patent Term and Internal Priority**(Section 532)*

Under present law, the term of a U.S. patent lasts 17 years from the date of its grant, provided the fees required to maintain the patent in force are paid. TRIPs requires WTO member countries to provide a patent term of at least 20 years, measured from the date the application for the patent is filed.

Section 532(a) of the bill changes the manner in which the term of a U.S. patent is measured. It amends section 154 of Title 35 to provide that the term of a patent will begin on the date the patent is issued and end 20 years after the date on which the application resulting in the patent was filed. If priority to an earlier application or applications is claimed under sections 120, 121, or 365(c) of Title 35, the 20-year period is measured from the date of the earliest of such applications. The term of a patent that results from any application that is filed on or after six months from the effective date of this legislation will end 20 years after the date the application was filed, or if priority to an earlier application or applications is claimed under sections 120, 121 or 365(c) of Title 35, 20 years from the date of the earliest of such applications.

Section 532(a) further amends section 154 of Title 35 to provide that priority under sections 119, 365(a), or 365(b) of Title 35 is not to be taken into account in determining the term of a patent. This provision is necessary to comply with the requirements of Article 4 *bis*(5) of the *Paris Convention for the Protection of Industrial Property* under which countries must exclude from their measurement of patent term any periods for which an applicant has based a claim of priority to an earlier foreign-filed application.

Section 532(a) also amends section 154 of Title 35 to provide for the term of a patent to be extended for up to a total of five years under certain circumstances. These circumstances include delays caused by interference proceedings under section 135(a), the imposition of secrecy orders under section 181, or when a patent is issued after an adverse determination of patentability has been reversed on appeal by either the Board of Patent Appeals and Interferences or a federal court.

An extension of patent term provided under the authority of section 154(b)(2) of Title 35 may be reduced in two instances. First, extensions for appeal will be reduced for periods of time attributable to appellate review before the expiration of three years from the filing date of the application leading to the patent. Second, an extension will be reduced for time attributable to periods during which the applicant did not act with due diligence. Although extensions under section 154(b) are limited to a total of five years, patentees will continue to be able to obtain extensions of patent term for up to five years under section 156 of Title 35.

Section 154 of Title 35 is also amended to provide that the term of a patent in force six months after the date of enactment of this legislation will be the greater of 17 years from the date the patent is granted or 20 years from the date of filing of the application leading to the patent. The same term will also be available to a patent granted later than six months after the date of enactment if the patent results from an application filed before six months

after the date of enactment. A patent whose term has been disclaimed under section 253 of Title 35 due to another patent on an invention that is not patentably distinct from but was owned by or subject to an obligation of assignment to the same person shall expire on the date of the other patent. A patent whose term has been disclaimed under section 253 of Title 35 independent of another patent shall be reduced by the length of the originally disclaimed period.

Section 532(a) adds new sections 154(c)(2) and (3). These sections address the situation where a third party begins using a patented invention anytime during the six months after the date of enactment of the legislation and such use becomes infringing because of a change in patent term due to the operation of section 154(c)(1). In such circumstances, the patent owner will not be able to obtain an injunction, recover a reasonable royalty, or obtain attorneys fees, but will be able to recover equitable remuneration.

Section 532(b)(1) of the bill amends section 119 of Title 35 to establish a domestic priority system. This will allow applicants who file a provisional application, as established by section 532(b)(3) of this bill, to claim priority based on the date of filing the provisional application. The period of time from filing the provisional application to filing the formal application, up to 12 months, will not be included in calculating the term of the patent. This will ensure that applicants who file originally in the United States are not placed at a disadvantage in relation to applicants who file originally in a foreign country.

Section 532(b)(3) establishes the provisional application system. Amended section 111 of Title 35 will permit an applicant to file a simplified "provisional" application for a \$150 fee for large entities or \$75 for small entities, that can serve as a basis for a claim of priority if the applicant subsequently files a formal patent application within 12 months. The provisional application must contain a specification and any necessary drawings, in compliance with 35 U.S.C. 112 and 114. However, claims do not need to be included. The provisional application will not be examined, and will expire 12 months after filing.

To facilitate the completion of the prosecution of applications pending in the PTO as of the effective date of section 154(a)(2), section 532(a)(2) directs the PTO Commissioner to establish regulations for two purposes. First, the Commissioner is to provide for the limited reexamination of applications pending for two years or longer on the effective date of section 154(a)(2), taking into account any reference made in such application to any earlier filed application under sections 120, 121 or 365(c) of Title 35. The further limited reexamination will permit applicants to present for consideration up to two submissions after the PTO has issued a final rejection on such an application.

The second purpose of the new regulations is for PTO to address restriction requirements and filings of divisional applications, and to ensure that there is an opportunity for an applicant to respond to a requirement for restriction or to file a divisional application. After the effective date of section 154(a)(2), the PTO should not make or maintain a requirement for restriction or the filing of a divisional application for an application that has been pending for

three years or longer as of the effective date of said section, taking into account any reference made in such application to any earlier filed application under sections 120, 121 or 365(c) of Title 35. Appropriate fees for both purposes should be established.

Patent Rights

(Section 533)

The list of exclusive rights granted to patent owners is expanded to preclude others from offering to sell or importing products covered by a U.S. patent or offering to sell the products of patented processes.

II. BUDGETARY IMPACT OF THE BILL

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

CONGRESSIONAL BUDGET OFFICE, U.S. CONGRESS,
Washington, DC, November 16, 1994.

Hon. DANIEL PATRICK MOYNIHAN, *Chairman,*
Committee on Finance,
U.S. Senate,
Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed revised estimate of the budgetary effect over the 1995 through 1999 period of S. 2467, the Uruguay Round Agreements Act of 1994, as ordered reported by the Senate Committee on Finance on September 29, 1994. This estimate supersedes our estimate of October 5, 1994, and incorporates the effects of legislation that has since been enacted. The Joint Committee on Taxation (JCT) and CBO estimate that the bill would increase the deficit by \$2.586 billion over the 1995 through 1999 period as the result of changes in receipts and direct spending.

S. 2467 provides additional 1995 spending authority to the Commodity Credit Corporation for export promotion, foreign market development, and certain other activities. The bill specifies that the amount of spending authority is to be the pay-as-you-go savings that result from enactment of the Federal Crop Insurance Reform Act of 1994. That act was signed into law on October 13, 1994, and the pay-as-you-go savings applicable to S. 2467 are \$166 million. CBO has added this amount to its previous estimate of the 1995 outlays for S. 2467.

A revised table of the receipt and direct spending effects of the bill is enclosed. If you need further assistance, feel free to contact me or your staff may wish to contact Melissa Sampson at 226-2720.

Sincerely,

JAMES L. BLUM
(For Robert D. Reischauer, Director).

ESTIMATES OF CHANGES IN REVENUES AND DIRECT SPENDING ASSOCIATED WITH S. 2467, THE URUGUAY ROUND AGREEMENTS ACT OF 1994

[By fiscal years, in millions of dollars]

	1995	1996	1997	1998	1999	1995-99
Changes in Revenues (Net)						
Reduction in tariff rates and miscellaneous tariff provisions	-909	-1657	-2319	-2973	-3658	-11516
Generalized System of Preferences extension (10/1/94-7/31/95)	-375	0	0	0	0	-375
Withholding on distribution of tribal casino profits ¹	15	11	14	15	16	71
Voluntary withholding on certain Federal payments ^{1 2}	0	0	183	18	20	221
Voluntary withholding on unemployment compensation ^{1 2}	0	0	149	2	5	156
Treatment of subpart F and section 936 income ¹	999	153	76	79	84	1391
Accelerate certain excise tax payments ¹	944	8	205	23	25	1205
For Social Security benefits paid to non-resident aliens—withhold on 85% of payment rather than 50% ¹	41	61	64	67	70	303
Taxpayer identification numbers required at birth (revenue portion) ¹	0	8	9	9	9	35
Prohibit nonresident aliens from receiving earned income tax credit (EITC) and modify EITC for military personnel outside the United States (revenue portion) ¹	0	12	13	14	14	53
Treat partnership distributions of marketable securities like cash ¹	11	33	48	56	63	211
Extend Internal Revenue Service user fees for five years	0	31	31	31	31	124
Rounding rules for pension cost of living adjustments ¹	103	38	111	29	114	395
Extend section 420 through 2000 with modifications ¹	0	42	120	119	118	399
Pension Benefit Guaranty Corporation (PBGC) reform (revenue portion) ¹	-1	-132	-226	-333	-382	-1074
Substantial understatement penalty for corporate tax shelters ¹	15	20	20	20	20	95
Subtotal	843	-1372	-1502	-2824	-3451	-8306
Changes in Outlays						
Taxpayer identification numbers required at birth (outlay portion) ¹	0	-13	-16	-15	-15	-59
Prohibit nonresident aliens from receiving EITC and modify EITC for military personnel outside the United States (outlay portion) ¹	-2	-57	-62	-62	-62	-245
Deny EITC for income of prisoners (outlay portion) ¹	-2	-3	-3	-3	-3	-14
Interest rate for portion of corporate tax overpayments over \$10,000 set at Federal short-term rate + 0.5%	-17	-104	-174	-225	-280	-800
Savings bonds—repeal 4% minimum rate, allow market-based investment yields	-31	-25	-24	-24	-18	-122

ESTIMATES OF CHANGES IN REVENUES AND DIRECT SPENDING ASSOCIATED WITH S. 2467, THE
URUGUAY ROUND AGREEMENTS ACT OF 1994—Continued

[By fiscal years, in millions of dollars]

	1995	1996	1997	1998	1999	1995-99
Customs merchandise processing fee ...	-64	-87	-89	-89	-86	-415
PBGC reform (outlay portion)	-81	-333	-621	-496	-506	-2037
Charge for licenses issued under pio- neer preferences	-22	-27	-27	-27	-427	-530
Commodity Credit Corporation ³	163	-263	-358	-508	-532	-1498
Subtotal	-56	-912	-1374	-1449	-1929	-5720
	Effect on Deficit					
Net Increase or Decrease (-)	-899	460	128	1375	1522	2586

¹ Estimate provided by the Joint Committee on Taxation (JCT).

² These provisions would also increase federal government administrative costs.

³ Enactment of H.R. 4217, the Federal Crop Insurance Reform Act of 1994, results in increased outlays of \$166 million in FY 1995 from S. 2467.

Source: Congressional Budget Office, November 1994.

III. CHANGES IN EXISTING LAW

Pursuant to the requirements of paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, S. 2467, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TARIFF ACT OF 1930

[Titles I and II were replaced by the Harmonized Tariff Schedule of the United States; see 76 Stat. 72]

TITLE III—SPECIAL PROVISIONS

Part I—Miscellaneous

SEC. 301. [Repealed.]

SEC. 302.¹ PORTO RICO—EXEMPTION FROM INTERNAL-REVENUE TAXES.

Articles, goods, wares, or merchandise going into Porto Rico from the United States shall be exempted from the payment of any tax imposed by the internal-revenue laws of the United States.

[SEC. 303. COUNTERVAILING DUTIES.

[(a) LEVY OF COUNTERVAILING DUTIES.—(1) Except in the case of an article or merchandise which is the product of a country under the Agreement (within the meaning of section 701(b) of this Act), whenever any country, dependency, colony, province, or other political subdivision of government, person, partnership, association, cartel, or corporation, shall pay or bestow, directly or indirectly, any bounty or grant upon the manufacture or production or export of any article or merchandise manufactured or produced in such country, dependency, colony, province, or other political subdivision of government, then upon the importation of such article or merchandise into the United States, whether the same shall be imported directly from the country of production or otherwise, and whether such article or merchandise is imported in the same condition as when exported from the country of production or has been changed in condition by remanufacture or otherwise, there shall be levied and paid, in all such cases, in addition to any duties otherwise imposed, a duty equal to the net amount of such bounty or grant, however the same be paid or bestowed.

[(2) In the case of any imported article or merchandise which is free of duty, duties may be imposed under this section only if

¹This section was incorporated into the Internal Revenue Code of 1989 as section 3361(b). See 26 U.S.C. 7653.

there are affirmative determinations by the Commission under title VII; except that such a determination shall not be required unless a determination of injury is required by the international obligations of the United States.

[(b) The duty imposed under subsection (a) shall be imposed, under regulations prescribed by the administering authority (as defined in section 771(1)), in accordance with title VII of this Act (relating to the imposition of countervailing duties) except that, in the case of any imported article or merchandise which is not free of duty—

[(1) no determination by the United States International Trade Commission under section 703(a), 704, or 705(b) shall be required.

[(2) an investigation may not be suspended under section 704(c),

[(3) no determination as to the presence of critical circumstances shall be made under section 703(e) or 705 (a)(2) or (b)(4)(A), and

[(4) any reference to determinations by the Commission, or to the suspension of an investigation under section 704(c) which are not permitted or required by the subsection shall be disregarded.

[(c) ~~Repealed.~~]

[(d) TEMPORARY PROVISION WHILE NEGOTIATIONS ARE IN PROCESS.—(1) It is the sense of the Congress that the President, to the extent practicable and consistent with United States interests, seek through negotiations the establishment of internationally agreed rules and procedures governing the use of subsidies (and other export incentives) and the application of countervailing duties.

[(2) If, after seeking information and advice from such agencies as he may deem appropriate, the Secretary of the Treasury determines, at any time during the four-year period beginning on the date of the enactment of the Trade Act of 1974, that—

[(A) adequate steps have been taken to reduce substantially or eliminate during such period the adverse effect of a bounty or grant which he has determined is being paid or bestowed with respect to any article or merchandise;

[(B) there is a reasonable prospect that, under section 102 of the Trade Act of 1974, successful trade agreements will be entered into with foreign countries or instrumentalities providing for the reduction or elimination of barriers to or other distortions of international trade; and

[(C) the imposition of the additional duty under this section with respect to such article or merchandise would be likely to seriously jeopardize the satisfactory completion of such negotiations;

[the imposition of the additional duty under this section with respect to such article or merchandise shall not be required during the remainder of such four-year period. This paragraph shall not apply with respect to any case involving non-rubber footwear pending on the date of the enactment of the Trade Act of 1974 until and unless agreements which temporize imports of non-rubber footwear become effective.

[(3) The determination of the Secretary under paragraph (2) may be revoked by him, in his discretion, at any time, and any determination made under such paragraph shall be revoked whenever the basis supporting such determination no longer exists. The additional duty provided under this section shall apply with respect to any affected articles or merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of any revocation under this subsection in the Federal Register.

[(4)(A) the four-year period referred to in paragraph (2) is extended from January 2, 1979, until whichever of the following dates first occurs:

[(i) The date on which either House of Congress defeats on a vote of final passage, in accordance with the provisions of section 151 of the Trade Act of 1974, implementing legislation with respect to a multilateral trade agreement or agreements governing the use of subsidies.

[(ii) The date of the enactment of such implementing legislation.

[(iii) September 30, 1979.

[(B) Any determination made by the Secretary under this subsection with respect to merchandise of a country which, if title VII of the Tariff Act of 1930 were in effect, would, as determined by the President, be a country under the Agreement (within the meaning of section 701(b) of such Act), which is in effect on September 29, 1979, or on the day before the date of the enactment of the Trade Agreements Act of 1979 (whichever of such dates first occurs), shall remain in effect until whichever of the following dates first occurs:

[(i) The date on which the United States International Trade Commission makes a determination under section 104 of the Trade Agreements Act of 1979.

[(ii) The date such determination is revoked under paragraph (3).

[(iii) The date of adoption of a resolution of disapproval of such determination under subsection (e)(2).

[(e) REPORTS TO CONGRESS.—(1) Whenever the Secretary makes a determination under subsection (d)(2) with respect to any article or merchandise, he shall promptly transmit to the House of Representatives and the Senate a document setting forth the determination, together with his reasons therefor.

[(2) If, at any time after the document referred to in paragraph (1) is delivered to the House of Representatives and the Senate, either the House or the Senate adopts, by an affirmative vote of a majority of those present and voting in that House, a resolution of disapproval under the procedures set forth in section 152, then such determination under subsection (d)(2) with respect to such article or merchandise shall have no force or effect beginning with the day after the date of the adoption of such resolution of disapproval, and the additional duty provided under this section with respect to such article or merchandise shall apply with respect to articles or merchandise entered, or withdrawn from warehouse, for consumption on or after such day.

[(f) CROSS REFERENCE.—

[For provisions of law applicable in the case of articles and merchandise which are the product of countries under the Agreement within the meaning of section 701(b) of this Act, see title VII of this Act.]

SEC. 303. [Repealed.]

* * * * *

SEC. 306. CATTLE, SHEEP, SWINE, AND MEATS—IMPORTATION PROHIBITED IN CERTAIN CASES.

* * * * *

(b) EXCEPTION.—The Secretary of Agriculture may permit, subject to such terms and conditions as the Secretary determines appropriate, the importation of cattle, sheep, other ruminants, or swine (including embryos of the animals), or the fresh, chilled, or frozen meat of the animals, from a region if the Secretary determines that the region from which the animal or meat originated is, and is likely to remain, free from rinderpest and foot-and-mouth disease, or is, and is likely to remain, a region of low prevalence of rinderpest and foot-and-mouth disease.

* * * * *

SEC. 313. DRAWBACK AND REFUNDS.

* * * * *

(w) *LIMITED APPLICABILITY FOR CERTAIN AGRICULTURAL PRODUCTS.*—

(1) *IN GENERAL.*—No drawback shall be available with respect to an agricultural product subject to the over-quota rate of duty established under a tariff-rate quota, except pursuant to subsection (j)(1).

(2) *APPLICATION TO TOBACCO.*—Notwithstanding paragraph (1), drawback shall also be available pursuant to subsection (a) with respect to any tobacco subject to the over-quota rate of duty established under a tariff-rate quota.

* * * * *

SEC. 315. EFFECTIVE DATES OF RATES OF DUTY.

* * * * *

(d) 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 anti-dumping duties or the imposition of countervailing duties under section 303 (as in effect on the day before the effective date of title II of the Uruguay Round Agreement Act). 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.

* * * * *

SEC. 337. UNFAIR PRACTICES IN IMPORT TRADE.

* * * * *

(b) INVESTIGATIONS OF VIOLATIONS BY COMMISSION[; TIME LIMITS].—(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, but not later than one year (18 months in more complicated cases) after the date of publication of notice of such investigation. The Commission shall publish in the Federal Register its reasons for designating any investigation as a more complicated investigation. For purposes of the one-year and 18-month periods prescribed by this subsection, there shall be excluded any period of time during which such investigation is suspended because of proceedings in a court or agency of the United States involving similar questions concerning the subject matter of such investigation.] *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 section 303 or] of subtitle B of title VII of [the Tariff Act of 1930] *this Act*, it shall promptly notify the Secretary of Commerce so that such action may be taken as is otherwise authorized by such section and such [Act] *subtitle*. If the Commission has reason to believe that the matter before it (A) is based solely on alleged acts and effects which are within the purview of section [303, 671, or 673] *701 or 731*, or (B) relates to an alleged copyright infringement with respect to which action is prohibited by section 1008 of title 17, United States Code, the Commission shall terminate, or not institute, any investigation into the matter. If the Commission has reason to believe the matter before it is based in part on alleged acts and effects which are within the purview of [section 303, 701, or 731] *section 701* of this Act, and in part on alleged acts and effects which may, independently from or in conjunction with those within the purview of such section, establish a basis for relief under this section, then it may institute or continue an investigation into the matter. If the Commission notifies the Secretary or the administering authority (as defined in section 771(1) of this Act) with respect to a matter under this paragraph, the Commission may suspend its investigation during the time the matter is before the Secretary or administering authority for final decision. [For purposes of computing the 1-year or 18-month period prescribed by this subsection, there shall be excluded such period

of suspension.] Any final decision [of the Secretary under section 303 of this Act or] by the administering authority under section 701 or 731 of this Act with respect to the matter within such section [303, 701,] 701 or 731 of which the Commission has notified the Secretary or administering authority shall be conclusive upon the Commission with respect to the issue of less-than-fair-value sales or subsidization and the matters necessary for such decision.

(c) DETERMINATIONS; REVIEW.—The Commission shall determine, with respect to each investigation conducted by it under this section, whether or not there is a violation of this section, except that the Commission may, by issuing a consent order or on the basis of [a settlement agreement] *an agreement between the private parties to the investigation, including an agreement to present the matter for arbitration*, terminate any such investigation, in whole or in part, without making such a determination. Each determination under subsection (d) or (e) shall be made on the record after notice and opportunity for a hearing in conformity with the provisions of subchapter II of chapter 5 of title 5, United States Code. All legal and equitable defenses may be presented in all cases. *A respondent may raise any counterclaim in a manner prescribed by the Commission. Immediately after a counterclaim is received by the Commission, the respondent raising such counterclaim shall file a notice of removal with a United States district court in which venue for any of the counterclaims raised by the party would exist under section 1391 of title 28, United States Code. Any counterclaim raised pursuant to this section shall relate back to the date of the original complaint in the proceeding before the Commission. Action on such counterclaim shall not delay or affect the proceeding under this section, including the legal and equitable defenses that may be raised under this subsection.* Any person adversely affected by a final determination of the Commission under subsection (d), (e), (f), or (g) may appeal such determination, within 60 days after the determination becomes final, to the United States Court of Appeals for the Federal Circuit for review in accordance with chapter 7 of title 5, United States Code. Notwithstanding the foregoing provisions of this subsection, Commission determinations under subsections (d), (e), (f), and (g) with respect to its findings on the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, the amount and nature of bond, or the appropriate remedy shall be reviewable in accordance with section 706 of title 5, United States Code. *Determinations by the Commission under subsections (e), (f), and (j) with respect to forfeiture of bonds and under subsection (h) with respect to the imposition of sanctions for abuse of discovery or abuse of process shall also be reviewable in accordance with section 706 of title 5, United States Code.*

(d) EXCLUSION OF ARTICLES FROM ENTRY.—(1) If the Commission determines, as a result of an investigation under this section, that [there is violation] *there is a violation* of this section, it shall direct that the articles concerned, imported by any person violating the provision of this section, be excluded from entry into the United States, unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United

States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. The Commission shall notify the Secretary of the Treasury of its action under this subsection directing such exclusion from entry, and upon receipt of such notice, the Secretary shall, through the proper officers, refuse such entry.

(2) *The authority of the Commission to order an exclusion from entry of articles shall be limited to persons determined by the Commission to be violating this section unless the Commission determines that—*

(A) *a general exclusion from entry of articles is necessary to prevent circumvention of an exclusion order limited to products of named persons; or*

(B) *there is a pattern of violation of this section and it is difficult to identify the source of infringing products.*

(e) EXCLUSION OF ARTICLES FROM ENTRY DURING INVESTIGATION EXCEPT UNDER BOND.—(1) If, during the course of an investigation under this section, the Commission determines that there is reason to believe that there is a violation of this section, it may direct that the articles concerned, imported by any person with respect to whom there is reason to believe that such person is violating this section, be excluded from entry into the United States, unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. The Commission shall notify the Secretary of the Treasury of its action under this subsection directing such exclusion from entry, and upon receipt of such notice, the Secretary shall, through the proper officers, refuse such entry, except that such articles shall be entitled to entry under bond [determined by the Commission and prescribed by the Secretary] *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 or subsection (f) to the same extent as preliminary in-

junctions and temporary restraining orders may be granted under the Federal Rules of Civil Procedure.

(4) *The Commission shall prescribe the terms and conditions under which bonds may be forfeited under paragraphs (1) and (2).*

(f) CEASE AND DESIST ORDERS.—(1) In addition to, or in lieu of, taking action under subsection (d) or (e), the Commission may issue and cause to be served on any person violating this section, or believed to be violating this section, as the case may be, an order directing such person to cease and desist from engaging in the unfair methods or acts involved, unless after considering the effect of such order upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such order should not be issued. The Commission may at any time, upon such notice and in such manner as it deems proper, modify or revoke any such order, and, in the case of a revocation, may take action under subsection (d) or (e), as the case may be. *If a temporary cease and desist order is issued in addition to, or in lieu of, an exclusion order under subsection (e), the Commission may require the complainant to post a bond, in an amount determined by the Commission to be sufficient to protect the respondent from any injury, as a prerequisite to the issuance of an order under this subsection. If the Commission later determines that the respondent has not violated the provisions of this section, the bond may be forfeited to the respondent. The Commission shall prescribe the terms and conditions under which the bonds may be forfeited under this paragraph.*

(2) Any person who violates an order issued by the Commission under paragraph (1) after it has become final shall forfeit and pay to the United States a civil penalty for each day on which an importation of articles, or their sale, occurs in violation of the order of not more than the greater of \$100,000, twice the domestic value of the articles entered or sold on such day in violation of the order. Such penalty shall accrue to the United States and may be recovered for the United States in a civil action brought by the Commission in the Federal District Court for the District of Columbia or for the district in which the violation occurs. In such actions, the United States district courts may issue mandatory injunctions incorporating the relief sought by the Commission as they deem appropriate in the enforcement of such final orders of the Commission.

(g)(1) If—

- (A) a complaint is filed against a person under this section;
- (B) the complaint and a notice of investigation are served on the person;
- (C) the person fails to respond to the complaint and notice or otherwise fails to appear to answer the complaint and notice;
- (D) the person fails to show good cause why the person should not be found in default; and
- (E) the complainant seeks relief limited solely to that person;

the Commission shall presume the facts alleged in the complaint to be true and shall, upon request, issue an exclusion from entry

or a cease and desist order, or both, limited to that person unless, after considering the effect of such exclusion or order upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, the Commission finds that such exclusion or order should not be issued.

(2) In addition to the authority of the Commission to issue a general exclusion from entry of articles when a respondent appears to contest an investigation concerning a violation of the provisions of this section, a general exclusion from entry of articles, regardless of the source or importer of the articles, may be issued if—

(A) no person appears to contest an investigation concerning a violation of the provisions of this section, [and]

(B) such a violation is established by substantial, reliable, and probative evidence[.] and

(C) *the requirements of subsection (d)(2) are met.*

(h) The Commission may by rule prescribe sanctions for abuse of discovery and abuse of process to the extent authorized by Rule 11 and Rule 37 of the Federal Rules of Civil Procedure.

(i) FORFEITURE.—

(1) In addition to taking action under subsection (d), the Commission may issue an order providing that any article imported in violation of the provisions of this section be seized and forfeited to the United States if—

(A) the owner, importer, or consignee of the article previously attempted to import the article into the United States;

(B) the article was previously denied entry into the United States by reason of an order issued under subsection (d); and

(C) upon such previous denial of entry, the Secretary of the Treasury provided the owner, importer, or consignee of the article written notice of—

(i) such order, and

(ii) the seizure and forfeiture that would result from any further attempt to import the article into the United States.

(2) The Commission shall notify the Secretary of the Treasury of any order issued under this subsection and, upon receipt of such notice, the Secretary of the Treasury shall enforce such order in accordance with the provisions of this section.

(3) Upon the attempted entry of articles subject to an order issued under this subsection, the Secretary of the Treasury shall immediately notify all ports of entry of the attempted importation and shall identify the persons notified under paragraph (1)(C).

(4) The Secretary of the Treasury shall provide—

(A) the written notice described in paragraph (1)(C) to the owner, importer, or consignee of any article that is denied entry into the United States by reason of an order issued under subsection (d); and

(B) a copy of such written notice to the Commission.

(j) REFERRAL TO THE PRESIDENT.—(1) If the Commission determines that there is a violation of this section, or that, or purposes of subsection (e), there is reason to believe that there is such a violation, it shall—

(A) publish such determination in the Federal Register, and

(B) transmit to the President a copy of such determination and the action taken under subsection (d), (e), (f), (g), or (i), with respect thereto, together with the record upon which such determination is based.

(2) If, before the close of the 60-day period beginning on the day after the day on which he receives a copy of such determination, the President, for policy reasons, disapproves such determination and notifies the Commission of his disapproval, then, effective on the date of such notice, such determination and the action taken under subsection (d), (e), (f), (g), or (i) with respect thereto shall have no force or effect.

(3) Subject to the provisions of paragraph (2), such determination shall, except for purposes of subsection (c), be effective upon publication thereof in the Federal Register, and the action taken under subsection (d), (e), (f), (g) or (i) with respect thereto shall be effective as provided in such subsections, except that articles directed to be excluded from entry under subsection (d) or subject to a cease and desist order under subsection (f) [shall be entitled to entry under bond determined by the Commission and prescribed by the Secretary until such determination becomes final.] *shall, until such determination becomes final, be entitled to entry under bond prescribed by the Secretary in an amount determined by the Commission to be sufficient to protect the complainant from any injury. If the determination becomes final, the bond may be forfeited to the complainant. The Commission shall prescribe the terms and conditions under which bonds may be forfeited under this paragraph.*

(4) If the President does not disapprove such determination within such 60-day period, or if he notifies the Commission before the close of such period that he approves such determination, then, for purposes of paragraph (3) and subsection (c) such determination shall become final on the day after the close of such period or the day on which the President notifies the Commission of his approval, as the case may be.

(k) PERIOD OF EFFECTIVENESS.—(1) Except as provided in subsections (f) and (j), any exclusion from entry or order under this section shall continue in effect until the Commission finds, and in the case of exclusion from entry notifies the Secretary of the Treasury, that the conditions which led to such exclusion from entry or order no longer exist.

(2) If any person who has previously been found by the Commission to be in violation of this section petitions the Commission for a determination that the petitioner is no longer in violation of this section or for a modification or rescission of an exclusion from entry or order under subsection (d), (e), (f), (g), or (i)—

(A) the burden of proof in any proceeding before the Commission regarding such petition shall be on the petitioner; and

(B) relief may be granted by the Commission with respect to such petition—

(i) on the basis of new evidence or evidence that could not have been presented at the prior proceeding, or

(ii) on grounds which would permit relief from a judgment or order under the Federal Rules of Civil Procedure.

(l) IMPORTATIONS BY OR FOR THE UNITED STATES.—Any exclusion from entry or order under subsection (d), (e), (f), (g), or (i), in cases based on a preceding involving a patent, copyright, or mask work under subsection (a)(1), shall not apply to any articles imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government. Whenever any article would have been excluded from entry or would not have been entered pursuant to the provisions of such subsections but for the operation of this subsection, or owner of the patent, copyright, or mask work adversely affected shall be entitled to reasonable and entire compensation in an action before the United States [Claims Court] *Court of Federal Claims* pursuant to the procedures of section 1498 of title 28, United States Code.

(m) DEFINITION OF UNITED STATES.—For purposes of this section and sections 338 and 340, the term “United States” means the customs territory of the United States as defined in general note 2 of the Harmonized Tariff Schedule of the United States.

(n)(1) Information submitted to the Commission or exchanged among the parties in connection with proceedings under this section which is properly designated as confidential pursuant to Commission rules may not be disclosed (except under a protective order issued under regulations of the Commission which authorizes limited disclosure of such information) to any person (other than a person described in paragraph (2)) without the consent of the person submitting it.

(2) Notwithstanding the prohibition contained in paragraph (1), information referred to in that paragraph may be disclosed to—

[(A) an officer or employee of the Commission who is directly concerned with carrying out the investigation in connection with which the information is submitted,]

(A) *an officer or employee of the Commission who is directly concerned with—*

(i) *carrying out the investigation or related proceeding in connection with which the information is submitted,*

(ii) *the administration of a bond posted pursuant to subsection (e), (f), or (j),*

(iii) *the administration or enforcement of an exclusion order issued pursuant to subsection (d), (e), or (g), a cease and desist order issued pursuant to subsection (f), or a consent order issued pursuant to subsection (c),*

(iv) *proceedings for the modification or rescission of a temporary or permanent order issued under subsection (d), (e), (f), (g), or (i), or a consent order issued under this section, or*

(v) *maintaining the administrative record of the investigation or related proceeding,*

(B) an officer or employee of the United States Government who is directly involved in the review under subsection (j), or

(C) [an officer or employee of the United States Customs Service who is directly involved in administering an exclusion from entry under this section resulting from the investigation in connection with which the information is submitted.] *an officer or employee of the United States Customs Service who is directly involved in administering an exclusion from entry under subsection (d), (e), or (g) resulting from the investigation or related proceeding in connection with which the information is submitted.*

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TITLE IV—ADMINISTRATIVE PROVISIONS

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Part II—Report, Entry, and Unlading of Vessels and Vehicles

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SEC. 466. EQUIPMENT AND REPAIRS OF VESSELS

* * * * *

(h) 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, [or]

(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[.], and

(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.*

* * * * *

SEC. 504. LIMITATION ON LIQUIDATION.

(a) LIQUIDATION.—Unless an entry is extended under subsection (b) or suspended as required by statute or court order, an entry of merchandise not liquidated *except as provided in section 751(a)(3)*, within one year from:

* * * * *

(d) REMOVAL OF SUSPENSION.—[When a suspension] *Except as provided in section 751(a)(3), when a suspension required by stat-*

ute or court order is removed, the Customs Service shall liquidate the entry 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 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 at the time of entry by the importer of record.

* * * * *

SEC. 516A. JUDICIAL REVIEW IN COUNTERVAILING DUTY AND ANTI-DUMPING 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 702(c) or 732(c) of this Act, not to initiate an investigation,

(B) a determination by the Commission, under section 751(b) of this Act, not to review a determination based upon changed circumstances, [or]

(C) a negative determination by the Commission, under section 703(a) or 733(a) of this Act, as to whether there is reasonable indication or material injury, threat of material injury, or material retardation, or

(D) a final determination by the administering authority or the Commission under section 751(c)(3),

an interested part who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing concurrently a summons and complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

(2) REVIEW OF DETERMINATIONS ON RECORD.—

(A) IN GENERAL.—Within thirty days after—

(i) the date of publication in the Federal Register of—

(I) notice of any determination described in clause (ii), (iii), (iv), [or (v)] (v), or (viii) of subparagraph (B), [or]

(II) an antidumping or countervailing duty order based upon any determination described in clause (i) of subparagraph (B), or

(III) notice of the implementation of any determination described in clause (vii) of subparagraph (B), or

* * * * *

(B) REVIEWABLE DETERMINATIONS.—The determinations which may be contested under subparagraph (A) are as follows:

* * * * *

(iv) A determination by the administering authority, under section 704 or 734 of this Act, to suspend an antidumping duty or a countervailing duty investigation, including any final determination resulting from a continued investigation which changes the size of the dumping margin or net *countervailable* subsidy calculated, or the reasoning underlying such calculations, at the time the suspension agreement was concluded.

* * * * *

(vii) A determination by the administering authority or the Commission under section 129 of the Uruguay Round Agreements Act concerning a determination under title VII of the Tariff Act of 1930.

(viii) A determination by the Commission under section 753(a)(1).

* * * * *

(5) TIME LIMITS IN CASES INVOLVING MERCHANDISE FROM FREE TRADE AREA COUNTRIES.—Notwithstanding any other provision of this subsection, in the case of a determination to which the provisions of subsection (g) apply, an action under this subsection may not be commenced, and the time limits for commencing an action under this subsection shall not begin to run, until the day specified in whichever of the following subparagraphs applies:

* * * * *

(E) For a determination described in clause (vii) of paragraph (2)(B), the 31st day after the date on which notice of the implementation of the determination is published in the Federal Register.

(b) STANDARDS OF REVIEW.—

(1) REMEDY.—The court shall hold unlawful any determination, finding, or conclusion found—

(A) in an action brought [under paragraph (1) of subsection (a)] *under subparagraph (A), (B), or (C) of subsection (a)(1), to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, or*

[(B)] *(B)(i) in an action brought under paragraph (2) of subsection (a), to be unsupported by substantial evidence on the record, or otherwise not in accordance with law[.], and*

(ii) in an action brought under paragraph (1)(D) of subsection (a), to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

* * * * *

(g) REVIEW OF COUNTERVAILING DUTY AND ANTIDUMPING DUTY DETERMINATIONS INVOLVING FREE TRADE AREA COUNTRY MERCHANDISE.—

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(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) or (B)] (A), (B), or (E) of subsection (a)(5) that is applicable to such determination. Receipt of such request by the United States Secretary shall be deemed to be a request for binational panel review within the meaning of article 1904(4) of the NAFTA or 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.

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SEC 592. PENALTIES FOR FRAUD, GROSS NEGLIGENCE, AND NEGLIGENCE.

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SEC. 592A. SPECIAL PROVISIONS REGARDING CERTAIN VIOLATIONS.

(a) PUBLICATION OF NAMES OF CERTAIN VIOLATORS.—

(1) PUBLICATION.—*The Secretary of the Treasury is authorized to publish in the Federal Register a list of the name of any producer, manufacturer, supplier, seller, exporter, or other person located outside the customs territory of the United States—*

(A) *against whom the Customs Service has issued a penalty claim under section 592, and*

(B) *if a petition with respect to that claim has been filed under section 618, against whom a final decision has been issued under such section after exhaustion of administrative remedies,*

citing any of the violations of the customs laws referred to in paragraph (2). Such list shall be published not later than March 31 and September 30 of each year.

(2) VIOLATIONS.—*The violations of the customs laws referred to in paragraph (1) are the following:*

(A) *Using documentation, or providing documentation subsequently used by the importer of record, which indicates a false or fraudulent country of origin or source of textile or apparel products.*

(B) *Using counterfeit visas, licenses, permits, bills of lading, or similar documentation, or providing counterfeit visas, licenses, permits, bills of lading, or similar documentation that is subsequently used by the importer of record, with respect to the entry into the customs territory of the United States of textile or apparel products.*

(C) *Manufacturing, producing, supplying, or selling textile or apparel products which are falsely or fraudulently labelled as to country of origin or source.*

(D) *Engaging in practices which aid or abet the transshipment, through a country other than the country of origin, of textile or apparel products in a manner which conceals the true origin of the textile or apparel products or permits the evasion of quotas on, or voluntary restraint agreements with respect to, imports of textile or apparel products.*

(3) **REMOVAL FROM LIST.**—Any person whose name has been included in a list published under paragraph (1) may petition the Secretary to be removed from such list. If the Secretary finds that such person has not committed any violations described in paragraph (2) for a period of not less than 3 years after the date on which the person's name was so published, the Secretary shall remove such person from the list as of the next publication of the list under paragraph (2).

(4) **REASONABLE CARE REQUIRED FOR SUBSEQUENT IMPORTS.**—

(A) **RESPONSIBILITY OF IMPORTERS AND OTHERS.**—After the name of a person has been published under paragraph (1), the Secretary of the Treasury shall require any importer of record entering, introducing, or attempting to introduce into the commerce of the United States textile or apparel products that were either directly or indirectly produced, manufactured, supplied, sold, exported, or transported by such named person to show, to the satisfaction of the Secretary, that such importer has exercised reasonable care to ensure that the textile or apparel products are accompanied by documentation, packaging, and labelling that are accurate as to its origin. Such reasonable care shall not include reliance solely on a source of information which is the named person.

(B) **FAILURE TO EXERCISE REASONABLE CARE.**—If the Customs Service determines that merchandise is not from the country claimed on the documentation accompanying the merchandise, the failure to exercise reasonable care described in subparagraph (A) shall be considered when the Customs Service determines whether the importer of record is in violation of section 484(a).

(b) **LIST OF HIGH RISK COUNTRIES.**—

(1) **LIST.**—The President or his designee, upon the advice of the Secretaries of Commerce and Treasury, and the heads of other appropriate departments and agencies, is authorized to publish a list of countries in which illegal activities have occurred involving transshipped textile or apparel products or activities designed to evade quotas of the United States on textile or apparel products, if those countries fail to demonstrate a good faith effort to cooperate with United States authorities in ceasing such activities. Such list shall be published in the 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 484(a).*

(3) **DEFINITION.**—*For purposes of this subsection, the term “country” means a foreign country or territory, including any overseas dependent territory or possession of a foreign country.*

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Title VII—Countervailing and Antidumping Duties

Subtitle A—Imposition of Countervailing Duties

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Sec. 709. *Conditional payment of countervailing duty.*

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Subtitle C—Reviews; Other Actions Regarding Agreements

Chapter 1—REVIEW OF AMOUNT OF DUTY AND AGREEMENTS OTHER THAN QUANTITATIVE RESTRICTION AGREEMENTS

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Sec. 752. *Special rules for section 751(b) and 751(c) reviews.*

Sec. 753. *Special rules for injury investigations for certain section 303 countervailing duty orders and investigations.*

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Subtitle D—General Provisions

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Sec. 771B. *Calculation of countervailable subsidies on certain processed agricultural products.*

Sec. 772. **[United States price]** *Export price and constructed export price.*

Sec. 773. **[Foreign market value]** *Normal value.*

Sec. 773A. *Currency conversion.*

* * * * *

Sec. 775. **[Subsidy]** *Countervailable subsidy practices discovered during a proceeding.*

Sec. 776. **[Verification of Information]** *Determinations on the basis of the facts available.*

* * * * *

Sec. 777A. *Sampling and averaging; determination of weighted average dumping*

margin and countervailable subsidy rate.

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Sec. 782. Conduct of investigations and administrative reviews.

Sec. 783. Antidumping petitions by third countries.

Subtitle A—Imposition of Countervailing Duties

SEC. 701. COUNTERVAILING DUTIES IMPOSED.

[(a) GENERAL RULE.—If—

[(1) the administering authority determines that—

[(A) a country under the Agreement, or

[(B) a person who is a citizen or national of such a country, or a corporation, association, or other organization organized in such a country,

[is providing, directly or indirectly, a subsidy with respect to the manufacture, production, or exportation of a class or kind of merchandise imported, or sold (or likely to be sold) for importation, into the United States, 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 a countervailing duty, in addition to any other duty imposed, equal to the amount of the net subsidy. For purposes of this subsection and section 705(b)(1), a reference to the sale of merchandise includes the entering into of any leasing arrangement regarding the merchandise that is equivalent to the sale of the merchandise.

[(b) COUNTRY UNDER THE AGREEMENT.—For purposes of this subtitle, the term “country under the Agreement” means a country—

[(1) between the United States and which the Agreement on Subsidies and Countervailing Measures applies, as determined under section 2(b) of the Trade Agreements Act of 1979,

[(2) which has assumed obligations with respect to the United States which are substantially equivalent to obligations under the Agreement, as determined by the President, or

[(3) 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 June 19, 1979, and

[(ii) requires unconditional most-favored-nation treatment with respect to articles imported into the United States,

[(B) the General Agreement on Tariffs and Trade does not apply between the United States and that country, and

[(C) the agreement described in subparagraph (A) does not expressly permit—

[(i) actions required or permitted by the General Agreement on Tariffs and Trade, or required by the Congress, or

[(ii) nondiscriminatory prohibitions or restrictions on importation which are designed to prevent deceptive or unfair practices.

[(c) REVOCATION OF STATUS AS A COUNTRY UNDER THE AGREEMENT.—The United States Trade Representative may revoke the status of a foreign country as a country under the Agreement for purposes of this subtitle if such foreign country—

[(1) announces that such foreign country does not intend, or is not able, to honor the obligations it has assumed with respect to the United States or the Agreement for purposes of this subtitle, or

[(2) does not in fact honor such obligations.]

(a) *GENERAL RULE.—If—*

(1) the administering authority determines that the government of a country or any public entity within the territory of a country is providing, directly or indirectly, a countervailable subsidy with respect to the manufacture, production, or export of a class or kind of merchandise imported, or sold (or likely to be sold) for importation, into the United States, and

(2) in the case of merchandise imported from a Subsidies Agreement country, the Commission determines that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of that merchandise or by reason of sales (or the likelihood of sales) of that merchandise for importation, then there shall be imposed upon such merchandise a countervailing duty, in addition to any other duty imposed, equal to the amount of the net countervailable subsidy. For purposes of this subsection and section 705(b)(1), a reference to the sale of merchandise includes the entering into of any leasing arrangement regarding the merchandise that is equivalent to the sale of the merchandise.

(b) SUBSIDIES AGREEMENT COUNTRY.—For purposes of this title, the term “Subsidies Agreement country” means—

(1) a WTO member country,

(2) a country which the President has determined has assumed obligations with respect to the United States which are substantially equivalent to the obligations under the Subsidies Agreement, or

(3) a country with respect to which the President determines that—

(A) there is an agreement in effect between the United States and that country which—

(i) was in force on the date of the enactment of the Uruguay Round Agreements Act, and

(ii) requires unconditional most-favored-nation treatment with respect to articles imported into the United States, and

(B) the agreement described in subparagraph (A) does not expressly permit—

(i) actions required or permitted by the GATT 1947 or GATT 1994, as defined in section 2(1) of the Uru-

guay Round Agreements Act, or required by the Congress, or

(ii) nondiscriminatory prohibitions or restrictions on importation which are designed to prevent deceptive or unfair practices.

(c) **COUNTERVAILING DUTY INVESTIGATIONS INVOLVING IMPORTS NOT ENTITLED TO A MATERIAL INJURY DETERMINATION.**—In the case of any article or merchandise imported from a country which is not a Subsidies Agreement country—

(1) no determination by the Commission under section 703(a), 704, or 705(b) shall be required,

(2) an investigation may not be suspended under section 704(c) or 704(l),

(3) no determination as to the presence of critical circumstances shall be made under section 703(e) or 705(a)(2),

(4) section 706(c) shall not apply,

(5) any reference to a determination described in paragraph (1) or (3), or to the suspension of an investigation under section 704(c) or 704(l), shall be disregarded, and

(6) section 751(c) shall not apply.

(d) **TREATMENT OF INTERNATIONAL CONSORTIA.**—For purposes of this subtitle, if the members (or other participating entities) of an international consortium that is engaged in the production of [a class or kind of merchandise subject to a countervailing duty investigation] *subject merchandise* receive *countervailable* subsidies from their respective home countries to assist, permit, or otherwise enable their participation in that consortium through production or manufacturing operations in their respective home countries, then the administering authority shall cumulate all such *countervailable* subsidies, as well as *countervailable* subsidies provided directly to the international consortium, in determining any countervailing duty upon such merchandise.

(e) **UPSTREAM SUBSIDY.**—Whenever the administering authority has reasonable grounds to believe or suspect that an upstream subsidy, as defined in section 771A(a)(1), is being paid or bestowed, the administering authority shall investigate whether an upstream subsidy has in fact been paid or bestowed, and if so, shall include the amount of the upstream subsidy as provided in section 771A(a)(3).

[(f) **CROSS REFERENCE.**—

[For provisions of law applicable in the case of merchandise which is the product of a country other than a country under the Agreement, see section 303 of this Act.]

SEC. 702. PROCEDURES FOR INITIATING A COUNTERVAILING DUTY INVESTIGATION.

(a) **INITIATION BY ADMINISTERING AUTHORITY.**—A countervailing duty investigation shall be [commenced] *initiated* whenever the administering authority determines, from information available to it, that a formal investigation is warranted into the question of whether the elements necessary for the imposition of a duty under section 701(a) exist.

(b) **INITIATION BY PETITION.**—

(1) **PETITION REQUIREMENTS.**—A countervailing duty proceeding shall be [commenced] *initiated* whenever an inter-

ested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) files a petition with the administering authority, on behalf of an industry, which alleges the elements necessary for the imposition of the duty imposed by section 701(a), and which is accompanied by information reasonably available to the petitioner supporting those allegations. The petition may be amended at such time, and upon such conditions, as the administering authority and the Commission may permit.

(2) **SIMULTANEOUS FILING WITH COMMISSION.**—The petitioner shall file a copy of the petition with the Commission on the same day as it is filed with the administering authority.

(3) **PETITION BASED UPON A DEROGATION OF AN INTERNATIONAL UNDERTAKING ON OFFICIAL EXPORT CREDITS.**—If the sole basis of a petition filed under [subsection 702(b)(1)] *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 [twenty days] *5 days after the date on which the administering authority initiates an investigation under subsection (c)*, determine the existence and estimated value of the derogation, if any, and shall publish such determination in the Federal Register.

(4) **ACTION WITH RESPECT TO PETITIONS.**—

(A) **NOTIFICATION OF GOVERNMENTS.**—*Upon receipt of a petition filed under paragraph (1), the administering authority shall—*

(i) notify the government of any exporting country named in the petition by delivering a public version of the petition to an appropriate representative of such country; and

(ii) provide the government of any exporting country named in the petition that is a Subsidies Agreement country an opportunity for consultations with respect to the petition.

(B) **ACCEPTANCE OF COMMUNICATIONS.**—*The administering authority shall not accept any unsolicited oral or written communication from any person other than an interested party described in section 771(9) (C), (D), (E), (F), or (G) before the administering authority makes its decision whether to initiate an investigation, except as provided in subparagraph (A)(ii) and subsection (c)(4)(D), and except for inquiries regarding the status of the administering authority's consideration of the petition.*

(C) **NONDISCLOSURE OF CERTAIN INFORMATION.**—*The administering authority and the Commission shall not disclose information with regard to any draft petition submitted for review and comment before it is filed under paragraph (1).*

[(c) **PETITION DETERMINATION.**—Within 20 days after the date on which a petition is filed under subsection (b), the administering authority shall—

[(1) determine whether the petition alleges the elements necessary for the imposition of a duty under section 701(a) and

contains information reasonably available to the petitioner supporting the allegations,

[(2) if the determination is affirmative, commence an investigation to determine whether a subsidy is being provided with respect to the class or kind of merchandise described in the petition, 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.]

(c) *PETITION DETERMINATION.*—

(1) *IN GENERAL.*—

(A) *TIME FOR INITIAL DETERMINATION.*—*Except as provided in subparagraph (B), within 20 days after the date on which a petition is filed under subsection (b), the administering authority shall—*

(i) *after examining, on the basis of sources readily available to the administering authority, the accuracy and adequacy of the evidence provided in the petition, determine whether the petition alleges the elements necessary for the imposition of a duty under section 701(a) and contains information reasonably available to the petitioner supporting the allegations, and*

(ii) *determine if the petition has been filed by or on behalf of the industry.*

(B) *EXTENSION OF TIME.*—*In any case in which the administering authority is required to poll or otherwise determine support for the petition by the industry under paragraph (4)(D), the administering authority may, in exceptional circumstances, apply subparagraph (A) by substituting “a maximum of 40 days” for “20 days”.*

(C) *TIME LIMITS WHERE PETITION INVOLVES SAME MERCHANDISE AS AN ORDER THAT HAS BEEN REVOKED.*—*If a petition is filed under this section with respect to merchandise that was the subject merchandise of—*

(i) *a countervailing duty order that was revoked under section 751(d) in the 24 months preceding the date the petition is filed, or*

(ii) *a suspended investigation that was terminated under section 751(d) in the 24 months preceding the date the petition is filed,*

the administering authority and the Commission shall, to the maximum extent practicable, expedite any investigation initiated under this section with respect to the petition.

(2) *AFFIRMATIVE DETERMINATIONS.*—*If the determinations under clauses (i) and (ii) of paragraph (1)(A) are affirmative, the administering authority shall initiate an investigation to determine whether a countervailable subsidy is being provided with respect to the subject merchandise.*

(3) *NEGATIVE DETERMINATIONS.*—*If the determination under clause (i) or (ii) of paragraph (1)(A) is negative, the ad-*

ministering authority shall dismiss the petition, terminate the proceeding, and notify the petitioner in writing of the reasons for the determination.

(4) DETERMINATION OF INDUSTRY SUPPORT.—

(A) GENERAL RULE.—For purposes of this subsection, the administering authority shall determine that the petition has been filed by or on behalf of the industry, if—

(i) the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and

(ii) the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition.

(B) CERTAIN POSITIONS DISREGARDED.—

(i) PRODUCERS RELATED TO FOREIGN PRODUCERS.—In determining industry support under subparagraph (A), the administering authority shall disregard the position of domestic producers who oppose the petition, if such producers are related to foreign producers, as defined in section 771(4)(B)(ii), unless such domestic producers demonstrate that their interests as domestic producers would be adversely affected by the imposition of a countervailing duty order.

(ii) PRODUCERS WHO ARE IMPORTERS.—The administering authority may disregard the position of domestic producers of a domestic like product who are importers of the subject merchandise.

(C) SPECIAL RULE FOR REGIONAL INDUSTRIES.—If the petition alleges that the industry is a regional industry, the administering authority shall determine whether the petition has been filed by or on behalf of the industry by applying subparagraph (A) on the basis of production in the region.

(D) POLLING THE INDUSTRY.—If the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the administering authority shall—

(i) poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or

(ii) if there is a large number of producers in the industry, the administering authority may determine industry support for the petition by using any statistically valid sampling method to poll the industry.

(E) COMMENTS BY INTERESTED PARTIES.—Before the administering authority makes a determination with respect to initiating an investigation, any person who would qualify as an interested party under section 771(9) if an investigation were initiated, may submit comments or information on the issue of industry support. After the administering authority makes a determination with respect to

initiating an investigation, the determination regarding industry support shall not be reconsidered.

(5) **DEFINITION OF DOMESTIC PRODUCERS OR WORKERS.**—*For purposes of this subsection, the term “domestic producers or workers” means those interested parties who are eligible to file a petition under subsection (b)(1)(A).*

(d) **NOTIFICATION TO COMMISSION OF DETERMINATION.**—The administering authority shall—

(1) notify the Commission immediately of any determination it makes under subsection (a) or (c), and

(2) if the determination is affirmative, make available to the Commission such information as it may have relating to the matter under investigation, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

(e) **INFORMATION REGARDING CRITICAL CIRCUMSTANCES.**—If, at any time after the initiation of an investigation under this subtitle, the administering authority finds a reasonable basis to suspect that the alleged *countervailable* subsidy is inconsistent with the *Subsidies* Agreement, the administering authority may request the Commissioner of Customs to compile information on an expedited basis regarding entries of the [class or kind of merchandise that is the subject of the investigation] *subject merchandise*. Upon receiving such request, the Commissioner of Customs shall collect information regarding the volume and value of entries of the [class or kind of merchandise that is the subject of the investigation] *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 705(a), the investigation is terminated, or the administering authority withdraws the request.

SEC. 703. PRELIMINARY DETERMINATIONS.

[(a) **DETERMINATION BY COMMISSION OF REASONABLE INDICATION OF INJURY.**—Except in the case of a petition dismissed by the administering authority under section 702(c)(3), the Commission, within 45 days after the date on which a petition is filed under section 702(b) or on which it receives notice from the administering authority of an investigation commenced under section 702(a), 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.]

(a) **DETERMINATION BY COMMISSION OF REASONABLE INDICATION OF INJURY.**—

(1) *GENERAL RULE.*—Except in the case of a petition dismissed by the administering authority under section 702(c)(3), the Commission, within the time specified in paragraph (2), shall determine, based on the information available to it at the time of the determination, whether there is a reasonable indication that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of the subject merchandise and that imports of the subject merchandise are not negligible. If the Commission finds that imports of the subject merchandise are negligible or otherwise makes a negative determination under this paragraph, the investigation shall be terminated.

(2) *TIME FOR COMMISSION DETERMINATION.*—The Commission shall make the determination described in paragraph (1)—

(A) in the case of a petition filed under section 702(b)—

(i) within 45 days after the date on which a petition is filed under such section, or

(ii) if the time has been extended pursuant to section 702(c)(1)(B), within 25 days after the date on which the Commission receives notice from the administering authority of initiation of the investigation, and

(B) in the case of an investigation initiated under section 702(a), within 45 days after the date on which the Commission receives notice from the administering authority that an investigation has been initiated under such section.

(b)(1) *PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.*—Within [85 days after the date on which a petition is filed under section 702(b)] 65 days after the date on which the administering authority initiates an investigation under section 702(c), or an investigation is [commenced] initiated under section 702(a), but not before an affirmative determination by the Commission under subsection (a) of this section, the administering authority shall make a determination, based upon the [best] 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 [merchandise which is the subject of the investigation] *subject merchandise*. [If the determination of the administering authority under this subsection is affirmative, the determination shall include an estimate of the net subsidy.]

(2) Notwithstanding subsection (b)(1), when the petition is one subject to subsection 702(b)(3), the administering authority shall, taking into account the nature of the *countervailable* subsidy concerned, make the determination required by subsection 703(b)(1) on an expedited basis and within [85 days after the date on which the petition is filed under section 702(b)] 65 days after the date on which the administering authority initiates an investigation under section 702(c) unless the provisions of section 703(c) apply.

* * * * *

(4) *DE MINIMIS COUNTERAVAILABLE SUBSIDY.*—

(A) *GENERAL RULE.*—In making a determination under this subsection, the administering authority shall disregard any de minimis countervailable subsidy. For purposes of the preceding sentence, a countervailable subsidy is de minimis if the administering authority determines that the aggregate of the net countervailable subsidies is less than 1 percent ad valorem or the equivalent specific rate for the subject merchandise.

(B) *EXCEPTION FOR DEVELOPING COUNTRIES.*—In the case of subject merchandise imported from a Subsidies Agreement country (other than a country to which subparagraph (C) applies) designated by the Trade Representative as a developing country in accordance with section 771(36), a countervailable subsidy is de minimis if the administering authority determines that the aggregate of the net countervailable subsidies does not exceed 2 percent ad valorem or the equivalent specific rate for the subject merchandise.

(C) *CERTAIN OTHER DEVELOPING COUNTRIES.*—In the case of subject merchandise imported from a Subsidies Agreement country that is—

(i) a least developed country, as determined by the Trade Representative in accordance with section 771(36), or

(ii) a developing country with respect to which the Trade Representative has notified the administering authority that the country has eliminated its export subsidies on an expedited basis within the meaning of Article 27.11 of the Subsidies Agreement,

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), or

(B) the administering authority concludes that the parties concerned are cooperating and determines that—

(i) the case is extraordinarily complicated by reason of—

(I) the number and complexity of the alleged *countervailable* subsidy practices;

(II) the novelty of the issues presented;

(III) the need to determine the extent to which particular *countervailable* subsidies are used by individual manufacturers, producers, and exporters; or

(IV) the number of firms whose activities must be investigated; and

(ii) additional time is necessary to make the preliminary determination,

then the administering authority may postpone making the preliminary determination under subsection (b) until not later than the [150th day after the date on which a petition is filed under section 702(b)] , *130th day after the date on which the administering authority initiates an investigation under section 702(c) or an investigation is [commenced] initiated under section 702(a).*

* * * * *

(d) EFFECT OF DETERMINATION BY THE ADMINISTERING AUTHORITY.—If the preliminary determination of the administering authority under subsection (b) is affirmative, the administering authority—

(1)(A) shall—

(i) *determine an estimated individual countervailable subsidy rate for each exporter and producer individually investigated, and, in accordance with section 705(c)(5), an estimated all-others rate for all exporters and producers not individually investigated and for new exporters and producers within the meaning of section 751(a)(2)(B), or*

(ii) *if section 777A(e)(2)(B) applies, determine a single estimated country-wide subsidy rate, applicable to all exporters and producers, and*

(B) *shall order the posting of a cash deposit, bond, or other security, as the administering authority deems appropriate, for each entry of the subject merchandise in an amount based on the estimated individual countervailable subsidy rate, the estimated all-others rate, or the estimated country-wide subsidy rate, whichever is applicable,*

[(1)] (2) *shall order the suspension of liquidation of all entries of merchandise subject to the determination which are entered, or withdrawn from [warehouse, for consumption on or after the date of publication of the notice of the determination in the Federal Register,] 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*

[(2) 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 amount of the net subsidy, and]

(3) shall make available to the Commission all information upon which its determination was based and which the Commission considers relevant to its injury determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

The instructions of the administering authority under paragraphs (1) and (2) may not remain in effect for more than 4 months.

(e) CRITICAL CIRCUMSTANCES DETERMINATIONS.—

(1) IN GENERAL.—If a petitioner alleges critical circumstances in its original petition, or by amendment at any time more than 20 days before the date of a final determination by the administering authority, then the administering authority shall promptly (at any time after the initiation of the investigation under this subtitle) determine, on the basis of the [best] information available to it at that time, whether there is a reasonable basis to believe or suspect that—

[(A) the alleged subsidy is inconsistent with the Agreement, and

[(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.]

(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)(1)] (d)(2) shall apply, or, if notice of such suspension of liquidation is already published, be amended to apply, to unliquidated entries of merchandise entered, or withdrawn from [warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered.] *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 DETERMINATIONS.—Whenever the Commission or the administering authority 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.]

(f) *NOTICE OF DETERMINATION.*—Whenever the Commission or the administering authority makes a determination under this section, the Commission or the administering authority, as the case may be, shall notify the petitioner, and other parties to the investigation, and the Commission or the administering authority (whichever is appropriate) of its determination. The administering authority shall include with such notification the facts and conclusions on which its determination is based. Not later than 5 days after the date on which the determination is required to be made under subsection (a)(2), the Commission shall transmit to the administering authority the facts and conclusions on which its determination is based.

(g) *TIME PERIOD WHERE UPSTREAM SUBSIDIZATION INVOLVED.*—

(1) *IN GENERAL.*—Whenever the administering authority concludes prior to a preliminary determination under section 703(b), that there is a reasonable basis to believe or suspect that an upstream subsidy is being bestowed, the time period within which a preliminary determination must be made shall be extended to 250 days after the filing of a petition under section 702(b) or [commencement] *initiation* of an investigation under section 702(a) (310 days in cases declared extraordinarily complicated under section 703(c)), if the administering authority concludes that such additional time is necessary to make the required determination concerning upstream subsidization.

* * * * *

SEC. 704. TERMINATION OR SUSPENSION OF INVESTIGATION.

(a) *TERMINATION OF INVESTIGATION UPON WITHDRAWAL OF PETITION.*—

(1) *IN GENERAL.*—[Except]

(A) *WITHDRAWAL OF PETITION.*—Except as provided in paragraphs (2) and (3), an investigation under this subtitle may be terminated by either the administering authority or the Commission, after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner or by the administering authority if the investigation was initiated under section 702(a).

(B) *REFILING OF PETITION.*—If, within 3 months after the withdrawal of a petition under subparagraph (A), a new petition is filed seeking 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 [merchandise that is subject to the investigation] *subject merchandise* unless the administering authority is satisfied that termination on the basis of that agreement is in the public interest.

* * * * *

(b) AGREEMENTS TO ELIMINATE OR OFFSET COMPLETELY A *COUNTERVAILABLE* SUBSIDY OR TO CEASE EXPORTS OF [SUBSIDIZED] *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 [merchandise which is the subject of the investigation] *subject merchandise* agree—

(1) to eliminate the *countervailable* subsidy completely or to offset completely the amount of the net *countervailable* subsidy, with respect to that merchandise exported directly or indirectly to the United States, within 6 months after the date on which the investigation is suspended, or

(2) to cease exports of that merchandise to the United States within 6 months after the date on which the investigation is suspended.

(c) AGREEMENTS ELIMINATING INJURIOUS EFFECT.—

(1) GENERAL RULE.—If the administering authority determines that extraordinary circumstances are present in a case, it may suspend an investigation upon the acceptance of an agreement from a government described in subsection (b), or from exporters described in subsection (b), if the agreement will eliminate completely the injurious effect of exports to the United States of the [merchandise which is the subject of the investigation] *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 [merchandise which is the subject of the investigation] *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 [merchandise which is the subject of an investigation] *subject merchandise* into the United States, but it may not accept such an agreement with exporters.

(4) DEFINITION OF EXTRAORDINARY CIRCUMSTANCES.—

(A) EXTRAORDINARY CIRCUMSTANCES.—For purposes of this subsection, the term “extraordinary circumstances” means circumstances in which—

(i) suspension of an investigation will be more beneficial to the domestic industry than continuation of the investigation, and

(ii) the investigation is complex.

(B) COMPLEX.—For purposes of this paragraph, the term “complex” means—

(i) there are a large number of alleged *countervailable* subsidy practices and the practices are complicated,

(ii) the issues raised are novel, or

(iii) the number of exporters involved is large.

(d) ADDITIONAL RULES AND CONDITIONS.—

(1) PUBLIC INTEREST; MONITORING.—The administering authority shall not accept an agreement under subsection (b) or (c) unless—

(A) it is satisfied that suspension of the investigation is in the public interest, [and]

(B) effective monitoring of the agreement by the United States is practicable[.], and

(C) *the agreement is not objectionable for other reasons, including reasons of general policy.*

Where practicable, the administering authority shall provide to the exporters who would have been subject to the agreement the reasons for not accepting the agreement and, to the extent possible, an opportunity to submit comments thereon. In applying subparagraph (A) with respect to any quantitative restriction agreement under subsection (c), the administering authority shall take into account, in addition to such other factors as are considered necessary or appropriate, the factors set forth in subsection (a)(2)(B) (i), (ii), and (iii) as they apply to the proposed suspension and agreement, after consulting with the appropriate consuming industries, producers, and workers referred to in subsection (a)(2)(C) (i) and (ii).

(2) EXPORTS OF MERCHANDISE TO UNITED STATES NOT TO INCREASE DURING INTERIM PERIOD.—The administering authority may not accept any agreement under subsection (b) unless that agreement provides a means of ensuring that the quantity of the merchandise covered by that agreement exported to the United States during the period provided for elimination or offset of the *countervailable* subsidy or cessation of exports does not exceed the quantity of such merchandise exported to the United States during the most recent representative period determined by the administering authority.

(3) REGULATIONS GOVERNING ENTRY OR WITHDRAWALS.—In order to carry out an agreement concluded under subsection (b) or (c), the administering authority is authorized to prescribe regulations governing the entry, or withdrawal from warehouse, for consumption of [merchandise covered by such agreement] *subject merchandise.*

* * * * *

(f) EFFECTS OF SUSPENSION OF INVESTIGATION.—

(1) IN GENERAL.—If the administering authority determines to suspend an investigation upon acceptance of an agreement described in subsection (b) or (c), then—

(A) it shall suspend the investigation, publish notice of suspension of the investigation, and issue an affirmative preliminary determination under section 703(b) with respect to the [merchandise which is the subject of the investigation] *subject merchandise*, unless it has previously issued such a determination in the same investigation,

(B) the Commission shall suspend any investigation it is conducting with respect to that merchandise, and

(C) the suspension of investigation shall take effect on the day on which such notice is published.

(2) LIQUIDATION OF ENTRIES.—

(A) CESSATION OF EXPORTS; COMPLETE ELIMINATION OF NET *COUNTERAVAILABLE* SUBSIDY.—If the agreement accepted by the administering authority is an agreement described in subsection (b), then—

(i) notwithstanding the affirmative preliminary determination required under paragraph (1)(A), the liquidation of entries of [merchandise which is the subject of the investigation] *subject merchandise* shall not be suspended under section 703[(d)(1)] (d)(2),

(ii) if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case with respect to such merchandise, that suspension of liquidation shall terminate, and

(iii) the administering authority shall refund any cash deposit and release any bond or other security deposited under section 703[(d)(1)] (d)(2).

(B) OTHER AGREEMENTS.—If the agreement accepted by the administering authority is an agreement described in subsection (c), then the liquidation of entries of the [merchandise which is the subject of the investigation] *subject merchandise* shall be suspended under section 703[(d)(1)] (d)(2), or, if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case, that suspension of liquidation shall continue in effect, subject to subsection (h)(3), but the security required under section 703[(d)(2)] (d)(1)(B) may be adjusted to reflect the effect of the agreement.

* * * * *

(g) INVESTIGATION TO BE CONTINUED UPON REQUEST.—If the administering authority, within 20 days after the date of publication of the notice of suspension of an investigation, receives a request for the continuation of the investigation from—

(1) the government of the country in which the *countervailable* subsidy practice is alleged to occur, or

(2) an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) which is a party to the investigation,

then the administering authority and the Commission shall continue the investigation.

(h) REVIEW OF SUSPENSION.—

(1) **IN GENERAL.**—Within 20 days after the suspension of an investigation under subsection (c), an interested party which is a party to the investigation and which is described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) may, by petition filed with the Commission and with notice to the administering authority, ask for a review of the suspension.

(2) **COMMISSION INVESTIGATION.**—Upon receipt of a review petition under paragraph (1), the Commission shall, within 75 days after the date on which the petition is filed with it, determine whether the injurious effect of imports of the [merchandise which is the subject of the investigation] *subject merchandise* is eliminated completely by the agreement. If the Commission's determination under this subsection is negative, the investigation shall be resumed on the date of publication of notice of such determination as if the affirmative preliminary determination under section 703(b) had been made on that date.

(3) **SUSPENSION OF LIQUIDATION TO CONTINUE DURING REVIEW PERIOD.**—The suspension of liquidation of entries of the [merchandise which is the subject of the investigation] *subject merchandise* shall terminate at the close of the 20-day period beginning on the day after the date on which notice of suspension of the investigation is published in the Federal Register, or, if a review petition is filed under paragraph (1) with respect to the suspension of the investigation, in the case of an affirmative determination by the Commission under paragraph (2), the date on which notice of the affirmative determination by the Commission is published. If the determination of the Commission under paragraph (2) is affirmative, then the administering authority shall—

(A) terminate the suspension of liquidation under section 703[(d)(1)] (d)(2), and

(B) release any bond or other security, and refund any cash deposit, required under section 703[(d)(2)] (d)(1)(B).

(i) **VIOLATION OF AGREEMENT.**—

(1) **IN GENERAL.**—If the administering authority determines that an agreement accepted under subsection (b) or (c) is being, or has been, violated, or no longer meets the requirements of such subsection (other than the requirement, under subsection (c)(1), of elimination of injury) and subsection (d), then, on the date of publication of its determination, it shall—

(A) suspend liquidation under section 703[(d)(1)] (d)(2) of unliquidated entries of the merchandise made on or after the later of—

* * * * *

(j) **DETERMINATION NOT TO TAKE AGREEMENT INTO ACCOUNT.**—In making a final determination under section 705, or in conducting a review under section 751, in a case in which the administering authority has terminated a suspension of investigation under subsection (i)(1), or continued an investigation under subsection (g), the Commission and the administering authority shall consider all of the [merchandise which is the subject of the investigation] *subject merchandise*, without regard to the effect of any agreement under subsection (b) or (c).

(k) **TERMINATION OF INVESTIGATIONS INITIATED BY ADMINISTERING AUTHORITY.**—The administering authority may terminate any investigation initiated by the administering authority under section 702(a) after providing notice of such termination to all parties to the investigation.

(l) **SPECIAL RULE FOR REGIONAL INDUSTRY INVESTIGATIONS.**—

(1) **SUSPENSION AGREEMENTS.**—*If the Commission makes a regional industry determination under section 771(4)(C), the administering authority shall offer exporters of the subject merchandise who account for substantially all exports of that merchandise for sale in the region concerned the opportunity to enter into an agreement described in subsection (b) or (c).*

(2) **REQUIREMENTS FOR SUSPENSION AGREEMENTS.**—*Any agreement described in paragraph (1) shall be subject to all the requirements imposed under this section for other agreements under subsection (b) or (c), except that if the Commission makes a regional industry determination under paragraph (1) in the final affirmative determination under section 705(b) but not in the preliminary affirmative determination under section 703(a), any agreement described in paragraph (1) may be accepted within 60 days after the countervailing duty order is published under section 706.*

(3) **EFFECT OF SUSPENSION AGREEMENT ON COUNTERVAILING DUTY ORDER.**—*If an agreement described in paragraph (1) is accepted after the countervailing duty order is published, the administering authority shall rescind the order, refund any cash deposit and release any bond or other security deposited under section 733(d)(1)(B), and instruct the Customs Service that entries of the subject merchandise that were made during the period that the order was in effect shall be liquidated without regard to antidumping duties.*

SEC. 705. FINAL DETERMINATIONS.

(a) **FINAL DETERMINATIONS BY ADMINISTERING AUTHORITY.**—

(1) **IN GENERAL.**—Within 75 days after the date of the preliminary determination under section 703(b), the administering authority shall make a final determination of whether or not a *countervailable* subsidy is being provided with respect to the [merchandise] *subject merchandise*; except that when an investigation under this subtitle is initiated simultaneously with an investigation under subtitle B, which involves imports of the same class or kind of merchandise from the same or other countries, the administering authority, if requested by the petitioner, shall extend the date of the final determination under this paragraph to the date of the final determination of the administering authority in such investigation initiated under subtitle B.

(2) **CRITICAL CIRCUMSTANCES DETERMINATIONS.**—If the final determination of the administering authority is affirmative, then that determination, in any investigation in which the presence of critical circumstances has been alleged under section 703(e), shall also contain a finding as to whether—

(A) the *countervailable* subsidy is inconsistent with the *Subsidies Agreement*, and

(B) there have been massive imports of the [class or kind of merchandise involved] *subject merchandise* over a relatively short period.

Such findings may be affirmative even though the preliminary determination under section 703(e)(1) was negative.

(3) *DE MINIMIS COUNTERVAILABLE SUBSIDY.*—*In making a determination under this subsection, the administering authority shall disregard any countervailable subsidy that is de minimis as defined in section 703(b)(4).*

(b) FINAL DETERMINATION BY COMMISSION.—

(1) IN GENERAL.—The Commission shall make a final determination of whether—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded, by reason of imports, or sales (or the likelihood of sales) for importation, of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a). *If the Commission determines that imports of the subject merchandise are negligible, the investigation shall be terminated.*

* * * * *

(4) CERTAIN ADDITIONAL FINDINGS.—

[(A) RETROACTIVE APPLICATION.—

[(i) IN GENERAL.—If the finding of the administering authority under subsection (a)(2) is affirmative, then the final determination of the Commission shall include a finding as to whether retroactive imposition of a countervailing duty on the merchandise appears necessary to prevent recurrence of material injury that was caused by massive imports of the merchandise over a relatively short period of time and will be difficult to repair.

[(ii) PREVENTION OF RECURRENCE.—For purposes of making its finding under clause (i), the Commission shall make an evaluation as to whether the effectiveness of the countervailing duty order would be materially impaired if such imposition did not occur.

[(iii) EVALUATION OF EFFECTIVENESS.—In making the evaluation under clause (ii), the Commission shall consider, among other factors it considers relevant—

[(I) the condition of the domestic industry,

[(II) whether massive imports of the merchandise over a relatively short period of time can be accounted for by efforts to avoid the potential imposition of countervailing duties,

[(III) whether foreign economic conditions led to the massive imports of the merchandise, and

[(IV) whether the impact of massive imports of the merchandise is likely to continue for some period after issuance of the countervailing duty order under this subtitle.]

(A) COMMISSION STANDARD FOR RETROACTIVE APPLICATION.—

(i) *IN GENERAL.*—If the finding of the administering authority under subsection (a)(2) is affirmative, then the final determination of the Commission shall include a finding as to whether the imports subject to the affirmative determination under subsection (a)(2) are likely to undermine seriously the remedial effect of the countervailing duty order to be issued under section 706.

(ii) *FACTORS TO CONSIDER.*—In making the evaluation under clause (i), the Commission shall consider, among other factors it considers relevant—

- (I) the timing and the volume of the imports,
- (II) any rapid increase in inventories of the imports, and
- (III) any other circumstances indicating that the remedial effect of the countervailing duty order will be seriously undermined.

* * * * *

(c) EFFECT OF FINAL DETERMINATIONS.—

(1) *EFFECT OF AFFIRMATIVE DETERMINATION BY THE ADMINISTERING AUTHORITY.*—If the determination of the administering authority under subsection (a) is affirmative, then—

(A) the administering authority shall make available to the Commission all information upon which such determination was based and which the Commission considers relevant to its determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority, [and]

(B)(i) the administering authority shall—

(I) determine an estimated individual countervailable subsidy rate for each exporter and producer individually investigated, and, in accordance with paragraph (5), an estimated all-others rate for all exporters and producers not individually investigated and for new exporters and producers within the meaning of section 751(a)(2)(B), or

(II) if 777A(e)(2)(B) applies, determine a single estimated country-wide subsidy rate, applicable to all exporters and producers,

(ii) shall order the posting of a cash deposit, bond, or other security, as the administering authority deems appropriate, for each entry of the subject merchandise in an amount based on the estimated individual countervailable subsidy rate, the estimated all-others rate, or the estimated country-wide subsidy rate, whichever is applicable, and

[(B)] (C) in cases where the preliminary determination by the administering authority under section 703(b) was negative, the administering authority shall order [under paragraphs (1) and (2) of section 703(d) the suspen-

sion of liquidation and the posting of a cash deposit, bond, or other security] *the suspension of liquidation under paragraph (2) of section 703(d).*

(2) **ISSUANCE OF ORDER; EFFECT OF NEGATIVE DETERMINATION.**—If the determinations of the administering authority and the Commission under subsections (a)(1) and (b)(1) are affirmative, then the administering authority shall issue a countervailing duty order under section 706(a). If either of such determinations is negative, the investigation shall be terminated upon the publication of notice of that negative determination and the administering authority shall—

(A) terminate the suspension of liquidation under section 703[(d)(1)] (d)(2), and

(B) release any bond or other security and refund any cash deposit required under section 703[(d)(2)] (d)(1)(B).

(3) **EFFECT OF NEGATIVE DETERMINATIONS UNDER SUBSECTIONS (a)(2) AND (b)(4)(A).**—If the determination of the administering authority or the Commission under subsection (a)(2) and (b)(4)(A), respectively, is negative, then the administering authority shall—

(A) terminate any retroactive suspension of liquidation required under paragraph (4) or section 703(e)(2), and

(B) release any bond or other security, and refund any cash deposit required, under section 703[(d)(2)] (d)(1)(B) with respect to entries of the merchandise the liquidation of which was suspended retroactively under section 703(e)(2).

* * * * *

(5) **METHOD FOR DETERMINING THE ALL-OTHERS RATE AND THE COUNTRY-WIDE SUBSIDY RATE.**—

(A) **ALL-OTHERS RATE.**—

(i) **GENERAL RULE.**—*For purposes of this subsection and section 703(d), the all-others rate shall be an amount equal to the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and de minimis countervailable subsidy rates, and any rates determined entirely under section 776.*

(ii) **EXCEPTION.**—*If the countervailable subsidy rates established for all exporters and producers individually investigated are zero or de minimis rates, or are determined entirely under section 776, the administering authority may use any reasonable method to establish an all-others rate for exporters and producers not individually investigated, including averaging the weighted average countervailable subsidy rates determined for the exporters and producers individually investigated.*

(B) **COUNTRY-WIDE SUBSIDY RATE.**—*The administering authority may calculate a single country-wide subsidy rate, applicable to all exporters and producers, if the administering authority limits its examination pursuant to section 777A(e)(2)(B). The estimated country-wide rate determined under section 703(d)(1)(A)(ii) or paragraph (1)(B)(i)(II) of*

this subsection shall be based on industry-wide data regarding the use of subsidies determined to be countervailable.

* * * * *

SEC. 706. ASSESSMENT OF DUTY.

(a) **PUBLICATION OF COUNTERVAILING DUTY ORDER.**—Within 7 days after being notified by the Commission of an affirmative determination under section 705(b), the administering authority shall publish a countervailing duty order which—

(1) directs customs officers to assess a countervailing duty equal to the amount of the net *countervailable* subsidy determined or estimated to exist, within 6 months after the date on which the administering authority receives satisfactory information upon which the assessment may be based, but in no event later than 12 months after the end of the annual accounting period of the manufacturer or exporter within which the merchandise is entered, or withdrawn from warehouse, for consumption,

[(2) 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,]

[(3)] (2) includes a description of the [class or kind of merchandise to which it applies] *subject merchandise*, in such detail as the administering authority deems necessary, and

[(4)] (3) requires the deposit of estimated countervailing duties pending liquidation of entries of merchandise at the same time as estimated normal customs duties on that merchandise are deposited.

(b) **IMPOSITION OF DUTIES.**—

(1) **GENERAL RULE.**—If the Commission, in its final determination under section 705(b), finds material injury or threat of material injury which, but for the suspension of liquidation under section 703[(d)(1)] (D)(2), would have led to a finding of material injury, then entries of the merchandise subject to the countervailing duty order, the liquidation of which has been suspended under section 703[(d)(1)] (d)(2), shall be subject to the imposition of countervailing duties under section 701(a).

* * * * *

(c) **SPECIAL RULE FOR REGIONAL INDUSTRIES.**—

(1) **IN GENERAL.**—*In an investigation under this subtitle in which the Commission makes a regional industry determination under section 771(4)(C), the administering authority shall, to the maximum extent possible, direct that duties be assessed only on the subject merchandise of the specific exporters or producers that exported the subject merchandise for sale in the region during the period of investigation.*

(2) **EXCEPTION FOR NEW EXPORTERS AND PRODUCERS.**—*After publication of the countervailing duty order, if the admin-*

istering authority finds that a new exporter or producer is exporting the subject merchandise for sale in the region concerned, the administering authority shall direct that duties be assessed on the subject merchandise of the new exporter or producer consistent with the provisions of section 751(a)(2)(B).

SEC. 707. TREATMENT OF DIFFERENCE BETWEEN DEPOSIT OF ESTIMATED COUNTERVAILING DUTY AND FINAL ASSESSED DUTY UNDER COUNTERVAILING DUTY ORDER.

(a) DEPOSIT OF ESTIMATED COUNTERVAILING DUTY UNDER SECTION 703[(d)(2)] (d)(1)(B).—If the amount of a cash deposit, or the amount of any bond or other security, required as security for an estimated countervailing duty under section 703[(d)(2)] (d)(1)(B) is different from the amount of the countervailing duty determined under a countervailing duty order issued under section 706, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption before notice of the affirmative determination of the Commission under section 705(b) is published shall be—

* * * * *

SEC. 708. EFFECT OF DEROGATION OF EXPORT-IMPORT BANK FINANCING.

Nothing in this title shall be interpreted as superseding the provisions of section 1912 of the Export-Import Bank Act Amendments of 1978, except that in the event of an assessment of duty based on a derogation under section 706 or action under section 703[(d)(2)] (d)(1)(B), the Secretary of the Treasury shall not authorize the Bank to provide guarantees, insurance and credits to competing United States sellers pursuant to section 1912 of such Act.

SEC. 709. CONDITIONAL PAYMENT OF COUNTERVAILING DUTY.

(a) IN GENERAL.—For all entries, or withdrawals from warehouse, for consumption of merchandise subject to a countervailing duty order on or after the date of publication of such order, no customs officer may deliver merchandise of that class or kind to the person by whom or for whose account it was imported unless that person complies with the requirement of subsection (b) and deposits with the appropriate customs officer an estimated countervailing duty in an amount determined by the administering authority.

(b) IMPORTER REQUIREMENTS.—In order to meet the requirements of this subsection, a person shall—

(1) furnish, or arrange to have furnished, to the appropriate customs officer such information as the administering authority deems necessary for ascertaining any countervailing duty to be imposed under this subtitle,

(2) maintain and furnish to the customs officer such records concerning such merchandise as the administering authority, by regulation, requires, and

(3) pay, or agree to pay on demand, to the customs officer the amount of countervailing duty imposed under this subtitle on that merchandise.

Subtitle B—Imposition of Antidumping Duties

SEC. 731. ANTIDUMPING DUTIES IMPOSED.

If—

(1) the administering authority determines that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value, and

(2) the Commission determines that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of that merchandise or by reason of sales (or the likelihood of sales) of that merchandise for importation, then there shall be imposed upon such merchandise an antidumping duty, in addition to any other duty imposed, in an amount equal to the amount by which the [foreign market value] *normal value* exceeds the [United States price] *export price* for the merchandise. For purposes of this subsection and section 735(b)(1), a reference to the sale of foreign merchandise includes the entering into of any leasing arrangement regarding the merchandise that is equivalent to the sale of the merchandise.

SEC. 732. PROCEDURES FOR INITIATING AN ANTIDUMPING DUTY INVESTIGATION.

(a) INITIATION BY ADMINISTERING AUTHORITY.—

(1) IN GENERAL.—An antidumping duty investigation shall be [commenced] *initiated* whenever the administering authority determines, from information available to it, that a formal investigation is warranted into the question of whether the elements necessary for the imposition of a duty under section 731 exist.

(2) CASES INVOLVING PERSISTENT DUMPING.—

(A) MONITORING.—The administering authority may establish a monitoring program with respect to imports of a class or kind of merchandise from any additional supplier country for a period not to exceed one year if—

(i) more than one antidumping order is in effect with respect to that class or kind of merchandise;

(ii) in the judgment of the administering authority there is reason to believe or suspect an extraordinary pattern of persistent injurious dumping from one or more additional supplier countries; and

(iii) in the judgment of the administering authority this extraordinary pattern is causing a serious commercial problem for the domestic industry.

(B) If during the period of monitoring referred to in subparagraph (A), the administering authority determines that there is sufficient information to [commence] *initiate* a formal investigation under this subsection regarding an additional supplier country, the administering authority shall immediately commence such an investigation.

(C) DEFINITION.—For purposes of this paragraph, the term “additional supplier country” means a country re-

garding which no antidumping investigation is currently pending, and no antidumping duty order is currently in effect, with respect to imports of the class or kind of merchandise covered by subparagraph (A).

(D) **EXPEDITIOUS ACTION.**—The administering authority and the Commission, to the extent practicable, shall expedite proceedings under this subtitle undertaken as a result of a formal investigation [commenced] *initiated* under subparagraph (B).

(b) **INITIATION BY PETITION.**—

(1) **PETITION REQUIREMENTS.**—An antidumping proceeding shall be [commenced] *initiated* whenever an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) files a petition with the administering authority, on behalf of an industry, which alleges the elements necessary for the imposition of the duty imposed by section 731, and which is accompanied by information reasonably available to the petitioner supporting those allegations. The petition may be amended at such time, and upon such conditions, as the administering authority and the Commission may permit.

(2) **SIMULTANEOUS FILING WITH COMMISSION.**—The petitioner shall file a copy of the petition with the Commission on the same day as it is filed with the administering authority.

(3) **ACTION WITH RESPECT TO PETITIONS.**—

(A) **NOTIFICATION OF GOVERNMENTS.**—*Upon receipt of a petition filed under paragraph (1), the administering authority shall notify the government of any exporting country named in the petition by delivering a public version of the petition to an appropriate representative of such country.*

(B) **ACCEPTANCE OF COMMUNICATIONS.**—*The administering authority shall not accept any unsolicited oral or written communication from any person other than an interested party described in section 771(9) (C), (D), (E), (F), or (G) before the administering authority makes its decision whether to initiate an investigation, except as provided in subsection (c)(4)(D), and except for inquiries regarding the status of the administering authority's consideration of the petition.*

(C) **NONDISCLOSURE OF CERTAIN INFORMATION.**—*The administering authority and the Commission shall not disclose information with regard to any draft petition submitted for review and comment before it is filed under paragraph (1).*

[(c) **PETITION DETERMINATION.**—Within 20 days after the date on which a petition is filed under subsection (b), the administering authority shall—

[(1) determine whether the petition alleges the elements necessary for the imposition of a duty under section 731 and contains information reasonably available to the petitioner supporting the allegations,

[(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, 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.]

(c) *PETITION DETERMINATION.*—

(1) *IN GENERAL.*—

(A) *TIME FOR INITIAL DETERMINATION.*—*Except as provided in subparagraph (B), within 20 days after the date on which a petition is filed under subsection (b), the administering authority shall—*

(i) *after examining, on the basis of sources readily available to the administering authority, the accuracy and adequacy of the evidence provided in the petition, determine whether the petition alleges the elements necessary for the imposition of a duty under section 731 and contains information reasonably available to the petitioner supporting the allegations, and*

(ii) *determine if the petition has been filed by or on behalf of the industry.*

(B) *EXTENSION OF TIME.*—*In any case in which the administering authority is required to poll or otherwise determine support for the petition by the industry under paragraph (4)(D), the administering authority may, in exceptional circumstances, apply subparagraph (A) by substituting “a maximum of 40 days” for “20 days”.*

(C) *TIME LIMITS WHERE PETITION INVOLVES SAME MERCHANDISE AS AN ORDER THAT HAS BEEN REVOKED.*—*If a petition is filed under this section with respect to merchandise that was the subject merchandise of—*

(i) *an antidumping duty order or finding that was revoked under section 751(d) in the 24 months preceding the date the petition is filed, or*

(ii) *a suspended investigation that was terminated under section 751(d) in the 24 months preceding the date the petition is filed,*

the administering authority and the Commission shall, to the maximum extent practicable, expedite any investigation initiated under this section with respect to the petition.

(2) *AFFIRMATIVE DETERMINATIONS.*—*If the determinations under clauses (i) and (ii) of paragraph (1)(A) are affirmative, the administering authority shall initiate an investigation to determine whether the subject merchandise is being, or is likely to be, sold in the United States at less than its fair value.*

(3) *NEGATIVE DETERMINATIONS.*—*If the determination under clause (i) or (ii) of paragraph (1)(A) is negative, the administering authority shall dismiss the petition, terminate the proceeding, and notify the petitioner in writing of the reasons for the determination.*

(4) *DETERMINATION OF INDUSTRY SUPPORT.*—

(A) *GENERAL RULE.*—*For purposes of this subsection, the administering authority shall determine that the petition has been filed by or on behalf of the industry, if—*

(i) *the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and*

(ii) *the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition.*

(B) CERTAIN POSITIONS DISREGARDED.—

(i) **PRODUCERS RELATED TO FOREIGN PRODUCERS.—***In determining industry support under subparagraph (A), the administering authority shall disregard the position of domestic producers who oppose the petition, if such producers are related to foreign producers, as defined in section 771(4)(B)(ii), unless such domestic producers demonstrate that their interests as domestic producers would be adversely affected by the imposition of an antidumping duty order.*

(ii) **PRODUCERS WHO ARE IMPORTERS.—***The administering authority may disregard the position of domestic producers of a domestic like product who are importers of the subject merchandise.*

(C) **SPECIAL RULE FOR REGIONAL INDUSTRIES.—***If the petition alleges the industry is a regional industry, the administering authority shall determine whether the petition has been filed by or on behalf of the industry by applying subparagraph (A) on the basis of production in the region.*

(D) **POLLING THE INDUSTRY.—***If the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the administering authority shall—*

(i) *poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or*

(ii) *if there is a large number of producers in the industry, the administering authority may determine industry support for the petition by using any statistically valid sampling method to poll the industry.*

(E) **COMMENTS BY INTERESTED PARTIES.—***Before the administering authority makes a determination with respect to initiating an investigation, any person who would qualify as an interested party under section 771(9) if an investigation were initiated, may submit comments or information on the issue of industry support. After the administering authority makes a determination with respect to initiating an investigation, the determination regarding industry support shall not be reconsidered.*

(5) **DEFINITION OF DOMESTIC PRODUCERS OR WORKERS.—***For purposes of this subsection, the term ‘domestic producers or workers’ means those interested parties who are eligible to file a petition under subsection (b)(1)(A).*

* * * * *

(e) **INFORMATION REGARDING CRITICAL CIRCUMSTANCES.—***If, at any time after the initiation of an investigation under this subtitle,*

the administering authority finds a reasonable basis to suspect that—

(1) there is a history of dumping in the United States or elsewhere of the [class or kind of the merchandise which is the subject of the investigation] *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 [merchandise which is the subject of the investigation] *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 [class or kind of merchandise that is the subject of the investigation] *subject merchandise*. Upon receiving such request, the Commissioner of Customs shall collect information regarding the volume and value of entries of the [class or kind of merchandise that is the subject of the investigation] *subject merchandise* and shall transmit such information to the administering authority at such times as the administering authority shall direct (at least once every 30 days), until a final determination is made under section 735(a), the investigation is terminated, or the administering authority withdraws the request.

SEC. 733. PRELIMINARY DETERMINATIONS.

[(a) DETERMINATION BY COMMISSION OF REASONABLE INDICATION OF INJURY.—Except in the case of a petition dismissed by the administering authority under section 732(c)(3), the Commission, within 45 days after the date on which a petition is filed under section 732(b) or on which it receives notice from the administering authority of an investigation commenced under section 732(a), 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.]

(a) DETERMINATION BY COMMISSION OF REASONABLE INDICATION OF INJURY.—

(1) GENERAL RULE.—*Except in the case of a petition dismissed by the administering authority under section 732(c)(3), the Commission, within the time specified in paragraph (2), shall determine, based on the information available to it at the time of the determination, whether there is a reasonable indication that—*

(A) *an industry in the United States—*

(i) *is materially injured, or*

(ii) *is threatened with material injury, or*

(B) *the establishment of an industry in the United States is materially retarded,*

by reason of imports of the subject merchandise and that imports of the subject merchandise are not negligible. If the Commission finds that imports of the subject merchandise are negligible or otherwise makes a negative determination under this paragraph, the investigation shall be terminated.

(2) **TIME FOR COMMISSION DETERMINATION.**—The Commission shall make the determination described in paragraph (1)—

(A) in the case of a petition filed under section 732(b)—

(i) within 45 days after the date on which a petition is filed, or

(ii) if the time has been extended pursuant to section 732(c)(1)(B), within 25 days after the date on which the Commission receives notice from the administering authority of initiation of the investigation, and

(B) in the case of an investigation initiated under section 732(a), within 45 days after the date on which the Commission receives notice from the administering authority that an investigation has been initiated under such section.

(b) **PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.**—

(1) **PERIOD OF ANTIDUMPING DUTY INVESTIGATION.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), within [160 days after the date on which a petition is filed under section 732(b)] 140 days after the date on which the administering authority initiates an investigation under section 732(c), or an investigation is [commenced] initiated under section 732(a), but not before an affirmative determination by the Commission under subsection (a) of this section, the administering authority shall make a determination, based upon the [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 administering authority under this subsection is affirmative, the determination shall include the estimated average amount by which the foreign market value exceeds the United States price.]

(B) **IF CERTAIN SHORT LIFE CYCLE MERCHANDISE INVOLVED.**—If a petition filed under section 732(b), or an investigation [commenced] initiated under section 732(a), concerns short life cycle merchandise that is included in a product category established under section 739(a), subparagraph (A) shall be applied—

(i) by substituting “[120] 100 days” for “[160] 140 days” if manufacturers that are second offenders account for a significant proportion of the merchandise under investigation, and

(ii) by substituting “[100] 80 days” for “[160] 140 days” if manufacturers that are multiple offenders account for a significant proportion of the merchandise under investigation.

(C) DEFINITIONS OF OFFENDERS.—For purposes of subparagraph (B)—

(i) the term “second offender” means a manufacturer that is specified in 2 affirmative dumping determinations (within the meaning of section 739) as the manufacturer of short life cycle merchandise that is—

(I) specified in both such determinations, and

(II) within the scope of the product category referred to in subparagraph (B).

(ii) the term “multiple offender” means a manufacturer that is specified in 3 or more affirmative dumping determinations (within the meaning of section 739) as the manufacturer of short life cycle merchandise that is—

(I) specified in each of such determinations, and

(II) within the scope of the product category referred to in subparagraph (B).

(2) PRELIMINARY DETERMINATION UNDER WAIVER OF VERIFICATION.—Within 75 days after the initiation of an investigation, the administering authority shall cause an official designated for such purpose to review the information concerning the case received during the first 60 days of the investigation, and, if there appears to be sufficient information available upon which the preliminary determination can reasonably be based, to disclose to the petitioner and any interested party, then a party to the proceedings that requests such disclosure, all available non-confidential information and all other information which is disclosed pursuant to section 777. Within 3 days (not counting Saturdays, Sundays, or legal public holidays) after such disclosure, the petitioner and each party which is an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) to whom such disclosure was made may furnish to the administering authority an irrevocable written waiver of verification of the information received by the authority, and an agreement that it is willing to have a preliminary determination made on the basis of the record then available to the authority. If a timely waiver and agreement have been received from the petitioner and each party which is an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) to whom the disclosure was made, and the authority finds that sufficient information is then available upon which the preliminary determination can reasonably be based, a preliminary determination shall be made within 90 days after the [commencement] *initiation* of the investigation on the basis of the record established during the first 60 days after the investigation was [commenced] *initiated*.

(3) *DE MINIMIS DUMPING MARGIN.*—*In making a determination under this subsection, the administering authority shall disregard any weighted average dumping margin that is de minimis. For purposes of the preceding sentence, a weighted average dumping margin is de minimis if the administering au-*

thority determines that it is less than 2 percent ad valorem or the equivalent specific rate for the subject merchandise.

(c) EXTENSION OF PERIOD IN EXTRAORDINARILY COMPLICATED CASES.—

(1) IN GENERAL.—If—

(A) the petitioner makes a timely request for an extension of the period within which the determination must be made under subsection (b)(1), or

(B) the administering authority concludes that the parties concerned are cooperating and determines that—

(i) the case is extraordinarily complicated by reason of—

(I) the number and complexity of the transactions to be investigated or adjustments to be considered,

(II) the novelty of the issues presented, or

(III) the number of firms whose activities must be investigated, and

(ii) additional time is necessary to make the preliminary determination,

then the administering authority may postpone making the preliminary determination under subsection (b)(1) until not later than the [210th day after the date on which a petition is filed under section 732(b)] *190th day after the date on which the administering authority initiates an investigation under section 732(c)*, or an investigation is [commenced] *initiated* under section 732(a). No extension of a determination date may be made under this paragraph for any investigation in which a determination date provided for in subsection (b)(1)(B) applies unless the petitioner submits written notice to the administering authority of its consent to the extension.

* * * * *

(d) EFFECT OF DETERMINATION BY THE ADMINISTERING AUTHORITY.—If the preliminary determination of the administering authority under subsection (b) is affirmative, the administering authority—

(1)(A) shall—

(i) *determine an estimated weighted average dumping margin for each exporter and producer individually investigated, and*

(ii) *determine, in accordance with section 735(c)(5), an estimated all-others rate for all exporters and producers not individually investigated, and*

(B) *shall order the posting of a cash deposit, bond, or other security, as the administering authority deems appropriate, for each entry of the subject merchandise in an amount based on the estimated weighted average dumping margin or the estimated all-others rate, whichever is applicable,*

[(1)] (2) shall order the suspension of liquidation of all entries of merchandise subject to the determination which are entered, or withdrawn from [warehouse, for consumption on or after the date of publication of the notice of the determination in the Federal Register,] *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*

[(2) 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]

(3) shall make available to the Commission all information upon which such determination was based and which the Commission considers relevant to its injury determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

The instructions of the administering authority under paragraphs (1) and (2) may not remain in effect for more than 4 months, except that the administering authority may, at the request of exporters representing a significant proportion of exports of the subject merchandise, extend that 4-month period to not more than 6 months.

(e) CRITICAL CIRCUMSTANCES DETERMINATIONS.—

(1) IN GENERAL.—If a petitioner alleges critical circumstances in its original petition, or by amendment at any time more than 20 days before the date of a final determination by the administering authority, then the administering authority shall promptly (at any time after the initiation of the investigation under this subtitle) determine, on the basis of the [best] 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 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 investigation over a relatively short period.]

(A)(i) *there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or*

(ii) *the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and*

(B) *there have been massive imports of the subject merchandise over a relatively short period.*

The administering authority shall be treated as having made an affirmative determination under subparagraph (A) in any investigation to which subsection (b)(1)(B) is applied.

(2) **SUSPENSION OF LIQUIDATION.**—If the determination of the administering authority under paragraph (1) is affirmative, then any suspension of liquidation ordered under subsection [(d)(1)] (d)(2) shall apply, or, if notice of such suspension of liquidation is already published, be amended to apply, to unliquidated entries of merchandise entered, or withdrawn from [warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered.] *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 DETERMINATIONS.**—Whenever the Commission or the administering authority 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.]

(f) **NOTICE OF DETERMINATION.**—*Whenever the Commission or the administering authority makes a determination under this section, the Commission or the administering authority, as the case may be, shall notify the petitioner, and other parties to the investigation, and the Commission or the administering authority (whichever is appropriate) of its determination. The administering authority shall include with such notification the facts and conclusions on which its determination is based. Not later than 5 days after the date on which the determination is required to be made under subsection (a)(2), the Commission shall transmit to the administering authority the facts and conclusions on which its determination is based.*

SEC. 734. TERMINATION OR SUSPENSION OF INVESTIGATION.

(a) **TERMINATION OF INVESTIGATION UPON WITHDRAWAL OF PETITION.**—

(1) **IN GENERAL.**—**[Except]**

(A) **WITHDRAWAL OF PETITION.**—*Except as provided in paragraphs (2) and (3), an investigation under this subtitle may be terminated by either the administering authority or the Commission, after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner or by the administering authority if the investigation was initiated under section 732(a).*

(B) **REFILING OF PETITION.**—*If, within 3 months after the withdrawal of a petition under subparagraph (A), a new petition is filed seeking the imposition of duties on both the subject merchandise of the withdrawn petition and the subject merchandise from another country, the administering authority and the Commission may use in the investigation initiated pursuant to the new petition any*

records compiled in an investigation conducted pursuant to the withdrawn petition. This subparagraph applies only with respect to the first withdrawal of a petition.

(2) SPECIAL RULES FOR QUANTITATIVE RESTRICTION AGREEMENTS.—

(A) IN GENERAL.—Subject to subparagraphs (B) and (C), the administering authority may not terminate an investigation under paragraph (1) by accepting an understanding or other kind of agreement to limit the volume of imports into the United States of the [merchandise that is subject to the investigation] *subject merchandise* unless the administering authority is satisfied that termination on the basis of that agreement is in the public interest.

* * * * *

(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 [merchandise which is the subject of the investigation] *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 [foreign market value] *normal value* of the merchandise which is the subject of the agreement exceeds the [United States price] *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 [merchandise which is the subject of the investigation] *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 [foreign market value] *normal value* exceeds the [United States price] *export price* will not exceed 15 percent of the weighted average amount by which the estimated [foreign market value] *normal value* exceeded the [United States price] *export price* for all less-than-fair-value entries of the exporter examined during the course of the investigation.

* * * * *

(d) ADDITIONAL RULES AND CONDITIONS.—The administering authority may not accept an agreement under subsection (b) or (c) unless—

(1) it is satisfied that suspension of the investigation is in the public interest, [and]

(2) effective monitoring of the agreement by the United States is practicable[.], and

(3) the agreement is not objectionable for other reasons, including reasons of general policy.

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.

* * * * *

(f) EFFECTS OF SUSPENSION OF INVESTIGATION.—

(1) IN GENERAL.—If the administering authority determines to suspend an investigation upon acceptance of an agreement described in subsection (b) or (c), then—

(A) it shall suspend the investigation, publish notice of suspension of the investigation, and issue an affirmative preliminary determination under section 733(b) with respect to the [merchandise which is the subject of the investigation] *subject merchandise*, unless it has previously issued such a determination in the same investigation,

(B) the Commission shall suspend any investigation it is conducting with respect to that merchandise, and

(C) the suspension of investigation shall take effect on the day on which such notice is published.

(2) LIQUIDATION OF ENTRIES.—

(A) CESSATION OF EXPORTS; COMPLETE ELIMINATION OF DUMPING MARGIN.—If the agreement accepted by the administering authority is an agreement described in subsection (b), then—

(i) notwithstanding the affirmative preliminary determination required under paragraph (1)(A), the liquidation of entries of [merchandise which is the subject of the investigation] *subject merchandise* shall not be suspended under section 733[(d)(1)] (d)(2),

(ii) if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case with respect to such merchandise, that suspension of liquidation shall terminate, and

(iii) the administering authority shall refund any cash deposit and release any bond or other security deposited under section 733[(d)(2)] (d)(1)(B).

(B) OTHER AGREEMENTS.—If the agreement accepted by the administering authority is an agreement described in subsection (c), the liquidation of entries of the [merchandise subject to the investigation] *subject merchandise* shall be suspended under section 733[(d)(1)] (d)(2), or, if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case, that suspension of liquidation shall continue in effect, subject to subsection (h)(3), but the security required under section 733[(d)(2)]

(d)(1)(B) may be adjusted to reflect the effect of the agreement.

* * * * *

(g) INVESTIGATION TO BE CONTINUED UPON REQUEST.—If the administering authority, within 20 days after the date of publication of the notice of suspension of an investigation, receives a request for the continuation of the investigation from—

(1) an exporter or exporters accounting for a significant proportion of exports to the United States of the [merchandise which is the subject of the investigation] *subject merchandise*, or

(2) an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) which is a party to the investigation,

then the administering authority and the Commission shall continue the investigation.

(h) REVIEW OF SUSPENSION.—

(1) IN GENERAL.—Within 20 days after the suspension of an investigation under subsection (c), an interested party which is a party to the investigation and which is described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) may, by petition filed with the Commission and with notice to the administering authority, ask for a review of the suspension.

(2) COMMISSION INVESTIGATION.—Upon receipt of a review petition under paragraph (1), the Commission shall, within 75 days after the date on which the petition is filed with it, determine whether the injurious effect of imports of the [merchandise which is the subject of the investigation] *subject merchandise* is eliminated completely by the agreement. If the Commission's determination under this subsection is negative, the investigation shall be resumed on the date of publication of notice of such determination as if the affirmative preliminary determination under section 733(b) had been made on that date.

(3) SUSPENSION OF LIQUIDATION TO CONTINUE DURING REVIEW PERIOD.—The suspension of liquidation of entries of the [merchandise which is the subject of the investigation] *subject merchandise* shall terminate at the close of the 20-day period beginning on the day after the date on which notice of suspension of the investigation is published in the Federal Register, or, if a review petition is filed under paragraph (1) with respect to the suspension of the investigation, in the case of an affirmative determination by the Commission under paragraph (2), the date on which notice of an affirmative determination by the Commission is published. If the determination of the Commission under paragraph (2) is affirmative, then the administering authority shall—

(A) terminate the suspension of liquidation under section 733[(d)(1)] (d)(2), and

(B) release any bond or other security, and refund any cash deposit, required under section 733[(d)(2)] (d)(1)(B).

(i) VIOLATION OF AGREEMENT.—

(1) IN GENERAL.—If the administering authority determines that an agreement accepted under subsection (b) or (c) is being, or has been, violated, or no longer meets the require-

ments of such subsection (other than the requirement, under subsection (c)(1), of elimination of injury) and subsection (d), then, on the date of publication of its determination, it shall—

(A) suspend liquidation under section 733[(d)(1)] (d)(2) of unliquidated entries of the merchandise made on the later of—

* * * * *

(j) DETERMINATION NOT TO TAKE AGREEMENT INTO ACCOUNT.—In making a final determination under section 735, or in conducting a review under section 751, in a case in which the administering authority has terminated a suspension of investigation under subsection (i)(1), or continued an investigation under subsection (g), the Commission and the administering authority shall consider all of the [merchandise which is the subject of the investigation] *subject merchandise*, without regard to the effect of any agreement under subsection (b) or (c).

* * * * *

(m) SPECIAL RULE FOR REGIONAL INDUSTRY INVESTIGATIONS.—

(1) SUSPENSION AGREEMENTS.—*If the Commission makes a regional industry determination under section 771(4)(C), the administering authority shall offer exporters of the subject merchandise who account for substantially all exports of that merchandise for sale in the region concerned the opportunity to enter into an agreement described in subsection (b), (c), or (l).*

(2) REQUIREMENTS FOR SUSPENSION AGREEMENTS.—*Any agreement described in paragraph (1) shall be subject to all the requirements imposed under this section for other agreements under subsection (b), (c), or (l), except that if the Commission makes a regional industry determination described in paragraph (1) in the final affirmative determination under section 735(b) but not in the preliminary affirmative determination under section 733(a), any agreement described in paragraph (1) may be accepted within 60 days after the antidumping order is published under section 736.*

(3) EFFECT OF SUSPENSION AGREEMENT ON ANTIDUMPING DUTY ORDER.—*If an agreement described in paragraph (1) is accepted after the antidumping duty order is published, the administering authority shall rescind the order, refund any cash deposit and release any bond or other security deposited under section 733(d)(1)(B), and instruct the Customs Service that entries of the subject merchandise that were made during the period that the order was in effect shall be liquidated without regard to antidumping duties.*

SEC. 735. FINAL DETERMINATIONS.

(a) FINAL DETERMINATION BY ADMINISTERING AUTHORITY.—

(1) GENERAL RULE.—Within 75 days after the date of its preliminary determination under section 733(b), the administering authority shall make a final determination of whether the [merchandise which was the subject of the investigation] *subject merchandise* is being, or is likely to be, sold in the United States at less than its fair value.

* * * * *

(3) CRITICAL CIRCUMSTANCES DETERMINATIONS.—If the final determination of the administering authority is affirmative, then that determination, in any investigation in which the presence of critical circumstances has been alleged under section 733(e), shall also contain a finding of whether—

(A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the [class or kind of merchandise which is the subject of the investigation] *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 [merchandise which is the subject of the investigation at less than its fair value] *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 [merchandise which is the subject of the investigation] *subject merchandise* over a relatively short period.

Such findings may be affirmative even though the preliminary determination under section 733(e)(1) was negative.

(4) *DE MINIMIS DUMPING MARGIN.*—*In making a determination under this subsection, the administering authority shall disregard any weighted average dumping margin that is de minimis as defined in section 733(b)(3).*

(b) FINAL DETERMINATION BY COMMISSION.—

(1) IN GENERAL.—The Commission shall make a final determination of whether—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports, or sales (or the likelihood of sales) for importation, of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a)(1). *If the Commission determines that imports of the subject merchandise are negligible, the investigation shall be terminated.*

* * * * *

(4) CERTAIN ADDITIONAL FINDINGS.—

[(A) RETROACTIVE APPLICATION.—

[(i) IN GENERAL.—If the finding of the administering authority under subsection (a)(3) is affirmative, then the final determination of the Commission shall include a finding as to whether retroactive imposition of antidumping duties on the merchandise appears necessary to prevent recurrence of material injury that was caused by massive imports of the merchandise over a relatively short period of time.

[(ii) PREVENTION OF RECURRENCE.—For purposes of making its finding under clause (i), the Commission shall make an evaluation as to whether the effectiveness of the antidumping duty order would be materially impaired if such imposition did not occur.

[(iii) EVALUATION OF EFFECTIVENESS.—In making the evaluation under clause (ii), the Commission shall consider, among other factors it considers relevant—

- [(I) the condition of the domestic industry,
- [(II) whether massive imports of the merchandise in a relatively short period of time can be accounted for by efforts to avoid the potential imposition of antidumping duties,
- [(III) whether foreign economic conditions led to the massive imports of the merchandise, and
- [(IV) whether the impact of the massive imports of the merchandise is likely to continue for some period after issuance of the antidumping duty order under this subtitle.]

(A) COMMISSION STANDARD FOR RETROACTIVE APPLICATION.—

(i) IN GENERAL.—*If the finding of the administering authority under subsection (a)(3) is affirmative, then the final determination of the Commission shall include a finding as to whether the imports subject to the affirmative determination under subsection (a)(3) are likely to undermine seriously the remedial effect of the antidumping duty order to be issued under section 736.*

(ii) FACTORS TO CONSIDER.—*In making the evaluation under clause (i), the Commission shall consider, among other factors it considers relevant—*

- (I) *the timing and the volume of the imports,*
- (II) *a rapid increase in inventories of the imports, and*
- (III) *any other circumstances indicating that the remedial effect of the antidumping order will be seriously undermined.*

* * * * *

(c) EFFECT OF FINAL DETERMINATIONS.—

(1) EFFECT OF AFFIRMATIVE DETERMINATION BY THE ADMINISTERING AUTHORITY.—*If the determination of the administering authority under subsection (a) is affirmative, then—*

(A) *the administering authority shall make available to the Commission all information upon which such determination was based and which the Commission considers relevant to its determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information as to which confidential treatment has been given by the administering authority, [and]*

(B)(i) *the administering authority shall—*

(I) *determine the estimated weighted average dumping margin for each exporter and producer individually investigated, and*

(II) *determine, in accordance with paragraph (5), the estimated all-others rate for all exporters and producers not individually investigated, and*

(ii) *the administering authority shall order the posting of a cash deposit, bond, or other security, as the administering authority deems appropriate, for each entry of the subject merchandise in an amount based on the estimated weighted average dumping margin or the estimated all-others rate, whichever is applicable, and*

[(B)] (C) in cases where the preliminary determination by the administering authority under section 733(b) was negative, the administering authority shall order [under paragraphs (1) and (2) of section 733(d) the suspension of liquidation and the posting of a cash deposit, bond, or other security] *the suspension of liquidation under paragraph (2) of section 733(d).*

(2) **ISSUANCE OF ORDER; EFFECT OF NEGATIVE DETERMINATION.**—If the determinations of the administering authority and the Commission under subsections (a)(1) and (b)(1) are affirmative, then the administering authority shall issue an anti-dumping duty order under section 736(a). If either of such determinations is negative, the investigation shall be terminated upon the publication of notice of that negative determination and the administering authority shall—

(A) terminate the suspension of liquidation under section 703[(d)(1)] (d)(2), and

(B) release any bond or other security and refund any cash deposit, required under section 733[(d)(2)] (d)(1)(B).

(3) **EFFECT OF NEGATIVE DETERMINATIONS UNDER SUBSECTIONS (a)(3) AND (b)(4)(A).**—If the determination of the administering authority or the Commission under subsection (a)(3) or (b)(4)(A), respectively, is negative, then the administering authority shall—

(A) terminate any retroactive suspension of liquidation required under paragraph (4) or section 733(e)(2), and

(B) release any bond or other security, and refund any cash deposit required, under section 733[(d)(2)] (d)(1)(B) with respect to entries of the merchandise the liquidation of which was suspended retroactively under section 733(e)(2).

* * * * *

(5) **METHOD FOR DETERMINING ESTIMATED ALL-OTHERS RATE.**—

(A) **GENERAL RULE.**—*For purposes of this subsection and section 733(d), the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and de minimis margins, and any margins determined entirely under section 776.*

(B) **EXCEPTION.**—*If the estimated weighted average dumping margins established for all exporters and producers individually investigated are zero or de minimis margins, or are determined entirely under section 776, the administering authority may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging*

the estimated weighted average dumping margins determined for the exporters and producers individually investigated.

* * * * *

SEC. 736. ASSESSMENT OF DUTY.

(a) **PUBLICATION OF ANTIDUMPING DUTY ORDER.**—Within 7 days after being notified by the Commission of an affirmative determination under section 735(b), the administering authority shall publish an antidumping duty order which—

(1) directs customs officers to assess an antidumping duty equal to the amount by which the [foreign market value] *normal value* of the merchandise exceeds the [United States price] *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 [class or kind of merchandise to which it applies] *subject merchandise*, in such detail as the administering authority deems necessary, and

(3) requires the deposit of estimated antidumping duties pending liquidation of entries of merchandise at the same time as estimated normal customs duties on that merchandise are deposited.

(b) **IMPOSITION OF DUTY.**—

(1) **GENERAL RULE.**—If the Commission, in its final determination under section 735(b), finds material injury or threat of material injury which, but for the suspension of liquidation under section 733[(d)(1)] (d)(2) would have led to a finding of material injury, then entries of the [merchandise subject to the antidumping duty order] *subject merchandise*, the liquidation of which has been suspended under section 733[(d)(1)] (d)(2), shall be subject to the imposition of antidumping duties under section 731.

(2) **SPECIAL RULE.**—If the Commission, in its final determination under section 735(b), finds threat of material injury, other than threat of material injury described in paragraph (1), or material retardation of the establishment of an industry in the United States, then [merchandise subject to an antidumping duty order] *subject merchandise* which is entered, or withdrawn from warehouse, for consumption or after the date of publication of notice of an affirmative determination of the Commission under section 735(b) shall be subject to the assessment of antidumping duties under section 731, and the administering authority shall release any bond or other security, and

refund any cash deposit made, to secure the payment of anti-dumping duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption before that date.

(c) SECURITY IN LIEU OF ESTIMATED DUTY PENDING EARLY DETERMINATION OF DUTY.—

(1) CONDITIONS FOR WAIVER OF DEPOSIT OF ESTIMATED DUTIES.—The administering authority may permit, for not more than 90 days after the date of publication of an order under subsection (a), the posting of a bond or other security in lieu of the deposit of estimated antidumping duties required under subsection (a)(3) if—

* * * * *

(C) on the basis of information presented to the administering authority by any manufacturer, producer, or exporter in such form and within such time as the administering authority may require, the administering authority is satisfied that a determination will be made, within 90 days after the date of publication of an order under subsection (a), of the [foreign market value] *normal value* and the [United States price] *export price* for all merchandise of such manufacturer, producer, or exporter described in that order which was entered, or withdrawn from warehouse, for consumption on or after the date of publication of—

(i) an affirmative preliminary determination by the administering authority under section 733(b), or

(ii) if its determination under section 733(b) was negative, an affirmative final determination by the administering authority under section 735(a), and before the date of publication of the affirmative final determination by the Commission under section 735(b);

(D) the party described in subparagraph (C) provides credible evidence that the amount by which the [foreign market value] *normal value* of the merchandise exceeds the [United States price] *export price* of the merchandise is significantly less than the amount of such excess specified in the antidumping duty order published under subsection (a); and

(E) the data concerning the [foreign market value] *normal value* and the [United States price] *export price* apply to sales in the usual commercial quantities and in the ordinary course of trade and the number of such sales are sufficient to form an adequate basis for comparison.

(2) NOTICE; HEARING.—If the administering authority permits the posting of a bond or other security in lieu of the deposit of estimated antidumping duties under paragraph (1), it shall—

(A) publish notice of its action in the Federal Register, and

(B) upon the request of any interested party, hold a hearing in accordance with section 774 before determining the [foreign market value] *normal value* and the [United States price] *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 [foreign market value] *normal value* and [United States price] *export price*, and that determination shall be the basis for the assessment of antidumping duties on entries of merchandise to which the notice under this subsection applies and also shall be the basis for the deposit of estimated antidumping duties on future entries of merchandise of manufacturers, producers, or exporters described in paragraph (1) to which the order issued under subsection (a) applies.

* * * * *

(d) SPECIAL RULE FOR REGIONAL INDUSTRIES.—

(1) IN GENERAL.—*In an investigation in which the Commission makes a regional industry determination under section 771(4)(C), the administering authority shall, to the maximum extent possible, direct that duties be assessed only on the subject merchandise of the specific exporters or producers that exported the subject merchandise for sale in the region concerned during the period of investigation.*

(2) EXCEPTION FOR NEW EXPORTERS AND PRODUCERS.—*After publication of the antidumping duty order, if the administering authority finds that a new exporter or producer is exporting the subject merchandise for sale in the region concerned, the administering authority shall direct that duties be assessed on the subject merchandise of the new exporter or producer consistent with the provisions of section 751(a)(2)(B).*

SEC. 737. TREATMENT OF DIFFERENCE BETWEEN DEPOSIT OF ESTIMATED ANTIDUMPING DUTY AND FINAL ASSESSED DUTY UNDER ANTIDUMPING DUTY ORDER.

(a) DEPOSIT OF ESTIMATED ANTIDUMPING DUTY UNDER SECTION 733[(d)(2)] (d)(1)(B).—If the amount of a cash deposit collected as security for an estimated antidumping duty under section 733[(d)(2)] (d)(1)(B) is different from the amount of the antidumping duty determined under an antidumping duty order published under section 736, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption before notice of the affirmative determination of the Commission under section 735(b) is published shall be—

* * * * *

SEC. 738. CONDITIONAL PAYMENT OF ANTIDUMPING DUTY.

* * * * *

(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 [United States price] *export price* of the merchandise imported by or for the account of that person, and such other information as the administering authority deems necessary for ascertaining any antidumping duty to be imposed under this title;

(2) maintain and furnish to the customs officer such records concerning the sale of the merchandise as the administering authority, by regulation, requires;

(3) state under oath before the customs officer that he is not an exporter, or if he is an exporter, declare under oath at the time of entry the [exporter's sales price] *constructed export price* of the merchandise to the customs officer if it is then known, or, if not, so declare within 30 days after the merchandise has been sold, or has been made the subject of an agreement to be sold, in the United States; and

(4) pay, or agree to pay on demand, to the customs officer the amount of antidumping duty imposed under section 731 on that merchandise.

SEC. 739. ESTABLISHMENT OF PRODUCT CATEGORIES FOR SHORT LIFE CYCLE MERCHANDISE.

* * * * *

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

* * * * *

(2) AFFIRMATIVE DUMPING DETERMINATION.—The term “affirmative dumping determination” means—

* * * * *

(B) any affirmative preliminary determination that—

(i) is made by the administering authority under section 733(b) during the 8-year period preceding the filing of the petition under this section in the course of an investigation for which no final determination is made under section 735 by reason of a suspension of the investigation under section 734, and

(ii) includes a determination that the estimated average amount by which the [foreign market value] *normal value* of the merchandise exceeds the [United States price] *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 [foreign market value] *normal value* of such merchandise of the manufacturer exceeds the [United States price] *export price* of such merchandise of the manufacturer, and

(ii) specifically identifies the manufacturer by name with such amount in the affirmative dumping determination or in an antidumping duty order issued as a result of the affirmative dumping determination.

(B) EXCLUSION.—Short life cycle merchandise of a manufacturer shall not be treated as being the subject of an affirmative dumping determination if—

(i) such merchandise of the manufacturer is part of a group of merchandise to which the administering

authority assigns (in lieu of making separate determinations described in subparagraph (A)(i)(I)) an amount determined to be the amount by which the [foreign market value] *normal value* of the merchandise in such group exceeds the [United States price] *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.

* * * * *

Subtitle C—Reviews; Other Actions Regarding Agreements

CHAPTER 1—REVIEW OF AMOUNT OF DUTY AND AGREEMENTS OTHER THAN QUANTITATIVE RESTRICTION AGREEMENTS

[SEC. 751. ADMINISTRATIVE REVIEW OF DETERMINATIONS.

[(a) PERIODIC REVIEW OF AMOUNT OF DUTY.—

[(1) IN GENERAL.—At least once during each 12-month period beginning on the anniversary of the date of publication of a countervailing duty order under this title or under section 303 of this Act, an antidumping duty order under this title or a finding under the Antidumping Act, 1921, or a notice of the suspension of an investigation, the administering authority, if a request for such a review has been received and after publication of notice of such review in the Federal Register, shall—

[(A) review and determine the amount of any net 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 suspension agreement by reason of which an investigation was suspended, and review the amount of any net subsidy or margin of sales at less than fair value 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.—For the purpose of paragraph (1)(B), the administering authority shall determine—

[(A) the foreign market value and United States price of each entry of merchandise subject to the antidumping duty order and included within that determination, and

[(B) the amount, if any, by which the foreign market value of each such entry exceeds the United States price of the entry.

[The administering authority, without revealing confidential information, shall publish notice of the results of the determination of antidumping duties in the Federal Register, and that determination shall be the basis for the assessment of

antidumping duties on entries of the merchandise included within the determination and for deposits of estimated duties.

[(b) REVIEWS UPON INFORMATION OR REQUEST.—

[(1) IN GENERAL.—Whenever the administering authority or the Commission receives information concerning, or a request for the review of, an agreement accepted under section 704 (other than a quantitative restriction agreement described in subsection (a)(2) or (c)(3)) or 734 (other than a quantitative restriction agreement described in subsection (a)(2)) or an affirmative determination made under section 704(h)(2), 705(a), 705(b), 734(h)(2), 735(a), 735(b), 762(a)(1), or 762(a)(2), which shows changed circumstances sufficient to warrant a review of such determination, it shall conduct such a review after publishing notice of the review in the Federal Register. In reviewing its determination under section 704(h)(2) or 734(h)(2), the Commission shall consider whether, in the light of changed circumstances, an agreement accepted under section 704(c) or 734(c) continues to eliminate completely the injurious effects of imports of the merchandise. During an investigation by the Commission, the party seeking revocation of an antidumping or countervailing duty order shall have the burden of persuasion with respect to whether there are changed circumstances sufficient to warrant revocation of the antidumping or countervailing duty order.

[(2) LIMITATION ON PERIOD FOR REVIEW.—In the absence of good cause shown—

[(A) the Commission may not review a determination under section 705(b) or 735(b), and

[(B) the administering authority may not review a determination under section 705(a) or 735(a), or the suspension of an investigation suspended under section 704 or 734,

less than 24 months after the date of publication of notice of that determination or suspension.

[(c) REVOCATION OF COUNTERVAILING DUTY ORDER OR ANTI-DUMPING DUTY ORDER.—The administering authority may revoke, in whole or in part, a countervailing duty order or an antidumping duty order, or terminate a suspended investigation, after review under this section. 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. Any such revocation or termination shall apply with respect to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on and after a date determined by the administering authority.

[(d) HEARINGS.—Whenever the administering authority or the Commission conducts a review under this section it shall, upon the request of and interested party, hold a hearing in accordance with section 774(b) in connection with that review.

[(e) DETERMINATION THAT BASIS FOR SUSPENSION NO LONGER EXISTS.—If the determination of the Commission under the last sentence of subsection (b)(1) is negative, the agreement shall be

treated as not accepted, beginning on the date of the publication of the Commission's determination, and the administering authority and the Commission shall proceed, under section 704(i) or 734(i), as if the 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.

[(f) CORRECTION OF MINISTERIAL ERRORS.—The administering authority shall establish procedures for the correction of ministerial errors in final determinations within a reasonable time after the determinations are issued under this section. Such procedures shall ensure opportunity for interested parties to present their views regarding any such errors. As used in this subsection, the term "ministerial error" includes errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.]

SEC. 751. ADMINISTRATIVE REVIEW OF DETERMINATIONS.

(a) PERIODIC REVIEW OF AMOUNT OF DUTY.—

(1) *IN GENERAL.*—At least once during each 12-month period beginning on the anniversary of the date of publication of a countervailing duty order under this title or under section 303 of this Act, an antidumping duty order under this title or a finding under the Antidumping Act, 1921, or a notice of the suspension of an investigation, the administering authority, if a request for such a review has been received and after publication of notice of such review in the Federal Register, shall—

(A) review and determine the amount of any net countervailable subsidy,

(B) review, and determine (in accordance with paragraph (2)), the amount of any antidumping duty, and

(C) review the current status of, and compliance with, any agreement by reason of which an investigation was suspended, and review the amount of any net countervailable subsidy or dumping margin involved in the agreement,

and shall publish in the Federal Register the results of such review, together with notice of any duty to be assessed, estimated duty to be deposited, or investigation to be resumed.

(2) DETERMINATION OF ANTIDUMPING DUTIES.—

(A) *IN GENERAL.*—For the purpose of paragraph (1)(B), the administering authority shall determine—

(i) the normal value and export price (or constructed export price) of each entry of the subject merchandise, and

(ii) the dumping margin for each such entry.

(B) DETERMINATION OF ANTIDUMPING OR COUNTERVAILING DUTIES FOR NEW EXPORTERS AND PRODUCERS.—

(i) *IN GENERAL.*—If the administering authority receives a request from an exporter or producer of the subject merchandise establishing that—

(I) such exporter or producer did not export the merchandise that was the subject of an antidumping duty or countervailing duty order to the United

States (or, in the case of a regional industry, did not export the subject merchandise for sale in the region concerned) during the period of investigation, and

(II) such exporter or producer is not affiliated (within the meaning of section 771(33)) with any exporter or producer who exported the subject merchandise to the United States (or in the case of a regional industry, who exported the subject merchandise for sale in the region concerned) during that period,

the administering authority shall conduct a review under this subsection to establish an individual weighted average dumping margin or an individual countervailing duty rate (as the case may be) for such exporter or producer.

(ii) TIME FOR REVIEW UNDER CLAUSE (i).—The administering authority shall commence a review under clause (i) in the calendar month beginning after—

(I) the end of the 6-month period beginning on the date of the countervailing duty or antidumping duty order under review, or

(II) the end of any 6-month period occurring thereafter,

if the request for the review is made during that 6-month period.

(iii) POSTING BOND OR SECURITY.—The administering authority shall, at the time a review under this subparagraph is initiated, direct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise.

(iv) TIME LIMITS.—The administering authority shall make a preliminary determination in a review conducted under this subparagraph within 180 days after the date on which the review is initiated, and a final determination within 90 days after the date the preliminary determination is issued, except that if the administering authority concludes that the case is extraordinarily complicated, it may extend the 180-day period to 300 days and may extend the 90-day period to 150 days.

(C) RESULTS OF DETERMINATIONS.—The determination under this paragraph shall be the basis for the assessment of countervailing or antidumping duties on entries of merchandise covered by the determination and for deposits of estimated duties.

(3) TIME LIMITS.—

(A) PRELIMINARY AND FINAL DETERMINATIONS.—The administering authority shall make a preliminary determination under subparagraph (A), (B), or (C) of paragraph (1) within 245 days after the last day of the month in which occurs the anniversary of the date of publication of

the order, finding, or suspension agreement for which the review under paragraph (1) is requested, and a final determination under paragraph (1) within 120 days after the date on which the preliminary determination is published. If it is not practicable to complete the review within the foregoing time, the administering authority may extend that 245-day period to 365 days and may extend that 120-day period to 180 days. The administering authority may extend the time for making a final determination without extending the time for making a preliminary determination, if such final determination is made not later than 300 days after the date on which the preliminary determination is published.

(B) LIQUIDATION OF ENTRIES.—If the administering authority orders any liquidation of entries pursuant to a review under paragraph (1), such liquidation shall be made promptly and, to the greatest extent practicable, within 90 days after the order is issued. In any case in which liquidation has not occurred within that 90-day period, the Secretary of the Treasury shall, upon the request of the affected party, provide an explanation thereof.

(C) EFFECT OF PENDING REVIEW UNDER SECTION 516A.—In a case in which a final determination under paragraph (1) is under review under section 516A and a liquidation of entries covered by the determination is enjoined under section 516A(c)(2) or suspended under section 516A(g)(5)(C), the administering authority shall, within 10 days after the final disposition of the review under section 516A, transmit to the Federal Register for publication the final disposition and issue instructions to the Customs Service with respect to the liquidation of entries pursuant to the review. In such a case, the 90-day period referred to in subparagraph (B) shall begin on the day on which the administering authority issues such instructions.

(4) ABSORPTION OF ANTIDUMPING DUTIES.—During any review under this subsection initiated 2 years or 4 years after the publication of an antidumping duty order under section 736(a), the administering authority, if requested, shall determine whether antidumping duties have been absorbed by a foreign producer or exporter subject to the order if the subject merchandise is sold in the United States through an importer who is affiliated with such foreign producer or exporter. The administering authority shall notify the Commission of its findings regarding such duty absorption for the Commission to consider in conducting a review under subsection (c).

(b) REVIEWS BASED ON CHANGED CIRCUMSTANCES.—

(1) IN GENERAL.—Whenever the administering authority or the Commission receives information concerning, or a request from an interested party for a review of—

(A) a final affirmative determination that resulted in an antidumping duty order under this title or a finding under the Antidumping Act, 1921, or a countervailing duty order under this title or section 303,

(B) a suspension agreement accepted under section 704 or 734, or

(C) a final affirmative determination resulting from an investigation continued pursuant to section 704(g) or 734(g),

which shows changed circumstances sufficient to warrant a review of such determination or agreement, the administering authority or the Commission (as the case may be) shall conduct a review of the determination or agreement after publishing notice of the review in the Federal Register.

(2) **COMMISSION REVIEW.**—In conducting a review under this subsection, the Commission shall—

(A) in the case of a countervailing duty order or antidumping duty order or finding, determine whether revocation of the order or finding is likely to lead to continuation or recurrence of material injury,

(B) in the case of a determination made pursuant to section 704(h)(2) or 734(h)(2), determine whether the suspension agreement continues to eliminate completely the injurious effects of imports of the subject merchandise, and

(C) in the case of an affirmative determination resulting from an investigation continued under section 704(g) or 734(g), determine whether termination of the suspended investigation is likely to lead to continuation or recurrence of material injury.

(3) **BURDEN OF PERSUASION.**—During a review conducted by the Commission under this subsection—

(A) the party seeking revocation of an order or finding described in paragraph (1)(A) shall have the burden of persuasion with respect to whether there are changed circumstances sufficient to warrant such revocation, and

(B) the party seeking termination of a suspended investigation or a suspension agreement shall have the burden of persuasion with respect to whether there are changed circumstances sufficient to warrant such termination.

(4) **LIMITATION ON PERIOD FOR REVIEW.**—In the absence of good cause shown—

(A) the Commission may not review a determination made under section 705(b) or 735(b), or an investigation suspended under section 704 or 734, and

(B) the administering authority may not review a determination made under section 705(a) or 735(a), or an investigation suspended under section 704 or 734,

less than 24 months after the date of publication of notice of that determination or suspension.

(c) **FIVE-YEAR REVIEW.**—

(1) **IN GENERAL.**—Notwithstanding subsection (b) and except in the case of a transition order defined in paragraph (6), 5 years after the date of publication of—

(A) a countervailing duty order (other than a countervailing duty order to which subparagraph (B) applies or which was issued without an affirmative determination of injury by the Commission under section 303), an antidump-

ing duty order, or a notice of suspension of an investigation, described in subsection (a)(1),

(B) a notice of injury determination under section 753 with respect to a countervailing duty order, or

(C) a determination under this section to continue an order or suspension agreement,
the administering authority and the Commission shall conduct a review to determine, in accordance with section 752, whether revocation of the countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

(2) NOTICE OF INITIATION OF REVIEW.—Not later than 30 days before the fifth anniversary of the date described in paragraph (1), the administering authority shall publish in the Federal Register a notice of initiation of a review under this subsection and request that interested parties submit—

(A) a statement expressing their willingness to participate in the review by providing information requested by the administering authority and the Commission,

(B) a statement regarding the likely effects of revocation of the order or termination of the suspended investigation, and

(C) such other information or industry data as the administering authority or the Commission may specify.

(3) RESPONSES TO NOTICE OF INITIATION.—

(A) NO RESPONSE.—If no interested party responds to the notice of initiation under this subsection, the administering authority shall issue a final determination, within 90 days after the initiation of a review, revoking the order or terminating the suspended investigation to which such notice relates. For purposes of this paragraph, an interested party means a party described in section 771(9) (C), (D), (E), (F), or (G).

(B) INADEQUATE RESPONSE.—If interested parties provide inadequate responses to a notice of initiation, the administering authority, within 120 days after the initiation of the review, or the Commission, within 150 days after such initiation, may issue, without further investigation, a final determination based on the facts available, in accordance with section 776.

(4) WAIVER OF PARTICIPATION BY CERTAIN INTERESTED PARTIES.—

(A) IN GENERAL.—An interested party described in section 771(9) (A) or (B) may elect not to participate in a review conducted by the administering authority under this subsection and to participate only in the review conducted by the Commission under this subsection.

(B) EFFECT OF WAIVER.—In a review in which an interested party waives its participation pursuant to this paragraph, the administering authority shall conclude that revocation of the order or termination of the investigation would be likely to lead to continuation or recurrence of

dumping or a countervailable subsidy (as the case may be) with respect to that interested party.

(5) CONDUCT OF REVIEW.—

(A) TIME LIMITS FOR COMPLETION OF REVIEW.—*Unless the review has been completed pursuant to paragraph (3) or paragraph (4) applies, the administering authority shall make its final determination pursuant to section 752 (b) or (c) within 240 days after the date on which a review is initiated under this subsection. If the administering authority makes a final affirmative determination, the Commission shall make its final determination pursuant to section 752(a) within 360 days after the date on which a review is initiated under this subsection.*

(B) EXTENSION OF TIME LIMIT.—*The administering authority or the Commission (as the case may be) may extend the period of time for making their respective determinations under this subsection by not more than 90 days, if the administering authority or the Commission (as the case may be) determines that the review is extraordinarily complicated. In a review in which the administering authority extends the time for making a 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 42nd calendar month after the date such orders are issued. A review of all transition orders shall be initiated not later than the 5th anniversary after the date such orders are issued.*

(ii) **COMPLETION.**—A review of a transition order shall be completed not later than 18 months after the date such review is initiated. Reviews of all transition orders shall be completed not later than 18 months after the 5th anniversary of the date such orders are issued.

(iii) **SUBSEQUENT REVIEWS.**—The time limits set forth in clauses (i) and (ii) shall be applied to all subsequent 5-year reviews of transition orders by substituting “date of the determination to continue such orders” for “date such orders are issued”.

(iv) **REVOCATION AND TERMINATION.**—No transition order may be revoked under this subsection before the date that is 5 years after the date the WTO Agreement enters into force with respect to the United States.

(B) **SEQUENCE OF TRANSITION REVIEWS.**—The administering authority, in consultation with the Commission, shall determine such sequence of review of transition orders as it deems appropriate to promote administrative efficiency. To the extent practicable, older orders shall be reviewed first.

(C) **DEFINITION OF TRANSITION ORDER.**—For purposes of this section, the term “transition order” means—

(i) a countervailing duty order under this title or under section 303,

(ii) an antidumping duty order under this title or a finding under the Antidumping Act, 1921, or

(iii) a suspension of an investigation under section 704 or 734,

which is in effect on the date the WTO Agreement enters into force with respect to the United States.

(D) **ISSUE DATE FOR TRANSITION ORDERS.**—For purposes of this subsection, a transition order shall be treated as issued on the date the WTO Agreement enters into force with respect to the United States, if such order is based on an investigation conducted by both the administering authority and the Commission.

(d) **REVOCATION OF ORDER OR FINDING; TERMINATION OF SUSPENDED INVESTIGATION.**—

(1) **IN GENERAL.**—The administering authority may revoke, in whole or in part, a countervailing duty order or an antidumping duty order or finding, or terminate a suspended investigation, after review under subsection (a) or (b). The administering authority shall not revoke, in whole or in part, a countervailing duty order or terminate a suspended investigation on the basis of any export taxes, duties, or other charges levied on the export of the subject merchandise to the United States which are specifically intended to offset the countervailable subsidy received.

(2) **FIVE-YEAR REVIEWS.**—In the case of a review conducted under subsection (c), the administering authority shall revoke a countervailing duty order or an antidumping duty order or finding, or terminate a suspended investigation, unless—

(A) the administering authority makes a determination that dumping or a countervailable subsidy, as the case may be, would be likely to continue or recur, and

(B) the Commission makes a determination that material injury would be likely to continue or recur as described in section 752(a).

(3) APPLICATION OF REVOCATION OR TERMINATION.—A determination under this section to revoke an order or finding or terminate a suspended investigation shall apply with respect to unliquidated entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption on or after the date determined by the administering authority.

(e) HEARINGS.—Whenever the administering authority or the Commission conducts a review under this section, it shall, upon the request of an interested party, hold a hearing in accordance with section 774(b) in connection with that review.

(f) DETERMINATION THAT BASIS FOR SUSPENSION NO LONGER EXISTS.—If the determination of the Commission under subsection (b)(2)(B) is negative, the suspension agreement shall be treated as not accepted, beginning on the date of publication of the Commission's determination, and the administering authority and the Commission shall proceed, under section 704(i) or 734(i), as if the suspension agreement had been violated on that date, except that no duty under any order subsequently issued shall be assessed on merchandise entered, or withdrawn from warehouse, for consumption before that date.

(g) REVIEWS TO IMPLEMENT RESULTS OF SUBSIDIES ENFORCEMENT PROCEEDING.—

(1) VIOLATIONS OF ARTICLE 8 OF THE SUBSIDIES AGREEMENT.—If—

(A) the administering authority receives notice from the Trade Representative of a violation of Article 8 of the Subsidies Agreement,

(B) the administering authority has reason to believe that merchandise subject to an existing countervailing duty order or suspended investigation is benefiting from the subsidy or subsidy program found to have been in violation of Article 8 of the Subsidies Agreement, and

(C) no review pursuant to subsection (a)(1) is in progress, the administering authority shall conduct a review of the order or suspended investigation to determine whether the subject merchandise benefits from the subsidy or subsidy program found to have been in violation of Article 8 of the Subsidies Agreement. If the administering authority determines that the subject merchandise is benefiting from the subsidy or subsidy program, it shall make appropriate adjustments in the estimated duty to be deposited or appropriate revisions to the terms of the suspension agreement.

(2) WITHDRAWAL OF SUBSIDY OR IMPOSITION OF COUNTERMEASURES.—If the Trade Representative notifies the administering authority that, pursuant to Article 4 or Article 7 of the Subsidies Agreement—

(A)(i) *the United States has imposed countermeasures, and*

(ii) *such countermeasures are based on the effects in the United States of imports of merchandise that is the subject of a countervailing duty order, or*

(B) *a WTO member country has withdrawn a countervailable subsidy provided with respect to merchandise subject to a countervailing duty order, the administering authority shall conduct a review to determine if the amount of the estimated duty to be deposited should be adjusted or the order should be revoked.*

(3) **EXPEDITED REVIEW.**—*The administering authority shall conduct reviews under this subsection on an expedited basis, and shall publish the results of such reviews in the Federal Register.*

[(g)] (h) CORRECTION OF MINISTERIAL ERRORS.—*The administering authority shall establish procedures for the correction of ministerial errors in final determinations within a reasonable time after the determinations are issued under this section. Such procedures shall ensure opportunity for interested parties to present their views regarding any such errors. As used in this subsection, the term “ministerial error” includes errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.*

SEC. 752. SPECIAL RULES FOR SECTION 751(b) AND 751(c) REVIEWS.

(a) **DETERMINATION OF LIKELIHOOD OF CONTINUATION OR RECURRENCE OF MATERIAL INJURY.**—

(1) **IN GENERAL.**—*In a review conducted under section 751 (b) or (c), the Commission shall determine whether revocation of an order, or termination of a suspended investigation, would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission shall consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked or the suspended investigation is terminated. The Commission shall take into account—*

(A) *its prior injury determinations, including the volume, price effect, and impact of imports of the subject merchandise on the industry before the order was issued or the suspension agreement was accepted,*

(B) *whether any improvement in the state of the industry is related to the order or the suspension agreement,*

(C) *whether the industry is vulnerable to material injury if the order is revoked or the suspension agreement is terminated, and*

(D) *in an antidumping proceeding under section 751(c), the findings of the administering authority regarding duty absorption under section 751(a)(4).*

(2) **VOLUME.**—*In evaluating the likely volume of imports of the subject merchandise if the order is revoked or the suspended investigation is terminated, the Commission shall consider whether the likely volume of imports of the subject merchandise would be significant if the order is revoked or the sus-*

pending investigation is terminated, either in absolute terms or relative to production or consumption in the United States. In so doing, the Commission shall consider all relevant economic factors, including—

(A) *any likely increase in production capacity or existing unused production capacity in the exporting country,*

(B) *existing inventories of the subject merchandise, or likely increases in inventories,*

(C) *the existence of barriers to the importation of such merchandise into countries other than the United States, and*

(D) *the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.*

(3) *PRICE.—In evaluating the likely price effects of imports of the subject merchandise if the order is revoked or the suspended investigation is terminated, the Commission shall consider whether—*

(A) *there is likely to be significant price underselling by imports of the subject merchandise as compared to domestic like products, and*

(B) *imports of the subject merchandise are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of domestic like products.*

(4) *IMPACT ON THE INDUSTRY.—In evaluating the likely impact of imports of the subject merchandise on the industry if the order is revoked or the suspended investigation is terminated, the Commission shall consider all relevant economic factors which are likely to have a bearing on the state of the industry in the United States, including, but not limited to—*

(A) *likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,*

(B) *likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, and*

(C) *likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.*

The Commission shall evaluate all relevant economic factors described in this paragraph within the context of the business cycle and the conditions of competition that are distinctive to the affected industry.

(5) *BASIS FOR DETERMINATION.—The presence or absence of any factor which the Commission is required to consider under this subsection shall not necessarily give decisive guidance with respect to the Commission's determination of whether material injury is likely to continue or recur within a reasonably foreseeable time if the order is revoked or the suspended investigation is terminated. In making that determination, the Commission shall consider that the effects of revocation or termination may*

not be imminent, but may manifest themselves only over a longer period of time.

(6) **MAGNITUDE OF MARGIN OF DUMPING AND NET COUNTERAVAILABLE SUBSIDY; NATURE OF COUNTERAVAILABLE SUBSIDY.**—In making a determination under section 751 (b) or (c), the Commission may consider the magnitude of the margin of dumping or the magnitude of the net countervailable subsidy. If a countervailable subsidy is involved the Commission shall consider information regarding the nature of the countervailable subsidy and whether the subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement.

(7) **CUMULATION.**—For purposes of this subsection, the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 751 (b) or (c) were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.

(8) **SPECIAL RULE FOR REGIONAL INDUSTRIES.**—In a review under section 751 (b) or (c) involving a regional industry, the Commission may base its determination on the regional industry defined in the original investigation under this title, another region that satisfies the criteria established in section 771(4)(C), or the United States as a whole. In determining if a regional industry analysis is appropriate for the determination in the review, the Commission shall consider whether the criteria established in section 771(4)(C) are likely to be satisfied if the order is revoked or the suspended investigation is terminated.

(b) **DETERMINATION OF LIKELIHOOD OF CONTINUATION OR RECURRENCE OF A COUNTERAVAILABLE SUBSIDY.**—

(1) **IN GENERAL.**—In a review conducted under section 751(c) the administering authority shall determine whether revocation of a countervailing duty order or termination of a suspended investigation under section 704 would be likely to lead to continuation or recurrence of a countervailable subsidy. The administering authority shall consider—

(A) the net countervailable subsidy determined in the investigation and subsequent reviews, and

(B) whether any change in the program which gave rise to the net countervailable subsidy described in subparagraph (A) has occurred that is likely to affect that net countervailable subsidy.

(2) **CONSIDERATION OF OTHER FACTORS.**—If good cause is shown, the administering authority shall also consider—

(A) programs determined to provide countervailable subsidies in other investigations or reviews under this title, but only to the extent that such programs—

(i) can potentially be used by the exporters or producers subject to the review under section 751(c), and

(ii) did not exist at the time that the countervailing duty order was issued or the suspension agreement was accepted, and

(B) programs newly alleged to provide countervailable subsidies but only to the extent that the administering authority makes an affirmative countervailing duty determination with respect to such programs and with respect to the exporters or producers subject to the review.

(3) NET COUNTERVAILABLE SUBSIDY.—The administering authority shall provide to the Commission the net countervailable subsidy that is likely to prevail if the order is revoked or the suspended investigation is terminated. The administering authority shall normally choose a net countervailable subsidy that was determined under section 705 or subsection (a) or (b)(1) of section 751.

(4) SPECIAL RULE.—

(A) TREATMENT OF ZERO AND DE MINIMIS RATES.—A net countervailable subsidy described in paragraph (1)(A) that is zero or de minimis shall not by itself require the administering authority to determine that revocation of a countervailing duty order or termination of a suspended investigation would not be likely to lead to continuation or recurrence of a countervailable subsidy.

(B) APPLICATION OF DE MINIMIS STANDARDS.—For purposes of this paragraph, the administering authority shall apply the de minimis standards applicable to reviews conducted under subsections (a) and (b)(1) of section 751.

(c) DETERMINATION OF LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING.—

(1) IN GENERAL.—In a review conducted under section 751(c), the administering authority shall determine whether revocation of an antidumping duty order or termination of a suspended investigation under section 734 would be likely to lead to continuation or recurrence of sales of the subject merchandise at less than fair value. The administering authority shall consider—

(A) the weighted average dumping margins determined in the investigation and subsequent reviews, and

(B) the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order or acceptance of the suspension agreement.

(2) CONSIDERATION OF OTHER FACTORS.—If good cause is shown, the administering authority shall also consider such other price, cost, market, or economic factors as it deems relevant.

(3) MAGNITUDE OF THE MARGIN OF DUMPING.—The administering authority shall provide to the Commission the magnitude of the margin of dumping that is likely to prevail if the order is revoked or the suspended investigation is terminated. The administering authority shall normally choose a margin that was determined under section 735 or under subsection (a) or (b)(1) of section 751.

(4) SPECIAL RULE.—

(A) **TREATMENT OF ZERO OR DE MINIMIS MARGINS.**—A dumping margin described in paragraph (1)(A) that is zero or de minimis shall not by itself require the administering authority to determine that revocation of an antidumping duty order or termination of a suspended investigation would not be likely to lead to continuation or recurrence of sales at less than fair value.

(B) **APPLICATION OF DE MINIMIS STANDARDS.**—For purposes of this paragraph, the administering authority shall apply the de minimis standards applicable to reviews conducted under subsections (a) and (b) of section 751.

SEC. 753. SPECIAL RULES FOR INJURY INVESTIGATIONS FOR CERTAIN SECTION 303 COUNTERVAILING DUTY ORDERS AND INVESTIGATIONS.

(a) **IN GENERAL.**—

(1) **Investigation by the commission upon request.**—In the case of a countervailing duty order described in paragraph (2), which—

(A) applies to merchandise that is the product of a Subsidies Agreement country, and

(B)(i) is in effect on the date on which such country becomes a Subsidies Agreement country, or

(ii) is issued on a date that is after the date described in clause (i) pursuant to a court order in an action brought under section 516A,

the Commission, upon receipt of a request from an interested party described in section 771(9) (C), (D), (E), (F), or (G) for an injury investigation with respect to such order, shall initiate an investigation and shall determine whether an industry in the United States is likely to be materially injured by reason of imports of the subject merchandise if the order is revoked.

(2) **DESCRIPTION OF COUNTERVAILING DUTY ORDERS.**—A countervailing duty order described in this paragraph is an order issued under section 303 with respect to which the requirement of an affirmative determination of material injury under section 303(a)(2) was not applicable at the time such order was issued.

(3) **REQUIREMENTS OF REQUEST FOR INVESTIGATION.**—A request for an investigation under this subsection shall be submitted—

(A) in the case of an order described in paragraph (1)(B)(i), within 6 months after the date on which the country described in paragraph (1)(A) becomes a Subsidies Agreement country, or

(B) in the case of an order described in paragraph (1)(B)(ii), within 6 months after the date the order is issued.

(4) **SUSPENSION OF LIQUIDATION.**—With respect to entries of subject merchandise made on or after—

(A) in the case of an order described in paragraph (1)(B)(i), the date on which the country described in paragraph (1)(A) becomes a Subsidies Agreement country, or

(B) in the case of an order described in paragraph (1)(B)(ii), the date on which the order is issued,

liquidation shall be suspended at the cash deposit rate in effect on the date described in subparagraph (A) or (B) (whichever is applicable).

(b) INVESTIGATION PROCEDURE AND SCHEDULE.—

(1) COMMISSION PROCEDURE.—

(A) IN GENERAL.—*Except as otherwise provided in this section, the provisions of this title regarding evidence in and procedures for investigations conducted under subtitle A shall apply to investigations conducted by the Commission under this section.*

(B) TIME FOR COMMISSION DETERMINATION.—*Except as otherwise provided in subparagraph (C), the Commission shall issue its determination under subsection (a)(1), to the extent possible, not later than 1 year after the date on which the investigation is initiated under this section.*

(C) SPECIAL RULE TO PERMIT ADMINISTRATIVE FLEXIBILITY.—*In the case of requests for investigations received under this section within 1 year after the date on which the WTO Agreement enters into force with respect to the United States, the Commission may, after consulting with the administering authority, initiate its investigations in a manner that results in determinations being made in all such investigations during the 4-year period beginning on such date.*

(2) NET COUNTERAVAILABLE SUBSIDY; NATURE OF SUBSIDY.—

(A) NET COUNTERAVAILABLE SUBSIDY.—*The administering authority shall provide to the Commission the net countervailable subsidy that is likely to prevail if the order which is the subject of the investigation is revoked. The administering authority normally shall choose a net countervailable subsidy that was determined under section 705 or subsection (a) or (b)(1) of section 751. If the Commission considers the magnitude of the net countervailable subsidy in making its determination under this section, the Commission shall use the net countervailable subsidy provided by the administering authority.*

(B) NATURE OF SUBSIDY.—*The administering authority shall inform the Commission of, and the Commission, in making its determination under this section, shall consider, the nature of the countervailable subsidy and whether the countervailable subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement.*

(3) EFFECT OF COMMISSION DETERMINATION.—

(A) AFFIRMATIVE DETERMINATION.—*Upon being notified by the Commission that it has made an affirmative determination under subsection (a)(1)—*

(i) the administering authority shall order the termination of the suspension of liquidation required pursuant to subsection (a)(4), and

(ii) the countervailing duty order shall remain in effect until revoked, in whole or in part, under section 751(d).

For purposes of section 751(c), a countervailing duty order described in this section shall be treated as issued on the

date of publication of the Commission's determination under this subsection.

(B) **NEGATIVE DETERMINATION.**—

(i) **IN GENERAL.**—Upon being notified by the Commission that it has made a negative determination under subsection (a)(1), the administering authority shall revoke the countervailing duty order, and shall refund, with interest, any estimated countervailing duties collected during the period liquidation was suspended pursuant to subsection (a)(4).

(ii) **LIMITATION ON NEGATIVE DETERMINATION.**—A determination by the Commission that revocation of the order is not likely to result in material injury to an industry by reason of imports of the subject merchandise shall not be based, in whole or in part, on any export taxes, duties, or other charges levied on the export of the subject merchandise to the United States that were specifically intended to offset the countervailable subsidy received.

(4) **COUNTERVAILING DUTY ORDERS WITH RESPECT TO WHICH NO REQUEST FOR INJURY INVESTIGATION IS MADE.**—If, with respect to a countervailing duty order described in subsection (a), a request for an investigation is not made within the time required by subsection (a)(3), the Commission shall notify the administering authority that a negative determination has been made under subsection (a) and the provisions of paragraph (3)(B) shall apply with respect to the order.

(c) **PENDING AND SUSPENDED COUNTERVAILING DUTY INVESTIGATIONS.**—If, on the date on which a country becomes a Subsidies Agreement country, there is a countervailing duty investigation in progress or suspended under section 303 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 under section 303(a)(2) was not applicable at the time the investigation was initiated, the Commission shall—

(1) in the case of an investigation in progress, make a final determination under section 705(b) within 75 days after the date of an affirmative final determination, if any, by the administering authority,

(2) in the case of a suspended investigation to which section 704(i)(1)(B) applies, make a final determination under section 705(b) within 120 days after receiving notice from the administering authority of the resumption of the investigation pursuant to section 704(i), or within 45 days after the date of an affirmative final determination, if any, by the administering authority, whichever is later, or

(3) in the case of a suspended investigation to which section 704(i)(1)(C) applies, treat the countervailing duty order issued pursuant to such section as if it were—

(A) an order issued under subsection (a)(1)(B)(ii) for purposes of subsection (a)(3); and

(B) an order issued under subsection (a)(1)(B)(i) for purposes of subsection (a)(4).

(d) **PUBLICATION IN FEDERAL REGISTER.**—*The administering authority or the Commission, as the case may be, shall publish in the Federal Register a notice of the initiation of any investigation, and a notice of any determination or revocation, made pursuant to this section.*

(e) **REQUEST FOR SIMULTANEOUS EXPEDITED REVIEW UNDER SECTION 751(c).**—

(1) **GENERAL RULE.**—

(A) **REQUESTS FOR REVIEWS.**—*Notwithstanding section 751(c)(6)(A) and except as provided in subparagraph (B), an interested party may request a review of an order under section 751(c) at the same time the party requests an investigation under subsection (a), if the order involves the same or comparable subject merchandise. Upon receipt of such request, the administering authority, after consulting with the Commission, shall initiate a review of the order under section 751(c). The Commission shall combine such review with the investigation under this section.*

(B) **EXCEPTION.**—*If the administering authority determines that the interested party who requested an investigation under this section is a related party or an importer within the meaning of section 771(4)(B), the administering authority may decline a request by such party to initiate a review of an order under section 751(c) which involves the same or comparable subject merchandise.*

(2) **CUMULATION.**—*If a review under section 751(c) is initiated under paragraph (1), such review shall be treated as having been initiated on the same day as the investigation under this section, and the Commission may, in accordance with section 771(7)(G), cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which such investigations are treated as initiated on the same day.*

(3) **TIME AND PROCEDURE FOR COMMISSION DETERMINATION.**—*The Commission shall render its determination in the investigation conducted under this section at the same time as the Commission's determination is made in the review under section 751(c) that is initiated pursuant to this subsection. The Commission shall in all other respects apply the procedures and standards set forth in section 751(c) to such section 751(c) reviews.*

CHAPTER 2—CONSULTATIONS AND DETERMINATIONS REGARDING QUANTITATIVE RESTRICTION AGREEMENTS

SEC. 761. REQUIRED CONSULTATIONS.

(a) **AGREEMENTS IN RESPONSE TO COUNTERAVAILABLE SUBSIDIES.**—*Within 90 days after the administering authority accepts a quantitative restriction agreement under section 704(a)(2) or (c)(3), the President shall enter into consultations with the government that is party to the agreement for purposes of—*

(1) *eliminating the countervailable subsidy completely, or*

(2) reducing the net *countervailable* subsidy to a level that eliminates completely the injurious effect of exports to the United States of the merchandise.

* * * * *

SEC. 762. REQUIRED DETERMINATIONS.

(a) **IN GENERAL.**—Before the expiration date, if any, of a quantitative restriction agreement accepted under section 704(a)(2) or 704(c)(3) (if suspension of the related investigation is still in effect)—

(1) the administering authority shall, at the direction of the President, initiate a proceeding to determine whether any *countervailable* subsidy is being provided with respect to the [merchandise subject to the agreement] *subject merchandise* and, if being so provided, the net *countervailable* subsidy; and

(2) if the administering authority initiates a proceeding under paragraph (1), the Commission shall determine whether imports of the merchandise of the kind subject to the agreement will, upon termination of the agreement, materially injure, or threaten with material injury, an industry in the United States or materially retard the establishment of such an industry.

(b) **DETERMINATIONS.**—The determinations required to be made by the administering authority and the Commission under subsection (a) shall be made under such procedures as the administering authority and the Commission, respectively, shall by regulation prescribe, and shall be treated as final determinations made under section 705 for purposes of judicial review under section 516A. If the determinations by each are affirmative, the administering authority shall—

(1) issue a countervailing duty order under section 706 effective with respect to merchandise entered on and after the date on which the agreement terminates; and

(2) order the suspension of liquidation of all entries of [merchandise subject to the order] *subject merchandise* which are entered, or withdrawn from warehouse for consumption, on or after the date of publication of the order in the Federal Register.

(c) **HEARINGS.**—The determination proceedings required to be prescribed under subsection (b) shall provide that the administering authority and the Commission must, upon the request of any interested party, hold a hearing in accordance with section 774 on the issues involved.

Subtitle D—General Provisions

SEC. 771. DEFINITIONS; SPECIAL RULES.

For purposes of this title—

(1) **ADMINISTERING AUTHORITY.**—The term “administering authority” means the Secretary of [the Treasury] *Commerce*, or any other officer of the United States to whom the responsibility for carrying out the duties of the administering authority under this title are transferred by law.

* * * * *

(4) INDUSTRY.—

[(A) IN GENERAL.—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 investigation under this title, 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.]

[(B) RELATED PARTIES.—When some producers are related to the exporters or importers, or are themselves importers of the allegedly subsidized or dumped merchandise, the term “industry” may be applied in appropriate circumstances by excluding such producers from those included in that 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 [subsidized or] 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 [subsidized or] 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 [subsidized or] 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 [subsidized or] dumped imports or imports of merchandise benefiting from a countervailable subsidy shall be assessed by the examination of the production of the narrowest group or range of products, which includes a *domestic* like product, for which the necessary information can be provided.

* * * * *

[(5) SUBSIDY.—

[(A) IN GENERAL.—The term “subsidy” has the same meaning as the term “bounty or grant” as that term is used in section 303, and includes, but is not limited to, the following:

[(i) Any export subsidy described in Annex A to the Agreement (relating to illustrative list of export subsidies).

[(ii) 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.

[(B) SPECIAL RULE.—In applying subparagraph (A), the administering authority, in each investigation, shall determine whether the bounty, grant, or subsidy in law or in fact is provided to a specific enterprise or industry, or group of enterprises or industries. Nominal general availability, under the terms of the law, regulation, program, or rule establishing a bounty, grant, or subsidy, of the benefits thereunder is not a basis for determining that the bounty, grant, or subsidy is not, or has not been, in fact provided to a specific enterprise or industry, or group thereof.]

(5) *COUNTERAVAILABLE SUBSIDY.*—

(A) *IN GENERAL.*—*Except as provided in paragraph (5B), a countervailable subsidy is a subsidy described in this paragraph which is specific as described in paragraph (5A).*

(B) *SUBSIDY DESCRIBED.*—*A subsidy is described in this paragraph in the case in which an authority—*

(i) provides a financial contribution,

(ii) provides any form of income or price support within the meaning of Article XVI of the GATT 1994, or

(iii) makes a payment to a funding mechanism to provide a financial contribution, or entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments,

to a person and a benefit is thereby conferred. For purposes of this paragraph and paragraphs (5A) and (5B), the term “authority” means a government of a country or any public entity within the territory of the country.

(C) *OTHER FACTORS.*—*The determination of whether a subsidy exists shall be made without regard to whether the recipient of the subsidy is publicly or privately owned and without regard to whether the subsidy is provided directly or indirectly on the manufacture, production, or export of merchandise. The administering authority is not required to consider the effect of the subsidy in determining whether a subsidy exists under this paragraph.*

(D) FINANCIAL CONTRIBUTION.—The term “financial contribution” means—

(i) *the direct transfer of funds, such as grants, loans, and equity infusions, or the potential direct transfer of funds or liabilities, such as loan guarantees,*

(ii) *foregoing or not collecting revenue that is otherwise due, such as granting tax credits or deductions from taxable income,*

(iii) *providing goods or services, other than general infrastructure, or*

(iv) *purchasing goods.*

(E) BENEFIT CONFERRED.—A benefit shall normally be treated as conferred where there is a benefit to the recipient, including—

(i) *in the case of an equity infusion, if the investment decision is inconsistent with the usual investment practice of private investors, including the practice regarding the provision of risk capital, in the country in which the equity infusion is made,*

(ii) *in the case of a loan, if there is a difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market,*

(iii) *in the case of a loan guarantee, if there is a difference, after adjusting for any difference in guarantee fees, between the amount the recipient of the guarantee pays on the guaranteed loan and the amount the recipient would pay for a comparable commercial loan if there were no guarantee by the authority, and*

(iv) *in the case where goods or services are provided, if such goods or services are provided for less than adequate remuneration, and in the case where goods are purchased, if such goods are purchased for more than adequate remuneration.*

For purposes of clause (iv), the adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service being provided or the goods being purchased in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions of purchase or sale.

(F) CHANGE IN OWNERSHIP.—A change in ownership of all or part of a foreign enterprise or the productive assets of a foreign enterprise does not by itself require a determination by the administering authority that a past countervailable subsidy received by the enterprise no longer continues to be countervailable, even if the change in ownership is accomplished through an arm’s length transaction.

(5A) SPECIFICITY.—

(A) IN GENERAL.—A subsidy is specific if it is an export subsidy described in subparagraph (B) or an import substi-

tution 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 NONCOUNTERAVAILABLE SUBSIDIES.—

(A) IN GENERAL.—Notwithstanding the provisions of paragraphs (5) and (5A), in the case of merchandise imported from a Subsidies Agreement country, a subsidy shall be treated as noncountervailable if the administering authority determines in an investigation under subtitle A or a review under subtitle C that the subsidy meets all of the criteria described in subparagraph (B), (C), or (D), as the case may be, or the provisions of subparagraph (E)(i) apply.

(B) RESEARCH SUBSIDY.—

(i) IN GENERAL.—Except for a subsidy provided on the manufacture, production, or export of civil aircraft, a subsidy for research activities conducted by a person, or by a higher education or research establishment on a contract basis with a person, shall be treated as noncountervailable, if the subsidy covers not more than 75 percent of the costs of industrial research or not more than 50 percent of the costs of precompetitive development activity, and such subsidy is limited exclusively to—

(I) the costs of researchers, technicians, and other supporting staff employed exclusively in the research activity,

(II) the costs of instruments, equipment, land, or buildings that are used exclusively and permanently (except when disposed of on a commercial basis) for the research activity,

(III) the costs of consultancy and equivalent services used exclusively for the research activity, including costs for bought-in research, technical knowledge, and patents,

(IV) additional overhead costs incurred directly as a result of the research activity, and

(V) other operating costs (such as materials and supplies) incurred directly as a result of the research activity.

(ii) DEFINITIONS.—For purposes of this subparagraph—

(I) INDUSTRIAL RESEARCH.—The term “industrial research” means planned search or critical investigation aimed at the discovery of new knowledge, with the objective that such knowledge may be useful in developing new products, processes, or services, or in bringing about a significant im-

provement to existing products, processes, or services.

(II) **PRECOMPETITIVE DEVELOPMENT ACTIVITY.**—The term “precompetitive development activity” means the translation of industrial research findings into a plan, blueprint, or design for new, modified, or improved products, processes, or services, whether intended for sale or use, including the creation of a first prototype that would not be capable of commercial use. The term also may include the conceptual formulation and design of products, processes, or services alternatives and initial demonstration or pilot projects, if these same projects cannot be converted or used for industrial application or commercial exploitation. The term does not include routine or periodic alterations to existing products, production lines, manufacturing processes, services, or other ongoing operations even if those alterations may represent improvements.

(iii) **CALCULATION RULES.**—

(I) **IN GENERAL.**—In the case of a research activity that spans both industrial research and precompetitive development activity, the allowable level of the noncountervailable subsidy shall not exceed 62.5 percent of the costs set forth in subclauses (I), (II), (III), (IV), and (V) of clause (i).

(II) **TOTAL ELIGIBLE COSTS.**—The allowable level of a noncountervailable subsidy described in clause (i) shall be based on the total eligible costs incurred over the duration of a particular project.

(C) **SUBSIDY TO DISADVANTAGED REGIONS.**—

(i) **IN GENERAL.**—A subsidy provided, pursuant to a general framework of regional development, to a person located in a disadvantaged region within a country shall be treated as noncountervailable, if it is not specific (within the meaning of paragraph (5A)) within eligible regions and if the following conditions are met:

(I) Each region identified as disadvantaged within the territory of a country is a clearly designated, contiguous geographical area with a definable economic and administrative identity.

(II) Each region is considered a disadvantaged region on the basis of neutral and objective criteria indicating that the region is disadvantaged because of more than temporary circumstances, and such criteria are clearly stated in the relevant statute, regulation, or other official document so as to be capable of verification.

(III) The criteria described in subclause (II) include a measurement of economic development.

(IV) Programs provided within a general framework of regional development include ceilings on the amount of assistance that can be

granted to a subsidized project. Such ceilings are differentiated according to the different levels of development of assisted regions, and are expressed in terms of investment costs or costs of job creation. Within such ceilings, the distribution of assistance is sufficiently broad and even to avoid the predominant use of a subsidy by, or the provision of disproportionately large amounts of a subsidy to, an enterprise or industry as described in paragraph (5A)(D).

(ii) MEASUREMENT OF ECONOMIC DEVELOPMENT.—

For purposes of clause (i), the measurement of economic development shall be based on one or more of the following factors:

(I) Per capita income, household per capita income, or per capita gross domestic product that does not exceed 85 percent of the average for the country subject to investigation or review.

(II) An unemployment rate that is at least 110 percent of the average unemployment rate for the country subject to investigation or review.

The measurement of economic development shall cover a 3-year period, but may be a composite measurement and may include factors other than those set forth in this clause.

(iii) DEFINITIONS.—For purposes of this subparagraph—

(I) GENERAL FRAMEWORK OF REGIONAL DEVELOPMENT.—*The term “general framework of regional development” means that the regional subsidy programs are part of an internally consistent and generally applicable regional development policy, and that regional development subsidies are not granted in isolated geographical points having no, or virtually no, influence on the development of a region.*

(II) NEUTRAL AND OBJECTIVE CRITERIA.—*The term “neutral and objective criteria” means criteria that do not favor certain regions beyond what is appropriate for the elimination or reduction of regional disparities within the framework of the regional development policy.*

(D) SUBSIDY FOR ADAPTATION OF EXISTING FACILITIES TO NEW ENVIRONMENTAL REQUIREMENTS.—

(i) IN GENERAL.—*A subsidy that is provided to promote the adaptation of existing facilities to new environmental requirements that are imposed by statute or by regulation, and that result in greater constraints and financial burdens on the recipient of the subsidy, shall be treated as noncountervailable, if the subsidy—*

(I) is a one-time nonrecurring measure,

(II) is limited to 20 percent of the cost of adaptation,

(III) does not cover the cost of replacing and operating the subsidized investment, a cost that must be fully borne by the recipient,

(IV) is directly linked and proportionate to the recipient's planned reduction of nuisances and pollution, and does not cover any manufacturing cost savings that may be achieved, and

(V) is available to all persons that can adopt the new equipment or production processes.

(ii) **EXISTING FACILITIES.**—For purposes of this subparagraph, the term “existing facilities” means facilities that have been in operation for at least 2 years before the date on which the new environmental requirements are imposed.

(E) **NOTIFIED SUBSIDY PROGRAM.**—

(i) **GENERAL RULE.**—If a subsidy is provided pursuant to a program that has been notified in accordance with Article 8.3 of the Subsidies Agreement, the subsidy shall be treated as noncountervailable and shall not be subject to investigation or review under this title.

(ii) **EXCEPTION.**—Notwithstanding clause (i), a subsidy shall be treated as countervailable if—

(I) the Trade Representative notifies the administering authority that a determination has been made pursuant to Article 8.4 or 8.5 of the Subsidies Agreement that the subsidy, or the program pursuant to which the subsidy was provided, does not satisfy the conditions and criteria of Article 8.2 of the Subsidies Agreement; and

(II) the subsidy is specific within the meaning of paragraph (5A).

(F) **CERTAIN SUBSIDIES ON AGRICULTURAL PRODUCTS.**—Domestic support measures that are provided with respect to products listed in Annex 1 to the Agreement on Agriculture, and that the administering authority determines conform fully to the provisions of Annex 2 to that Agreement, shall be treated as noncountervailable. Upon request by the administering authority, the Trade Representative shall provide advice regarding the interpretation and application of Annex 2.

(G) **PROVISIONAL APPLICATION.**—

(i) Subparagraphs (B), (C), (D), and (E) shall not apply on or after the first day of the month that is 66 months after the WTO Agreement enters into force, unless the provisions of such subparagraphs are extended pursuant to section 282(c) of the Uruguay Round Agreements Act.

(ii) Subparagraph (F) shall not apply to imports from a WTO member country at the end of the 9-year period beginning on January 1, 1995. The Trade Representative shall determine the precise termination date for each WTO member country in accordance with paragraph (i) of Article 1 of the Agreement on Agri-

culture and such date shall be notified to the administering authority.

(6) **NET COUNTERAVAILABLE** subsidy.—For the purpose of determining the net *countervailable* subsidy, the administering authority may subtract from the gross 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 subsidy,

(B) any loss in the value of the *countervailable* subsidy resulting from its deferred receipt, if the deferral is mandated by Government order, and

(C) export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the *countervailable* subsidy received.

(7) **MATERIAL INJURY**.—

(A) **IN GENERAL**.—The term “material injury” means harm which is not inconsequential, immaterial, or unimportant.

(B) **VOLUME AND CONSEQUENT IMPACT**.—In making determinations under sections 703(a), 705(b), 733(a), and 735(b), the Commission in each case—

(i) shall consider—

(I) the volume of imports of the [merchandise which is the subject of the investigation] *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 705(d) or 735(d), as the case may be, the Commission shall explain its analysis of each factor considered under clause (i), and identify each factor considered under clause (ii) and explain in full its relevance to the determination.

(C) **EVALUATION OF RELEVANT FACTORS**.—For purposes of subparagraph (B)—

(i) **VOLUME**.—In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.

(ii) **PRICE**.—In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether—

(I) there has been significant price underselling by the imported merchandise as com-

pared 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)(iii)] *(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, [and]

(IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the *domestic* like product[.], and

(V) *in a proceeding under subtitle B, the magnitude of the margin of dumping.*

The Commission shall evaluate all relevant economic factors described in this clause within the context of the business cycle and conditions of competition that are distinctive to the affected industry.

[(iv) **CUMULATION**—

[(I) **IN GENERAL.**—For purposes of clauses (i) and (ii), and subject to subclause (II), the Commission 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.

[(II) **CBI EXCEPTION.**—Solely for purposes of determining material injury, or the threat thereof, by reason of imports which are products of a country designated as a beneficiary country under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701 et seq.), the volume and effect of imports from such country may only be cumulatively assessed with imports of like products from one or more other countries designated as beneficiary countries.]

(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.

[(v) TREATMENT OF NEGLIGIBLE IMPORTS.—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 discernible adverse impact on the domestic industry. For purposes of making such determination, the Commission shall evaluate all relevant economic factors regarding the imports, including, but not limited to, whether—

[(I) the volume and market share of the imports are negligible,

[(II) sales transactions involving the imports are isolated and sporadic, and

[(III) the domestic market for the domestic like product is price sensitive by reason of the nature of the product, so that a small quantity of imports can result in price suppression or depression.

[For purposes of this clause, the Commission may treat as negligible and having no discernible adverse impact on the domestic industry imports that are the product of any country that is a party to a free trade area agreement with the United States which entered into force and effect before January 1, 1987, if the Commission determines that the domestic industry is not being materially injured by reason of such imports.]

(D) SPECIAL RULES FOR AGRICULTURAL PRODUCTS.—

(i) The Commission shall not determine that there is no material injury or threat of material injury to the United States producers of an agricultural commodity merely because the prevailing market price is at or above the minimum support price.

(ii) In the case of agricultural products, the Commission shall consider any increased burden on government income or price support programs.

(E) SPECIAL RULES.—For purposes of this paragraph—

[(i) NATURE OF SUBSIDY.—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.]

*(i) NATURE OF COUNTERAVAILABLE 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 merchandise, the Commission shall consider, among other relevant economic factors—

[(I) If a 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 subsidy is an export subsidy inconsistent with the Agreement),

[(II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States,

[(III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,

[(IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,

[(V) any substantial increase in inventories of the merchandise in the United States,

[(VI) the presence of underutilized capacity for producing the merchandise in the exporting country,

[(VII) any other demonstrable adverse trends that indicate the probability that the importation (or sale for importation) of the merchandise

(whether or not it is actually being imported at the time) will be the cause of actual injury,

[(VIII) the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 701 or 731 or to final orders under section 706 or 736, are also used to produce the merchandise under investigation,

[(IX) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both)¹

[(X) 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 like product.

[(ii) BASIS FOR DETERMINATION.—Any determination by the Commission under this title that an industry in the United States is threatened with material injury shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition.]

(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 countervailable subsidy (particularly as to whether the countervailable subsidy is a countervailable 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*

¹ So in law. Probably should read "both". See sections 1326(b)(3) and 1329 of P.L. 100-418, 102 Stat. 1204.]

into account the availability of other export markets to absorb any additional exports,

(III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,

(IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices, and are likely to increase demand for further imports,

(V) inventories of the subject merchandise,

(VI) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products,

(VII) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both),

(VIII) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and

(IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).

(ii) BASIS FOR DETERMINATION.—The Commission shall consider the factors set forth in clause (i) as a whole in making a determination of whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted under this title. The presence or absence of any factor which the Commission is required to consider under clause (i) shall not necessarily give decisive guidance with respect to the determination. Such a determination may not be made on the basis of mere conjecture or supposition.

(iii) EFFECT OF DUMPING IN THIRD-COUNTRY MARKETS.—

(I) IN GENERAL.—In investigations under subtitle B, the Commission shall consider whether dumping in the markets of foreign countries (as

evidenced by dumping findings or antidumping remedies in other [GATT] 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) [GATT] WTO MEMBER MARKET.—For purposes of this clause, the term “[GATT] WTO member market” means the market of any country which is a [signatory to The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (relating to anti-dumping measures)] WTO member.

(III) EUROPEAN COMMUNITIES.—For purposes of this clause, the European Communities shall be treated as a foreign country.

[(iv) CUMULATION.—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 303, 701, or 731.]

(G) CUMULATION FOR DETERMINING MATERIAL INJURY.—

(i) IN GENERAL.—For purposes of clauses (i) and (ii) of subparagraph (C), and subject to clause (ii), the Commission shall cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which—

(I) petitions were filed under section 702(b) or 732(b) on the same day,

(II) investigations were initiated under section 702(a) or 732(a) on the same day, or

(III) petitions were filed under section 702(b) or 732(b) and investigations were initiated under section 702(a) or 732(a) on the same day,

if such imports compete with each other and with domestic like products in the United States market.

(ii) EXCEPTIONS.—The Commission shall not cumulatively assess the volume and effect of imports under clause (i)—

(I) with respect to which the administering authority has made a preliminary negative determination, unless the administering authority subsequently made a final affirmative determination

with respect to those imports before the Commission's final determination is made;

(II) from any country with respect to which the investigation has been terminated;

(III) from any country designated as a beneficiary country under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701 et seq.) for purposes of making a determination with respect to that country, except that the volume and effect of imports of the subject merchandise from such country may be cumulatively assessed with imports of the subject merchandise from any other country designated as such a beneficiary country to the extent permitted by clause (i); or

(IV) from any country that is a party to an agreement with the United States establishing a free trade area, which entered into force and effect before January 1, 1987, unless the Commission determines that a domestic industry is materially injured or threatened with material injury by reason of imports from that country.

(iii) RECORDS IN FINAL INVESTIGATIONS.—In each final determination in which it cumulatively assesses the volume and effect of imports under clause (i), the Commission shall make its determinations based on the record compiled in the first investigation in which it makes a final determination, except that when the administering authority issues its final determination in a subsequently completed investigation, the Commission shall permit the parties in the subsequent investigation to submit comments concerning the significance of the administering authority's final determination, and shall include such comments and the administering authority's final determination in the record for the subsequent investigation.

(iv) REGIONAL INDUSTRY DETERMINATIONS.—In an investigation which involves a regional industry, and in which the Commission decides that the volume and effect of imports should be cumulatively assessed under this subparagraph, such assessment shall be based upon the volume and effect of imports into the region or regions determined by the Commission. The provisions of clause (iii) shall apply to such investigations.

(H) CUMULATION FOR DETERMINING THREAT OF MATERIAL INJURY.—To the extent practicable and subject to subparagraph (G)(ii), for purposes of clause (i)(III) and (IV) of subparagraph (F), the Commission may cumulatively assess the volume and price effects of imports of the subject merchandise from all countries with respect to which—

(i) petitions were filed under section 702(b) or 732(b) on the same day,

(ii) investigations were initiated under section 702(a) or 732(a) on the same day, or

(iii) petitions were filed under section 702(b) or 732(b) and investigations were initiated under section 702(a) or 732(a) on the same day, if such imports compete with each other and with domestic like products in the United States market.

(I) CONSIDERATION OF POST-PETITION INFORMATION.—The Commission shall consider whether any change in the volume, price effects, or impact of imports of the subject merchandise since the filing of the petition in an investigation under subtitle A or B is related to the pendency of the investigation and, if so, the Commission may reduce the weight accorded to the data for the period after the filing of the petition in making its determination of material injury, threat of material injury, or material retardation of the establishment of an industry in the United States.

[(8) AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES; AGREEMENT.—The terms “Agreement on Subsidies and Countervailing Measures” and “Agreement” mean 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) approved under section 2(a) of the Trade Agreements Act of 1979.]

(8) SUBSIDIES AGREEMENT; AGREEMENT ON AGRICULTURE.—

(A) SUBSIDIES AGREEMENT.—The term “Subsidies Agreement” means the Agreement on Subsidies and Countervailing Measures referred to in section 101(d)(12) of the Uruguay Round Agreements Act.

(B) AGREEMENT ON AGRICULTURE.—The term “Agreement on Agriculture” means the Agreement on Agriculture referred to in section 101(d)(2) of the Uruguay Round Agreements Act.

(9) INTERESTED PARTY.—The term “interested party” means—

(A) a foreign manufacturer, producer, or exporter, or the United States importer, of [merchandise which is the subject of an investigation] *subject merchandise* under this title or a trade or business association a majority of the members of which are *producers, exporters, or importers* of such merchandise,

(B) the government of a country in which such merchandise is produced or manufactured or from which such merchandise is exported,

(C) a manufacturer, producer, or wholesaler in the United States of a *domestic* like product,

(D) a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a *domestic* like product,

(E) a trade or business association a majority of whose members manufacture, produce, or wholesale a *domestic* like product in the United States,

(F) an association, a majority of whose members is composed of interested parties described in subparagraph (C), (D), or (E) with respect to a *domestic* like product, and

(G) in any investigation under this title involving an industry engaged in producing a processed agricultural product, as defined in paragraph (4)(E), a coalition or trade association which is representative of either—

- (i) processors,
- (ii) processors and producers, or
- (iii) processors and growers,

but this subparagraph shall cease to have effect if the United States Trade Representative notifies the administering authority and the Commission that the application of this subparagraph is inconsistent with the international obligations of the United States.

(10) *DOMESTIC LIKE PRODUCT*.—The term “domestic like product” means a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.

(11) *AFFIRMATIVE DETERMINATIONS BY DIVIDED COMMISSION*.—If the Commissioners voting on a determination by the Commission, *including a determination under section 751*, are evenly divided as to whether the determination should be affirmative or negative, the Commission shall be deemed to have made an affirmative determination. For the purpose of applying this paragraph when the issue before the Commission is to determine whether there is—

* * * * *

[(13) *EXPORTER*.—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 any business conducted 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.]

(13) *EXPORTER*.—For purposes of determining the export price, the term “exporter” includes the person by whom or for whose account the subject merchandise is imported into the United States if such person is affiliated with the exporter or producer of the merchandise.

* * * * *

(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 [merchandise which is the subject of an investigation] *subject merchandise*, have been normal in the trade under consideration with respect to merchandise of the same class or kind. *The administering authority shall consider the following sales and transactions, among others, to be outside the ordinary course of trade:*

(A) *Sales disregarded under section 773(b)(1).*

(B) *Transactions disregarded under section 773(f)(2).*

(16) **[SUCH OR SIMILAR MERCHANDISE] FOREIGN LIKE PRODUCT.**—The term [“such or similar merchandise”] “foreign like product” means merchandise in the first of the following categories in respect of which a determination for the purposes of subtitle B of this title can be satisfactorily made:

(A) The [merchandise which is the subject of an investigation] *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 [merchandise which is the subject of the investigation] *subject merchandise*,

(ii) like that merchandise in component material or materials and in the purposes for which used, and

(iii) approximately equal in commercial value to that merchandise.

(C) **MERCHANDISE—**

(i) produced in the same country and by the same person and of the same general class or kind as the merchandise which is the subject of the investigation,

(ii) like that merchandise in the purposes for which used, and

(iii) which the administering authority determines may reasonably be compared with that merchandise.

(17) **USUAL COMMERCIAL QUANTITIES.**—The term “usual commercial quantities”, in any case in which the [merchandise which is the subject of the investigation] *subject merchandise* is sold in the market under consideration at different prices for different quantities, means the quantities in which such merchandise is there sold at the price or prices for one quantity in an aggregate volume which is greater than the aggregate volume sold at the price or prices for any other quantity.

* * * * *

(24) **NEGLIGIBLE IMPORTS.**—

(A) **IN GENERAL.**—

(i) **LESS THAN 3 PERCENT.**—*Except as provided in clauses (ii) and (iv), imports from a country of merchandise corresponding to a domestic like product identified by the Commission are “negligible” if such imports account for less than 3 percent of the volume of all such merchandise imported into the United*

States in the most recent 12-month period for which data are available that precedes—

(I) the filing of the petition under section 702(b) or 732(b), or

(II) the initiation of the investigation, if the investigation was initiated under section 702(a) or 732(a).

(ii) **EXCEPTION.**—Imports that would otherwise be negligible under clause (i) shall not be negligible if the aggregate volume of imports of the merchandise from all countries described in clause (i) with respect to which investigations were initiated on the same day exceeds 7 percent of the volume of all such merchandise imported into the United States during the applicable 12-month period.

(iii) **DETERMINATION OF AGGREGATE VOLUME.**—In determining aggregate volume under clause (ii) or (iv), the Commission shall not consider imports from any country specified in paragraph (7)(G)(ii).

(iv) **NEGLIGIBILITY IN THREAT ANALYSIS.**—Notwithstanding clauses (i) and (ii), the Commission shall not treat imports negligible if it determines that there is a potential that imports from a country described in clause (i) will imminently account for more than 3 percent of the volume of all such merchandise imported into the United States, or that the aggregate volumes of imports from all countries described in clause (ii) will imminently exceed 7 percent of the volume of all such merchandise imported into the United States. The Commission shall consider such imports only for purposes of determining threat of material injury.

(B) **NEGLIGIBILITY FOR CERTAIN COUNTRIES IN COUNTERVAILING DUTY INVESTIGATIONS.**—In the case of an investigation under section 701, subparagraph (A) shall be applied to imports of subject merchandise from developing countries by substituting “4 percent” for “3 percent” in subparagraph (A)(i) and by substituting “9 percent” for “7 percent” in subparagraph (A)(ii).

(C) **COMPUTATION OF IMPORT VOLUMES.**—In computing import volumes for purposes of subparagraphs (A) and (B), the Commission may make reasonable estimates on the basis of available official statistics.

(D) **REGIONAL INDUSTRIES.**—In an investigation in which the Commission makes a regional industry determination under paragraph (4)(C), the Commission’s examination under subparagraphs (A) and (B) shall be based upon the volume of subject merchandise exported for sale in the regional market in lieu of the volume of all subject merchandise imported into the United States.

(25) **SUBJECT MERCHANDISE.**—The term “subject merchandise” means the class or kind of merchandise that is within the scope of an investigation, a review, a suspension agreement, an order under this title or section 303, or a finding under the Antidumping Act, 1921.

(26) **SECTION 303.**—The terms “section 303” and “303” mean section 303 of this Act as in effect on the day before the effective date of title II of the Uruguay Round Agreements Act.

(27) **SUSPENSION AGREEMENT.**—The term “suspension agreement” means an agreement described in section 704(b), 704(c), 734(b), 734(c), or 734(l).

(28) **EXPORTER OR PRODUCER.**—The term “exporter or producer” means the exporter of the subject merchandise, the producer of the subject merchandise, or both where appropriate. For purposes of section 773, the term “exporter or producer” includes both the exporter of the subject merchandise and the producer of the same subject merchandise to the extent necessary to accurately calculate the total amount incurred and realized for costs, expenses, and profits in connection with production and sale of that merchandise.

(29) **WTO AGREEMENT.**—The term “WTO Agreement” means the Agreement defined in section 2(9) of the Uruguay Round Implementation Act.

(30) **WTO MEMBER AND WTO MEMBER COUNTRY.**—The terms “WTO member” and “WTO member country” mean a state, or separate customs territory (within the meaning of Article XII of the WTO Agreement), with respect to which the United States applies the WTO agreement.

(31) **GATT 1994.**—The term “GATT 1994” means the General Agreement on Tariffs and Trade annexed to the WTO Agreement.

(32) **TRADE REPRESENTATIVE.**—The term “Trade Representative” means the United States Trade Representative.

(33) **AFFILIATED PERSONS.**—The following persons shall be considered to be “affiliated” or “affiliated persons”:

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

(B) Any officer or director of an organization and such organization.

(C) Partners.

(D) Employer and employee.

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

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

(G) Any person who controls any other person and such other person.

For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

(34) **DUMPED; DUMPING.**—The terms “dumped” and “dumping” refer to the sale or likely sale of goods at less than fair value.

(35) **DUMPING MARGIN; WEIGHTED AVERAGE DUMPING MARGIN.**—

(A) **DUMPING MARGIN.**—*The term “dumping margin” means the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise.*

(B) **WEIGHTED AVERAGE DUMPING MARGIN.**—*The term “weighted average dumping margin” is the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer.*

(C) **MAGNITUDE OF THE MARGIN OF DUMPING.**—*The magnitude of the margin of dumping used by the Commission shall be—*

(i) *in making a preliminary determination under section 733(a) in an investigation (including any investigation in which the Commission cumulatively assesses the volume and effect of imports under paragraph (7)(G)(i)), the dumping margin or margins published by the administering authority in its notice of initiation of the investigation;*

(ii) *in making a final determination under section 735(b), the dumping margin or margins most recently published by the administering authority prior to the closing of the Commission’s administrative record;*

(iii) *in a review under section 751(b)(2), the most recent dumping margin or margins determined by the administering authority under section 752(c)(3), if any, or under section 733(b) or 735(a); and*

(iv) *in a review under section 751(c), the dumping margin or margins determined by the administering authority under section 752(c)(3).*

(36) **DEVELOPING AND LEAST DEVELOPED COUNTRY.**—

(A) **DEVELOPING COUNTRY.**—*The term “developing country” means a country designated as a developing country by the Trade Representative.*

(B) **LEAST DEVELOPED COUNTRY.**—*The term “least developed country” means a country which the Trade Representative determines is—*

(i) *a country referred to as a least developed country within the meaning of paragraph (a) of Annex VII to the Subsidies Agreement, or*

(ii) *any other country listed in Annex VII to the Subsidies Agreement, but only if the country has a per capita gross national product of less than \$1,000 per annum as measured by the most recent data available from the World Bank.*

(C) **PUBLICATION OF LIST.**—*The Trade Representative shall publish in the Federal Register, and update as necessary, a list of—*

(i) *developing countries that have eliminated their export subsidies on an expedited basis within the*

meaning of Article 27.11 of the Subsidies Agreement, and

(ii) countries determined by the Trade Representative to be least developed or developing countries.

(D) FACTORS TO CONSIDER.—*In determining whether a country is a developing country under subparagraph (A), the Trade Representative shall consider such economic, trade, and other factors which the Trade Representative considers appropriate, including the level of economic development of such country (the assessment of which shall include a review of the country's per capita gross national product) and the country's share of world trade.*

(E) LIMITATION ON DESIGNATION.—*A determination that a country is a developing or least developed country pursuant to this paragraph shall be for purposes of this title only and shall not affect the determination of a country's status as a developing or least developed country with respect to any other law.*

SEC. 771A. UPSTREAM SUBSIDIES.

[(a) DEFINITION.—*The term "upstream subsidy" means any subsidy described in section 771(5)(B) (i), (ii), (iii), or (iv) by the government of a country that—*

[(1) 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;]

(a) DEFINITION.—*The term "upstream subsidy" means any countervailable subsidy, other than an export subsidy, that—*

(1) is paid or bestowed by an authority (as defined in section 771(5)) with respect to a product (hereafter in this section referred to as an "input product") that is used in the same country as the authority in the manufacture or production of merchandise which is the subject of a countervailing duty proceeding;

(2) in the judgment of the administering authority bestows a competitive benefit on the merchandise; and

(3) has a significant effect on the cost of manufacturing or producing the merchandise.

In applying this subsection, an association of two or more foreign countries, political subdivisions, dependent territories, or possessions of foreign countries organized into a customs union outside the United States shall be treated as being one country if the countervailable subsidy is provided by the customs union.

(b) DETERMINATION OF COMPETITIVE BENEFIT.—

(1) IN GENERAL.—*Except as provided in paragraph (2), the administering authority shall decide that a competitive benefit has been bestowed when the price for the input product referred to in subsection (a)(1) for such use is lower than the price that the manufacturer or producer of merchandise which is the subject of a countervailing duty proceeding would otherwise pay for the product in obtaining it from another seller in an arms-length transaction.*

(2) ADJUSTMENTS.—If the administering authority has determined in a previous proceeding that a *countervailable* subsidy is paid or bestowed on the input product that is used for comparison under paragraph (1), the administering authority may (A) where appropriate, adjust the price that the manufacturer or producer of merchandise which is the subject of such proceeding would otherwise pay for the product to reflect the 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 [merchandise under investigation] *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 [subsidization] *the countervailable subsidy* determined with respect to the upstream product.

SEC. 771B. CALCULATION OF *COUNTERVAILABLE* SUBSIDIES ON CERTAIN PROCESSED AGRICULTURAL PRODUCTS.

In the case of an agricultural product processed from a raw agricultural product in which—

(1) the demand for the prior stage product is substantially dependent on the demand for the latter stage product, and

(2) the processing operation adds only limited value to the raw commodity,

countervailable subsidies found to be provided to either producers or processors of the product shall be deemed to be provided with respect to the manufacture, production, or exportation of the processed product.

[SEC. 772. UNITED STATES PRICE

[(a) UNITED STATES PRICE.—For purposes of this title, the term “United States price” means the purchase price, or the exporter’s sales price, of the merchandise, whichever is appropriate.

[(b) PURCHASE PRICE.—For purposes of this section, the term “purchase price” means the price at which merchandise is purchased, or agreed to be purchased, prior to the date of importation, from a reseller or the manufacturer or producer of the merchandise for exportation to the United States. Appropriate adjustments for costs and expenses under subsection (d) shall be made if they are not reflected in the price paid by the person by whom, or for whose account, the merchandise is imported.

[(c) EXPORTER’S SALES PRICE.—For purposes of this section, the term “exporter’s sales price” means the price at which merchandise is sold or agreed to be sold in the United States, before or after the time of importation, by or for the account of the exporter, as adjusted under subsections (d) and (e).

[(d) ADJUSTMENTS TO PURCHASE PRICE AND EXPORTER’S SALES PRICE.—The purchase price and the exporter’s sales price shall be adjusted by being—

[(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 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 merchandise to the United States;

[(C) the amount of any taxes imposed in the country of exportation directly upon the exported merchandise or components thereof, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States, but only to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation; and

[(D) the amount of any countervailing duty imposed on the merchandise under subtitle A of this title or section 303 of this Act to offset an export subsidy, and

[(2) reduced by—

[(A) except as provided in paragraph (1)(D), the amount, if any, included in such price, attributable to any additional costs, charges, and expenses, and United States import duties, incident to bringing the merchandise from the place of shipment in the country of exportation 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 country of exportation on the exportation of the merchandise to the United States other than an export tax, duty, or other charge described in section 771(6)(C).

[(e) **ADDITIONAL ADJUSTMENTS TO EXPORTER'S SALES PRICE.**—For purposes of this section, the exporter's sales price shall also be adjusted by being reduced by the amount, if any, of—

[(1) commissions for selling in the United States the particular merchandise under consideration,

[(2) expenses generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise, and

[(3) any increased value, including additional material and labor, resulting from a process of manufacture or assembly performed on the imported merchandise after the importation of the merchandise and before its sale to a person who is not the exporter of the merchandise.]

SEC. 772. EXPORT PRICE AND CONSTRUCTED EXPORT PRICE.

(a) **EXPORT PRICE.**—*The term "export price" means the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c).*

(b) **CONSTRUCTED EXPORT PRICE.**—*The term "constructed export price" means the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date*

of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d).

(c) **ADJUSTMENTS FOR EXPORT PRICE AND CONSTRUCTED EXPORT PRICE.**—*The price used to establish export price and constructed export price shall be—*

(1) *increased by—*

(A) *when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the subject merchandise in condition packed ready for shipment to the United States,*

(B) *the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States, and*

(C) *the amount of any countervailing duty imposed on the subject merchandise under subtitle A to offset an export subsidy, and*

(2) *reduced by—*

(A) *except as provided in paragraph (1)(C), the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties, which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States, and*

(B) *the amount, if included in such price, of any export tax, duty, or other charge imposed by the exporting country on the exportation of the subject merchandise to the United States, other than an export tax, duty, or other charge described in section 771(6)(C).*

(d) **ADDITIONAL ADJUSTMENTS TO CONSTRUCTED EXPORT PRICE.**—*For purposes of this section, the price used to establish constructed export price shall also be reduced by—*

(1) *the amount of any of the following expenses generally incurred by or for the account of the producer or exporter, or the affiliated seller in the United States, in selling the subject merchandise (or subject merchandise to which value has been added)—*

(A) *commissions for selling the subject merchandise in the United States;*

(B) *expenses that result from, and bear a direct relationship to, the sale, such as credit expenses, guarantees and warranties;*

(C) *any selling expenses that the seller pays on behalf of the purchaser;*

(D) *any selling expenses not deducted under subparagraph (A), (B), or (C);*

(2) *the cost of any further manufacture or assembly (including additional material and labor), except in circumstances described in subsection (e); and*

(3) *the profit allocated to the expenses described in paragraphs (1) and (2).*

(e) **SPECIAL RULE FOR MERCHANDISE WITH VALUE ADDED AFTER IMPORTATION.**—Where the subject merchandise is imported by a person affiliated with the exporter or producer, and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, the administering authority shall determine the constructed export price for such merchandise by using one of the following prices if there is a sufficient quantity of sales to provide a reasonable basis for comparison and the administering authority determines that the use of such sales is appropriate:

(1) The price of identical subject merchandise sold by the exporter or producer to an unaffiliated person.

(2) The price of other subject merchandise sold by the exporter or producer to an unaffiliated person.

If there is not a sufficient quantity of sales to provide a reasonable basis for comparison under paragraph (1) or (2), or the administering authority determines that neither of the prices described in such paragraphs is appropriate, then the constructed export price may be determined on any other reasonable basis.

(f) **SPECIAL RULE FOR DETERMINING PROFIT.**—

(1) **IN GENERAL.**—For purposes of subsection (d)(3), profit shall be an amount determined by multiplying the total actual profit by the applicable percentage.

(2) **DEFINITIONS.**—For purposes of this subsection—

(A) **APPLICABLE PERCENTAGE.**—The term “applicable percentage” means the percentage determined by dividing the total United States expenses by the total expenses.

(B) **TOTAL UNITED STATES EXPENSES.**—The term “total United States expenses” means the total expenses described in subsection (d) (1) and (2).

(C) **TOTAL EXPENSES.**—The term “total expenses” means all expenses in the first of the following categories which applies and which are incurred by or on behalf of the foreign producer and foreign exporter of the subject merchandise and by or on behalf of the United States seller affiliated with the producer or exporter with respect to the production and sale of such merchandise:

(i) The expenses incurred with respect to the subject merchandise sold in the United States and the foreign like product sold in the exporting country if such expenses were requested by the administering authority for the purpose of establishing normal value and constructed export price.

(ii) The expenses incurred with respect to the narrowest category of merchandise sold in the United States and the exporting country which includes the subject merchandise.

(iii) The expenses incurred with respect to the narrowest category of merchandise sold in all countries which includes the subject merchandise.

(D) **TOTAL ACTUAL PROFIT.**—The term “total actual profit” means the total profit earned by the foreign producer, exporter, and affiliated parties described in subparagraph (C) with respect to the sale of the same merchandise

for which total expenses are determined under such subparagraph.

[SEC. 773. FOREIGN MARKET VALUE

[(a) DETERMINATION; FICTITIOUS MARKET; SALES AGENCIES.—For purposes of this title—

[(1) IN GENERAL.—The foreign market value of imported merchandise shall be the price, at the 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) with respect to such person—

[(A) at which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the country from which exported, in the usual commercial quantities and in the ordinary course of trade for home consumption, or

[(B) if not so sold or offered for sale for home consumption, or if the administering authority determines that the quantity sold for home consumption is so small in relation to the quantity sold for exportation to countries other than the United States as to form an inadequate basis for comparison, then the price at which so sold or offered for sale for exportation to countries other than the United States,

[increased by, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States except that in the case of merchandise purchased or agreed to be purchased by the person by whom or for whose account the merchandise is imported, prior to the time of importation, the foreign market value shall be ascertained as of the date of such purchase or agreement to purchase. In the ascertainment of foreign market value for the purposes of this title 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.

[(2) USE OF CONSTRUCTED VALUE.—If the administering authority determines that the foreign market value of imported merchandise cannot be determined under paragraph (1)(A), then, notwithstanding paragraph (1)(B), the foreign market value of the merchandise may be the constructed value of that merchandise, as determined under subsection (e).

[(3) INDIRECT SALES AND OFFERS FOR SALE.—If such or similar merchandise is sold or, in the absence of sales, offered for sale through a sales agency or other organization related to the seller in any of the respects described in section 771(13), the prices at which such or similar merchandise is sold or, in the absence of sales, offered for sale by such sales agency or other organization may be used in determining the foreign market value.

[(4) OTHER ADJUSTMENTS.—In determining foreign market value, if it is established to the satisfaction of the administering authority that the amount of any difference between United States price and the foreign market value (or that the fact

that the United States price is the same as the foreign market value) is wholly or partly due to—

[(A) the fact that the commercial quantities, in which such or similar merchandise is sold or, in the absence of sales, offered for sale, for exportation to, or in the principal markets of, the United States, as appropriate, in the ordinary course of trade, are less or are greater than the commercial quantities in which such or similar merchandise is sold or, in the absence of sales, offered for sale, in the principal markets of the country of exportation in the ordinary course of trade for home consumption (or, if not so sold for home consumption, then for exportation to countries other than the United States);

[(B) other differences in circumstances of sale; or

[(C) the fact that merchandise described in paragraph (B) or (C) of section 771(16) is used in determining foreign market value,

then due allowance shall be made therefor.

[(5) FICTITIOUS MARKETS.—The occurrence of different movements in the prices at which different forms of any merchandise subject to an antidumping duty order issued under this title are sold (or, in the absence of sales, offered for sale) after the issuance of such order in the principal markets of the foreign country from which the merchandise is exported may be considered by the administering authority as evidence of the establishment of a fictitious market for the merchandise if the movement in such prices appears to reduce the amount by which the foreign market value of the merchandise exceeds the United States price of the merchandise.

[(b) SALES AT LESS THAN COST OF PRODUCTION.—Whenever the administering authority has reasonable grounds to believe or suspect that sales in the home market of the country of exportation, or, as appropriate, to countries other than the United States, have been made at prices which represent less than the cost of producing the merchandise in question, it shall determine whether, in fact, such sales were made at less than the cost of producing the merchandise. If the administering authority determines that sales made at less than cost of production—

[(1) have been made over an extended period of time and in substantial quantities, and

[(2) are not at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade,

[such sales shall be disregarded in the determination of foreign market value. Whenever sales are disregarded by virtue of having been made at less than the cost of production and the remaining sales, made at not less than cost of production, are determined to be inadequate as a basis for the determination of foreign market value under subsection (a), the administering authority shall employ the constructed value of the merchandise to determine its foreign market value.

[(c) NONMARKET ECONOMY COUNTRIES.—

[(1) IN GENERAL.—If—

[(A) the merchandise under investigation is exported from a nonmarket economy country, and

[(B) the administering authority finds that available information does not permit the foreign market value of the merchandise to be determined under subsection (a),

[the administering authority shall determine the foreign market value of the 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, as required by subsection (e). 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 foreign market value of merchandise under paragraph (1), the administering authority shall determine the foreign market value on the basis of the price at which merchandise that is—

[(A) comparable to the merchandise under investigation, and

[(B) produced in one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country, is sold in other countries, including the United States.

[(3) FACTORS OF PRODUCTION.—For purposes of paragraph (1), the factors of production utilized in producing merchandise include, but are not limited to—

[(A) hours of labor required,

[(B) quantities of raw materials employed,

[(C) amounts of energy and other utilities consumed,

and

[(D) representative capital cost, including depreciation.

[(4) VALUATION OF FACTORS OF PRODUCTION.—The administering authority, in valuing factors of production under paragraph (1), shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are—

[(A) at a level of economic development comparable to that of the nonmarket economy country, and

[(B) significant producers of comparable merchandise.

[(d) SPECIAL RULE FOR CERTAIN MULTINATIONAL CORPORATIONS.—Whenever, in the course of an investigation under this title, the administering authority determines that—

[(1) 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 such or similar merchandise which are located in another country or countries;

[(2) the sales of such or similar merchandise by the company concerned in the home market of the exporting country are nonexistent or inadequate as a basis for comparison with the sales of the merchandise to the United States; and

[(3) the foreign market value of such or similar merchandise produced in one or more of the facilities outside the country of exportation is higher than the foreign market value of such or similar merchandise produced in the facilities located in the country of exportation,

[it shall determine the foreign market value of such merchandise by reference to the foreign market value at which such or similar merchandise is sold in substantial quantities by one or more facilities outside the country of exportation. The administering authority, in making any determination under this paragraph, shall make adjustments for the difference between the costs of production (including taxes, labor, materials, and overhead) of such or similar merchandise produced in facilities outside the country of exportation and costs of production of such or similar merchandise produced in facilities in the country of exportation, if such differences are demonstrated to its satisfaction. For the purposes of this subsection, in determining foreign market value such or similar merchandise produced in a country outside of the country of exportation, the administering authority shall determine its price at the time of exportation from the country of exportation 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 incident to placing the merchandise in condition packed ready for shipment to the United States by reference to such costs in the country of exportation.

[(e) CONSTRUCTED VALUE.—

[(1) DETERMINATION.—For the purposes of this title, the constructed value of imported merchandise shall be the sum of—

[(A) the cost of materials (exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the article in the production of which such materials are used) and of fabrication or other processing of any kind employed in producing such or similar merchandise, at a time preceding the date of exportation of the merchandise under consideration which would ordinarily permit the production of that particular merchandise in the ordinary course of business;

[(B) an amount for general expenses and profit equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise under consideration which are made by producers in the country of exportation, in the usual commercial quantities and in the ordinary course of trade, except that—

[(i) the amount for general expenses shall not be less than 10 percent of the cost as defined in subparagraph (A), and

[(ii) the amount for profit shall not be less than 8 percent of the sum of such general expenses and cost; and

[(C) the cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the merchandise under consideration in condition, packed ready for shipment to the United States.

[(2) TRANSACTIONS DISREGARDED; BEST EVIDENCE.—For the purposes of this subsection, a transaction directly or indirectly between persons specified in any one of the subparagraphs in paragraph (4) of this subsection 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 in the market under consideration of merchandise under consideration. If a transaction is disregarded under the preceding sentence and there are no other transactions available for consideration, then the determination of the amount required to be considered shall be based on the best evidence available as to what the amount would have been if the transaction had occurred between persons not specified in any one of the subparagraphs in paragraph (4) of this section.

[(3) SPECIAL RULE.—If, regarding any transaction between persons specified in any one of the subparagraphs of paragraph (4) involving the production by one of such persons of a major input to the merchandise under consideration, the administering authority has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the costs of production of such input, then the administering authority may determine the value of the major input on the best evidence available regarding such costs of production, if such costs are greater than the amount that would be determined for such input under paragraph (2).

[(4) RELATED PARTIES.—The persons referred to in paragraphs (2) and (3) of this subsection are:

[(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.

[(f) EXPORTATION FROM AN INTERMEDIATE COUNTRY.—If—

[(1) a reseller purchases the merchandise from the manufacturer or producer of the merchandise,

[(2) the manufacturer or producer of the merchandise does not know (at the time of the sale to such reseller) the country to which such reseller intends to export the merchandise,

[(3) the merchandise is exported by, or on behalf of, such reseller to a country other than the United States,

[(4) the merchandise enters the commerce of such country but is not substantially transformed in such country, and

[(5) the merchandise is subsequently exported to the United States,

[such country shall be treated, for purposes of this section, as the country from which the merchandise was exported.]

SEC. 773. NORMAL VALUE.

(a) *DETERMINATION.*—*In determining under this title whether subject merchandise is being, or is likely to be, sold at less than fair value, a fair comparison shall be made between the export price or constructed export price and normal value. In order to achieve a fair comparison with the export price or constructed export price, normal value shall be determined as follows:*

(1) *DETERMINATION OF NORMAL VALUE.*—

(A) *IN GENERAL.*—*The normal value of the subject merchandise shall be the price described in subparagraph (B), at a time reasonably corresponding to the time of the sale used to determine the export price or constructed export price under section 772(a) or (b).*

(B) *PRICE.*—*The price referred to in subparagraph (A) is—*

(i) *the price at which the foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the export price or constructed export price, or*

(ii) *in a case to which subparagraph (C) applies, the price at which the foreign like product is so sold (or offered for sale) for consumption in a country other than the exporting country or the United States, if—*

(I) *such price is representative,*

(II) *the aggregate quantity (or, if quantity is not appropriate, value) of the foreign like product sold by the exporter or producer in such other country is 5 percent or more of the aggregate quantity (or value) of the subject merchandise sold in the United States or for export to the United States, and*

(III) *the administering authority does not determine that the particular market situation in such other country prevents a proper comparison with the export price or constructed export price.*

(C) *THIRD COUNTRY SALES.*—*This subparagraph applies when—*

(i) *the foreign like product is not sold (or offered for sale) for consumption in the exporting country as described in subparagraph (B)(i),*

(ii) the administering authority determines that the aggregate quantity (or, if quantity is not appropriate, value) of the foreign like product sold in the exporting country is insufficient to permit a proper comparison with the sales of the subject merchandise to the United States, or

(iii) the particular market situation in the exporting country does not permit a proper comparison with the export price or constructed export price.

For purposes of clause (ii), the aggregate quantity (or value) of the foreign like product sold in the exporting country shall normally be considered to be insufficient if such quantity (or value) is less than 5 percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

(2) **FICTITIOUS MARKETS.**—No pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account in determining normal value. The occurrence of different movements in the prices at which different forms of the foreign like product are sold (or, in the absence of sales, offered for sale) in the exporting country after the issuance of an antidumping duty order may be considered by the administering authority as evidence of the establishment of a fictitious market for the foreign like product if the movement in such prices appears to reduce the amount by which the normal value exceeds the export price (or the constructed export price) of the subject merchandise.

(3) **EXPORTATION FROM AN INTERMEDIATE COUNTRY.**—Where the subject merchandise is exported to the United States from an intermediate country, normal value shall be determined in the intermediate country, except that normal value may be determined in the country of origin of the subject merchandise if—

(A) the producer knew at the time of the sale that the subject merchandise was destined for exportation;

(B) the subject merchandise is merely transshipped through the intermediate country;

(C) sales of the foreign like product in the intermediate country do not satisfy the conditions of paragraph (1)(C); or

(D) the foreign like product is not produced in the intermediate country.

(4) **USE OF CONSTRUCTED VALUE.**—If the administering authority determines that the normal value of the subject merchandise cannot be determined under paragraph (1)(B)(i), then, notwithstanding paragraph (1)(B)(ii), the normal value of the subject merchandise may be the constructed value of that merchandise, as determined under subsection (e).

(5) **INDIRECT SALES OR OFFERS FOR SALE.**—If the foreign like product is sold or, in the absence of sales, offered for sale through an affiliated party, the prices at which the foreign like product is sold (or offered for sale) by such affiliated party may be used in determining normal value.

(6) **ADJUSTMENTS.**—The price described in paragraph (1)(B) shall be—

(A) increased by the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the subject merchandise in condition packed ready for shipment to the United States;

(B) reduced by—

(i) when included in the price described in paragraph (1)(B), the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the foreign like product in condition packed ready for shipment to the place of delivery to the purchaser,

(ii) the amount, if any, included in the price described in paragraph (1)(B), attributable to any additional costs, charges, and expenses incident to bringing the foreign like product from the original place of shipment to the place of delivery to the purchaser, and

(iii) the amount of any taxes imposed directly upon the foreign like product or components thereof which have been rebated, or which have not been collected, on the subject merchandise, but only to the extent that such taxes are added to or included in the price of the foreign like product, and

(C) increased or decreased by the amount of any difference (or lack thereof) between the export price or constructed export price and the price described in paragraph (1)(B) (other than a difference for which allowance is otherwise provided under this section) that is established to the satisfaction of the administering authority to be wholly or partly due to—

(i) the fact that the quantities in which the subject merchandise is sold or agreed to be sold to the United States are greater than or less than the quantities in which the foreign like product is sold, agreed to be sold, or offered for sale,

(ii) the fact that merchandise described in subparagraph (B) or (C) of section 771(16) is used in determining normal value, or

(iii) other differences in the circumstances of sale.

(7) ADDITIONAL ADJUSTMENTS.—

(A) LEVEL OF TRADE.—The price described in paragraph (1)(B) shall also be increased or decreased to make due allowance for any difference (or lack thereof) between the export price or constructed export price and the price described in paragraph (1)(B) (other than a difference for which allowance is otherwise made under this section) that is shown to be wholly or partly due to a difference in level of trade between the export price or constructed export price and normal value, if the difference in level of trade—

(i) involves the performance of different selling activities; and

(ii) is demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different levels of trade in the country in which normal value is determined.

In a case described in the preceding sentence, the amount of the adjustment shall be based on the price differences between the two levels of trade in the country in which normal value is determined.

(B) CONSTRUCTED EXPORT PRICE OFFSET.—*When normal value is established at a level of trade which constitutes a more advanced stage of distribution than the level of trade of the constructed export price, but the data available do not provide an appropriate basis to determine under subparagraph (A)(ii) a level of trade adjustment, normal value shall be reduced by the amount of indirect selling expenses incurred in the country in which normal value is determined on sales of the foreign like product but not more than the amount of such expenses for which a deduction is made under section 772(d)(1)(D).*

(8) ADJUSTMENTS TO CONSTRUCTED VALUE.—*Constructed value as determined under subsection (e), may be adjusted, as appropriate, pursuant to this subsection.*

(b) SALES AT LESS THAN COST OF PRODUCTION.—

(1) DETERMINATION; SALES DISREGARDED.—*Whenever the administering authority has reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of normal value have been made at prices which represent less than the cost of production of that product, the administering authority shall determine whether, in fact, such sales were made at less than the cost of production. If the administering authority determines that sales made at less than the cost of production—*

(A) have been made within an extended period of time in substantial quantities, and

(B) were not at prices which permit recovery of all costs within a reasonable period of time,
such sales may be disregarded in the determination of normal value. Whenever such sales are disregarded, normal value shall be based on the remaining sales of the foreign like product in the ordinary course of trade. If no sales made in the ordinary course of trade remain, the normal value shall be based on the constructed value of the merchandise.

(2) DEFINITIONS AND SPECIAL RULES.—*For purposes of this subsection—*

(A) REASONABLE GROUNDS TO BELIEVE OR SUSPECT.—*There are reasonable grounds to believe or suspect that sales of the foreign like product were made at prices that are less than the cost of production of the product, if—*

(i) in an investigation initiated under section 732 or a review conducted under section 751, an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) provides information, based upon observed prices or constructed prices or costs, that sales of the foreign like product under consideration for the determination of normal value have been made at prices which represent less than the cost of production of the product; or

(ii) in a review conducted under section 751 involving a specific exporter, the administering authority disregarded some or all of the exporter's sales pursuant to paragraph (1) in the investigation or if a review has been completed, in the most recently completed review.

(B) **EXTENDED PERIOD OF TIME.**—The term “extended period of time” means a period that is normally 1 year, but not less than 6 months.

(C) **SUBSTANTIAL QUANTITIES.**—Sales made at prices below the cost of production have been made in substantial quantities if—

(i) the volume of such sales represents 20 percent or more of the volume of sales under consideration for the determination of normal value, or

(ii) the weighted average per unit price of the sales under consideration for the determination of normal value is less than the weighted average per unit cost of production for such sales.

(D) **RECOVERY OF COSTS.**—If prices which are below the per unit cost of production at the time of sale are above the weighted average per unit cost of production for the period of investigation or review, such prices shall be considered to provide for recovery of costs within a reasonable period of time.

(3) **CALCULATION OF COST OF PRODUCTION.**—For purposes of this subtitle, the cost of production shall be an amount equal to the sum of—

(A) the cost of materials and of fabrication or other processing of any kind employed in producing the foreign like product, during a period which would ordinarily permit the production of that foreign like product in the ordinary course of business;

(B) an amount for selling, general, and administrative expenses based on actual data pertaining to production and sales of the foreign like product by the exporter in question; and

(C) the cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the foreign like product in condition packed ready for shipment.

For purposes of subparagraph (A), if the normal value is based on the price of the foreign like product sold for consumption in a country other than the exporting country, the cost of materials shall be determined without regard to any internal tax in the exporting country imposed on such materials or their disposition which are remitted or refunded upon exportation.

(c) **NONMARKET ECONOMY COUNTRIES.**—

(1) **IN GENERAL.**—If—

(A) the subject merchandise is exported from a nonmarket economy country, and

(B) the administering authority finds that available information does not permit the normal value of the subject merchandise to be determined under subsection (a),

the administering authority shall determine the normal value of the subject merchandise on the basis of the value of the factors

of production utilized in producing the merchandise and to which shall be added an amount for general expenses and profit plus the cost of containers, coverings, and other expenses. Except as provided in paragraph (2), the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority.

(2) *EXCEPTION.*—If the administering authority finds that the available information is inadequate for purposes of determining the normal value of subject merchandise under paragraph (1), the administering authority shall determine the normal value on the basis of the price at which merchandise that is—

(A) comparable to the subject merchandise, and

(B) produced in one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country, is sold in other countries, including the United States.

(3) *FACTORS OF PRODUCTION.*—For purposes of paragraph (1), the factors of production utilized in producing merchandise include, but are not limited to—

(A) hours of labor required,

(B) quantities of raw materials employed,

(C) amounts of energy and other utilities consumed, and

(D) representative capital cost, including depreciation.

(4) *VALUATION OF FACTORS OF PRODUCTION.*—The administering authority, in valuing factors of production under paragraph (1), shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are—

(A) at a level of economic development comparable to that of the nonmarket economy country, and

(B) significant producers of comparable merchandise.

(d) *SPECIAL RULE FOR CERTAIN MULTINATIONAL CORPORATIONS.*—Whenever, in the course of an investigation under this title, the administering authority determines that—

(1) subject merchandise exported to the United States is being produced in facilities which are owned or controlled, directly or indirectly, by a person, firm, or corporation which also owns or controls, directly or indirectly, other facilities for the production of the foreign like product which are located in another country or countries,

(2) subsection (a)(1)(C) applies, and

(3) the normal value of the foreign like product produced in one or more of the facilities outside the exporting country is higher than the normal value of the foreign like product produced in the facilities located in the exporting country,

it shall determine the normal value of the subject merchandise by reference to the normal value at which the foreign like product is sold in substantial quantities from one or more facilities outside the exporting country. The administering authority, in making any determination under this paragraph, shall make adjustments for the

difference between the cost of production (including taxes, labor, materials, and overhead) of the foreign like product produced in facilities outside the exporting country and costs of production of the foreign like product produced in facilities in the exporting country, if such differences are demonstrated to its satisfaction. For purposes of this subsection, in determining the normal value of the foreign like product produced in a country outside of the exporting country, the administering authority shall determine its price at the time of exportation from the exporting country and shall make any adjustments required by subsection (a) for the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States by reference to such costs in the exporting country.

(e) **CONSTRUCTED VALUE.**—*For purposes of this title, the constructed value of imported merchandise shall be an amount equal to the sum of—*

(1) *the cost of materials and fabrication or other processing of any kind employed in producing the merchandise, during a period which would ordinarily permit the production of the merchandise in the ordinary course of business;*

(2)(A) *the actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review for selling, general, and administrative expenses, and for profits, in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country, or*

(B) *if actual data are not available with respect to the amounts described in subparagraph (A), then—*

(i) *the actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review for selling, general, and administrative expenses, and for profits, in connection with the production and sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise,*

(ii) *the weighted average of the actual amounts incurred and realized by exporters or producers that are subject to the investigation or review (other than the exporter or producer described in clause (i)) for selling, general, and administrative expenses, and for profits, in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country, or*

(iii) *the amounts incurred and realized for selling, general, and administrative expenses, and for profits, based on any other reasonable method, except that the amount allowed for profit may not exceed the amount normally realized by exporters or producers (other than the exporter or producer described in clause (i)) in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise ; and*

(3) *the cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the subject*

merchandise in condition packed ready for shipment to the United States.

For purposes of paragraph (1), the cost of materials shall be determined without regard to any internal tax in the exporting country imposed on such materials or their disposition which are remitted or refunded upon exportation of the subject merchandise produced from such materials.

(f) SPECIAL RULES FOR CALCULATION OF COST OF PRODUCTION AND FOR CALCULATION OF CONSTRUCTED VALUE.—For purposes of subsections (b) and (e)—

(1) COSTS.—

(A) IN GENERAL.—Costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise. The administering authority shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer on a timely basis, if such allocations have been historically used by the exporter or producer, in particular for establishing appropriate amortization and depreciation periods, and allowances for capital expenditures and other development costs.

(B) NONRECURRING COSTS.—Costs shall be adjusted appropriately for those nonrecurring costs that benefit current or future production, or both.

(C) STARTUP COSTS.—

(i) IN GENERAL.—Costs shall be adjusted appropriately for circumstances in which costs incurred during the time period covered by the investigation or review are affected by startup operations.

(ii) STARTUP OPERATIONS.—Adjustments shall be made for startup operations only where—

(I) a producer is using new production facilities or producing a new product that requires substantial additional investment, and

(II) production levels are limited by technical factors associated with the initial phase of commercial production.

For purposes of subclause (II), the initial phase of commercial production ends at the end of the startup period. In determining whether commercial production levels have been achieved, the administering authority shall consider factors unrelated to startup operations that might affect the volume of production processed, such as demand, seasonality, or business cycles.

(iii) ADJUSTMENT FOR STARTUP OPERATIONS.—The adjustment for startup operations shall be made by substituting the unit production costs incurred with respect to the merchandise at the end of the startup period for the unit production costs incurred during the startup period. If the startup period extends beyond the

period of the investigation or review under this title, the administering authority shall use the most recent cost of production data that it reasonably can obtain, analyze, and verify without delaying the timely completion of the investigation or review. For purposes of this subparagraph, the startup period ends at the point at which the level of commercial production that is characteristic of the merchandise, producer, or industry concerned is achieved.

(2) **TRANSACTIONS DISREGARDED.**—*A transaction directly or indirectly between affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration. If a transaction is disregarded under the preceding sentence and no other transactions are available for consideration, the determination of the amount shall be based on the information available as to what the amount would have been if the transaction had occurred between persons who are not affiliated.*

(3) **MAJOR INPUT RULE.**—*If, in the case of a transaction between affiliated persons involving the production by one of such persons of a major input to the merchandise, the administering authority has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the cost of production of such input, then the administering authority may determine the value of the major input on the basis of the information available regarding such cost of production, if such cost is greater than the amount that would be determined for such input under paragraph (2).*

SEC. 773A. CURRENCY CONVERSION.

(a) **IN GENERAL.**—*In an antidumping proceeding under this title, the administering authority shall convert foreign currencies into United States dollars using the exchange rate in effect on the date of sale of the subject merchandise, except that, if it is established that a currency transaction on forward markets is directly linked to an export sale under consideration, the exchange rate specified with respect to such currency in the forward sale agreement shall be used to convert the foreign currency. Fluctuations in exchange rates shall be ignored.*

(b) **SUSTAINED MOVEMENT IN FOREIGN CURRENCY VALUE.**—*In an investigation under subtitle B, if there is a sustained movement in the value of the foreign currency relative to the United States dollar, the administering authority shall allow exporters at least 60 days to adjust their export prices to reflect such sustained movement.*

* * * * *

[SEC. 775. SUBSIDY PRACTICES DISCOVERED DURING A PROCEEDING.

[If, in the course of a proceeding under this title, the administering authority discovers a practice which appears to be a 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 777(a)(1), if the practice appears to be a subsidy with respect to any other merchandise.]

SEC. 775. COUNTERAVAILABLE SUBSIDY PRACTICES DISCOVERED DURING A PROCEEDING.

If, in the course of a proceeding under this title, the administering authority discovers a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in a countervailing duty petition, or if the administering authority receives notice from the Trade Representative that a subsidy or subsidy program is in violation of Article 8 of the Subsidies Agreement, then the administering authority—

(1) shall include the practice, subsidy, or subsidy program in the proceeding if the practice, subsidy, or subsidy program appears to be a countervailable subsidy with respect to the merchandise which is the subject of the proceeding, or

(2) shall transfer the information (other than confidential information) concerning the practice, subsidy, or subsidy program to the library maintained under section 777(a)(1), if the practice, subsidy, or subsidy program appears to be a countervailable subsidy with respect to any other merchandise.

[SEC. 776. VERIFICATION OF INFORMATION.

[(a) CERTIFICATION OF SUBMISSIONS.—Any person providing factual information to the administering authority or the Commission in connection with a proceeding under this title on behalf of the petitioner or any other interested party shall certify that such information is accurate and complete to the best of that person's knowledge.

[(b) VERIFICATION.—The administering authority shall verify all information relied upon in making—

[(1) a final determination in an investigation,

[(2) a revocation under section 751(c), and

[(3) a review and determination under section 751(a), if—

[(A) verification is timely requested by an interested party as defined in section 771(9) (C), (D), (E), or (F), and

[(B) no verification was made under this paragraph during the 2 immediately preceding reviews and determinations under that section of the same order, finding, or notice, except that this clause shall not apply if good cause for verification is shown.

[In publishing notice of any action referred to in paragraph (1), (2), or (3), 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 action, which may include, in actions referred to in paragraph (1), the information submitted in support of the petition.

[(c) DETERMINATIONS TO BE MADE ON BEST INFORMATION AVAILABLE.—In making their determinations under this title, the

administering authority and the Commission shall, whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation, use the best information otherwise available.]

SEC. 776. DETERMINATIONS ON THE BASIS OF THE FACTS AVAILABLE.

(a) *IN GENERAL.*—If—

- (1) *necessary information is not available on the record, or*
- (2) *an interested party or any other person—*

(A) *withholds information that has been requested by the administering authority or the Commission under this title,*

(B) *fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782,*

(C) *significantly impedes a proceeding under this title,*

or

(D) *provides such information but the information cannot be verified as provided in section 782(i),*

the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

(b) *ADVERSE INFERENCES.*—*If the administering authority or the Commission (as the case may be) finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission (as the case may be), in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. Such adverse inference may include reliance on information derived from—*

●
(1) *the petition,*

(2) *a final determination in the investigation under this title,*

(3) *any previous review under section 751 or determination under section 753, or*

(4) *any other information placed on the record.*

(c) *CORROBORATION OF SECONDARY INFORMATION.*—*When the administering authority or the Commission relies on secondary information rather than on information obtained in the course of an investigation or review, the administering authority or the Commission, as the case may be, shall, to the extent practicable, corroborate that information from independent sources that are reasonably at their disposal.*

SEC. 777. ACCESS TO INFORMATION.

(a) *INFORMATION GENERALLY MADE AVAILABLE.*—

* * * * *

(4) **SUMMARIES; NON-PROPRIETARY SUBMISSIONS.**—The administering authority and the Commission [may] *shall* disclose—

* * * * *

(5) **MAINTENANCE OF PUBLIC RECORD.**—*The administering authority and the Commission shall maintain and make available for public inspection and copying a record of all information which is obtained by the administering authority or the Commission, as the case may be, in a proceeding under this title to the extent that public disclosure of the information is not prohibited under this chapter or exempt from disclosure under section 552 of title 5, United States Code.*

(b) **PROPRIETARY INFORMATION.**—

[(1) **PROPRIETARY STATUS MAINTAINED.**—Except as provided in subsection (a)(4)(A) and subsection (c), information submitted to the administering authority or the Commission which is designated as proprietary by the person submitting it shall not be disclosed to any person (other than 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 an officer or employee of the United States Customs Service who is directly involved in conducting an investigation regarding fraud under this title) without the consent of the person submitting it. The administering authority and the Commission shall require that information for which proprietary treatment is requested be accompanied by—

[(A) 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

[(B) either—

[(i) a statement which permits the administering authority or the Commission to release under administrative protective order, in accordance with subsection (c), the information submitted in confidence, or

[(ii) a statement to the administering authority or the Commission that the business proprietary information is of a type that should not be released under administrative protective order.]

(1) **PROPRIETARY STATUS MAINTAINED.**—

(A) **IN GENERAL.**—*Except as provided in subsection (a)(4)(A) and subsection (c), information submitted to the administering authority or the Commission which is designated as proprietary by the person submitting the information shall not be disclosed to any person without the consent of the person submitting the information, other than—*

(i) to an officer or employee of the administering authority or the Commission who is directly concerned with carrying out the investigation in connection with

which the information is submitted or any review under this title covering the same subject merchandise, or

(ii) to an officer or employee of the United States Customs Service who is directly involved in conducting an investigation regarding fraud under this title.

(B) ADDITIONAL REQUIREMENTS.—*The administering authority and the Commission shall require that information for which proprietary treatment is requested be accompanied by—*

(i) either—

(I) a non-proprietary summary in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence, or

(II) a statement that the information is not susceptible to summary accompanied by a statement of the reasons in support of the contention, and

(ii) either—

(I) a statement which permits the administering authority or the Commission to release under administrative protective order, in accordance with subsection (c), the information submitted in confidence, or

(II) a statement to the administering authority or the Commission that the business proprietary information is of a type that should not be released under administrative protective order.

(2) UNWARRANTED DESIGNATION.—*If the administering authority or the Commission determines, on the basis of the nature and extent of the information or its availability from public sources, that designation of any information as proprietary is unwarranted, then it shall notify the person who submitted it and ask for an explanation of the reasons for the designation. Unless that person persuades the administering authority or the Commission that the designation is warranted, or withdraws the designation, the administering authority or the Commission, as the case may be, shall return it to the party submitting it. In a case in which the administering authority or the Commission returns the information to the person submitting it, the person may thereafter submit other material concerning the subject matter of the returned information if the submission is made within the time otherwise provided for submitting such material.*

(3) SECTION 751 REVIEWS.—*Notwithstanding the provisions of paragraph (1), information submitted to the administering authority or the Commission in connection with a review under section 751(b) or 751(c) which is designated as proprietary by the person submitting the information may, if the review results in the revocation of an order or finding (or termination of a suspended investigation) under section 751(d), be used by the agency to which the information was originally submitted in any investigation initiated within 2 years after the date of the revoca-*

tion or termination pursuant to a petition covering the same subject merchandise.

* * * * *

[(e) TIMELY SUBMISSIONS.—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 comment by other parties within such reasonable time as the administering authority or the Commission shall provide. If information is submitted without an adequate opportunity for other parties to comment thereon, the administering authority or the Commission may return the information to the party submitting it and not consider it.]

(e) [Repealed.]

* * * * *

(h) OPPORTUNITY FOR COMMENT BY CONSUMERS AND INDUSTRIAL USERS.—*The administering authority and the Commission shall provide an opportunity for industrial users of the subject merchandise and, if the merchandise is sold at the retail level, for representative consumer organizations, to submit relevant information to the administering authority concerning dumping or a countervailable subsidy, and to the Commission concerning material injury by reason of dumped or subsidized imports.*

(i) PUBLICATION OF DETERMINATIONS; REQUIREMENTS FOR FINAL DETERMINATIONS.—

(1) IN GENERAL.—*Whenever the administering authority makes a determination under section 702 or 732 whether to initiate an investigation, or the administering authority or the Commission makes a preliminary determination under section 703 or 733, a final determination under section 705 or section 735, a preliminary or final determination in a review under section 751, a determination to suspend an investigation under this title, or a determination under section 753, the administering authority or the Commission, as the case may be, shall publish the facts and conclusions supporting that determination, and shall publish notice of that determination in the Federal Register.*

(2) CONTENTS OF NOTICE OR DETERMINATION.—*The notice or determination published under paragraph (1) shall include, to the extent applicable—*

(A) in the case of a determination of the administering authority—

(i) *the names of the exporters or producers of the subject merchandise or, when providing such names is impracticable, the countries exporting the subject merchandise to the United States,*

(ii) *a description of the subject merchandise that is sufficient to identify the subject merchandise for customs purposes,*

(iii) *(I) with respect to a determination in an investigation under subtitle A or section 753 or in a review of a countervailing duty order, the amount of the countervailable subsidy established and a full expla-*

nation of the methodology used in establishing the amount, and

(II) with respect to a determination in an investigation under subtitle B or in a review of an anti-dumping duty order, the weighted average dumping margins established and a full explanation of the methodology used in establishing such margins, and

(iv) the primary reasons for the determination; and
(B) in the case of a determination of the Commission—
(i) considerations relevant to the determination of injury, and

(ii) the primary reasons for the determination.

(3) **ADDITIONAL REQUIREMENTS FOR FINAL DETERMINATIONS.**—In addition to the requirements set forth in paragraph (2)—

(A) the administering authority shall include in a final determination described in paragraph (1) an explanation of the basis for its determination that addresses relevant arguments, made by interested parties who are parties to the investigation or review (as the case may be), concerning the establishment of dumping or a countervailable subsidy, or the suspension of the investigation, with respect to which the determination is made; and

(B) the Commission shall include in a final determination of injury an explanation of the basis for its determination that addresses relevant arguments that are made by interested parties who are parties to the investigation or review (as the case may be) concerning volume, price effects, and impact on the industry of imports of the subject merchandise.

SEC. 777A. SAMPLING AND AVERAGING; DETERMINATION OF WEIGHTED AVERAGE DUMPING MARGIN AND COUNTERAVAILABLE SUBSIDY RATE.

[(a) **IN GENERAL.**—For the purpose of determining United States price or foreign market value under sections 772 and 773, and for purposes of carrying out annual reviews under section 751, the administering authority may—

[(1) use averaging or generally recognized sampling techniques whenever a significant volume of sales is involved or a significant number of adjustments to prices is required, and

[(2) decline to take into account adjustments which are insignificant in relation to the price or value of the merchandise.

[(b) **SELECTION OF SAMPLES AND AVERAGES.**—The authority to select appropriate samples and averages shall rest exclusively with the administering authority; but such samples and averages shall be representative of the transactions under investigation.]

(a) **IN GENERAL.**—For purposes of determining the export price (or constructed export price) under section 772 or the normal value under section 773, and in carrying out reviews under section 751, the administering authority may—

(1) use averaging and statistically valid samples, if there is a significant volume of sales of the subject merchandise or a significant number or types of products, and

(2) *decline to take into account adjustments which are insignificant in relation to the price or value of the merchandise.*

(b) **SELECTION OF AVERAGES AND SAMPLES.**—*The authority to select averages and statistically valid samples shall rest exclusively with the administering authority. The administering authority shall, to the greatest extent possible, consult with the exporters and producers regarding the method to be used to select exporters, producers, or types of products under this section.*

(c) **DETERMINATION OF DUMPING MARGIN.**—

(1) **GENERAL RULE.**—*In determining weighted average dumping margins under section 733(d), 735(c), or 751(a), the administering authority shall determine the individual weighted average dumping margin for each known exporter and producer of the subject merchandise.*

(2) **EXCEPTION.**—*If it is not practicable to make individual weighted average dumping margin determinations under paragraph (1) because of the large number of exporters or producers involved in the investigation or review, the administering authority may determine the weighted average dumping margins for a reasonable number of exporters or producers by limiting its examination to—*

(A) *a sample of exporters, producers, or types of products that is statistically valid based on the information available to the administering authority at the time of selection, or*

(B) *exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can be reasonably examined.*

(d) **DETERMINATION OF LESS THAN FAIR VALUE.**—

(1) **INVESTIGATIONS.**—

(A) **IN GENERAL.**—*In an investigation under subtitle B, the administering authority shall determine whether the subject merchandise is being sold in the United States at less than fair value—*

(i) *by comparing the weighted average of the normal values to the weighted average of the export prices (and constructed export prices) for comparable merchandise, or*

(ii) *by comparing the normal values of individual transactions to the export prices (or constructed export prices) of individual transactions for comparable merchandise.*

(B) **EXCEPTION.**—*The administering authority may determine whether the subject merchandise is being sold in the United States at less than fair value by comparing the weighted average of the normal values to the export prices (or constructed export prices) of individual transactions for comparable merchandise, if—*

(i) *there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and*

(ii) the administering authority explains why such differences cannot be taken into account using a method described in paragraph (1)(A)(i) or (ii).

(2) **REVIEWS.**—In a review under section 751, when comparing export prices (or constructed export prices) of individual transactions to the weighted average price of sales of the foreign like product, the administering authority shall limit its averaging of prices to a period not exceeding the calendar month that corresponds most closely to the calendar month of the individual export sale.

(e) **DETERMINATION OF COUNTERAVAILABLE SUBSIDY RATE.**—

(1) **GENERAL RULE.**—In determining countervailable subsidy rates under section 703(d), 705(c), or 751(a), the administering authority shall determine an individual countervailable subsidy rate for each known exporter or producer of the subject merchandise.

(2) **EXCEPTION.**—If the administering authority determines that it is not practicable to determine individual countervailable subsidy rates under paragraph (1) because of the large number of exporters or producers involved in the investigation or review, the administering authority may—

(A) determine individual countervailable subsidy rates for a reasonable number of exporters or producers by limiting its examination to—

(i) a sample of exporters or producers that the administering authority determines is statistically valid based on the information available to the administering authority at the time of selection, or

(ii) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that the administering authority determines can be reasonably examined; or

(B) determine a single country-wide subsidy rate to be applied to all exporters and producers.

The individual countervailable subsidy rates determined under subparagraph (A) shall be used to determine the all-others rate under section 705(c)(5).

* * * * *

SEC. 780. DOWNSTREAM PRODUCT MONITORING.

* * * * *

(c) **ACTION ON BASIS OF MONITORING REPORTS.**—The administering authority shall review the information in the reports submitted by the Commission under subsection (b)(2) and shall—

(1) consider the information in determining whether to initiate an investigation under section 702(a)[, 732(a), or 303] or 732(a) regarding any downstream product, and

(2) request the Commission to cease monitoring any downstream product if the information indicates that imports into the United States are not increasing and there is no reasonable likelihood of diversion with respect to component parts.

(d) **DEFINITIONS.**—For purposes of this section—

(1) The term “component part” means any imported article that—

(A) during the 5-year period ending on the date on which the petition is filed under subsection (a), has been subject to—

(i) a countervailing or antidumping duty order issued under this title or section 303 that requires the deposit of estimated countervailing or antidumping duties imposed at a rate of at least 15 percent ad valorem, or

(ii) an agreement entered into under section 704, 734, or 303 after a preliminary affirmative determination under section 703(b), 733(b)(1), or 303 was made by the administering authority which included a determination that the estimated net *countervailable* subsidy was at least 15 percent ad valorem or that the estimated average amount by which the [foreign market value] *normal value* exceeded the [United States price] *export price* was at least 15 percent ad valorem, and

(B) because of its inherent characteristics, is routinely used as a major part, component, assembly, subassembly, or material in a downstream product.

(2) The term “downstream product” means any manufactured article—

(A) which is imported into the United States, and

(B) into which is incorporated any component part.

SEC. 781. PREVENTION OF CIRCUMVENTION OF ANTIDUMPING AND COUNTERVAILING DUTY ORDERS.

[(a) MERCHANDISE COMPLETED OR ASSEMBLED IN THE UNITED STATES.—

[(1) IN GENERAL.—If—

[(A) merchandise sold in the United States is of the same class or kind as any other merchandise that is the subject of—

[(i) an antidumping duty order issued under section 736,

[(ii) a finding issued under the Antidumping Act, 1921, or

[(iii) a countervailing duty order issued under section 706 or section 303,

[(B) such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such order or finding applies, and

[(C) the difference between the value of such merchandise sold in the United States and the value of the imported parts and components referred to in subparagraph (B) is small,

[the administering authority, after taking into account any advice provided by the Commission under subsection (e), may include within the scope of such order or finding the imported parts or components referred to in subparagraph (B) that are used in the completion or assembly of the merchandise in the United States at any time such order or finding is in effect.

[(2) 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,

[(B) whether the manufacturer or exporter of the parts or components is related to 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 issuance of such order or finding.

[(b) MERCHANDISE COMPLETED OR ASSEMBLED IN OTHER FOREIGN COUNTRIES.—

[(1) IN GENERAL.—If—

[(A) merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of—

[(i) an antidumping duty order issued under section 736,

[(ii) a finding issued under the Antidumping Act, 1921, or

[(iii) a countervailing duty order issued under section 706 or section 303,

[(B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which—

[(i) is subject to such order or finding, or

[(ii) is produced in the foreign country with respect to which such order or finding applies,

[(C) the difference between the value of such imported merchandise and the value of the merchandise described in subparagraph (B) is small, and

[(D) the administering authority determines that action is appropriate under this paragraph to prevent evasion of such order or finding,

[(the administering authority, after taking into account any advice provided by the Commission under subsection (e), may include such imported merchandise within the scope of such order or finding at any time such order or finding is in effect.

[(2) FACTORS TO CONSIDER.—In determining whether to include merchandise assembled or completed in a foreign country 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,

[(B) whether the manufacturer or exporter of the merchandise described in paragraph (1)(B) is related to 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 issuance of such order or finding.]

(a) **MERCHANDISE COMPLETED OR ASSEMBLED IN THE UNITED STATES.**—

(1) **IN GENERAL.**—*If—*

(A) *merchandise sold in the United States is of the same class or kind as any other merchandise that is the subject of—*

(i) *an antidumping duty order issued under section 736,*

(ii) *a finding issued under the Antidumping Act, 1921, or*

(iii) *a countervailing duty order issued under section 706 or section 303,*

(B) *such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such order or finding applies,*

(C) *the process of assembly or completion in the United States is minor or insignificant, and*

(D) *the value of the parts or components referred to in subparagraph (B) is a significant portion of the total value of the merchandise,*

the administering authority, after taking into account any advice provided by the Commission under subsection (e), may include within the scope of such order or finding the imported parts or components referred to in subparagraph (B) that are used in the completion or assembly of the merchandise in the United States at any time such order or finding is in effect.

(2) **DETERMINATION OF WHETHER PROCESS IS MINOR OR INSIGNIFICANT.**—*In determining whether the process of assembly or completion is minor or insignificant under paragraph (1)(C), the administering authority shall take into account—*

(A) *the level of investment in the United States,*

(B) *the level of research and development in the United States,*

(C) *the nature of the production process in the United States,*

(D) *the extent of production facilities in the United States, and*

(E) *whether the value of the processing performed in the United States represents a small proportion of the value of the merchandise sold in the United States.*

(3) **FACTORS TO CONSIDER.**—*In determining whether to include parts or components in a countervailing or antidumping duty order or finding under paragraph (1), the administering authority shall take into account such factors as—*

(A) *the pattern of trade, including sourcing patterns,*

(B) *whether the manufacturer or exporter of the parts or components is affiliated with the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign coun-*

try with respect to which the order or finding described in paragraph (1) applies, and

(C) whether imports into the United States of the parts or components produced in such foreign country have increased after the initiation of the investigation which resulted in the issuance of such order or finding.

(b) **MERCHANDISE COMPLETED OR ASSEMBLED IN OTHER FOREIGN COUNTRIES.—**

(1) **IN GENERAL.—If—**

(A) merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of—

(i) an antidumping duty order issued under section 736,

(ii) a finding issued under the Antidumping Act, 1921, or

(iii) a countervailing duty order issued under section 706 or section 303,

(B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which—

(i) is subject to such order or finding, or

(ii) is produced in the foreign country with respect to which such order or finding applies,

(C) the process of assembly or completion in the foreign country referred to in subparagraph (B) is minor or insignificant,

(D) the value of the merchandise produced in the foreign country to which the antidumping duty order applies is a significant portion of the total value of the merchandise exported to the United States, and

(E) the administering authority determines that action is appropriate under this paragraph to prevent evasion of such order or finding,

the administering authority, after taking into account any advice provided by the Commission under subsection (e), may include such imported merchandise within the scope of such order or finding at any time such order or finding is in effect.

(2) **DETERMINATION OF WHETHER PROCESS IS MINOR OR INSIGNIFICANT.—**In determining whether the process of assembly or completion is minor or insignificant under paragraph (1)(C), the administering authority shall take into account—

(A) the level of investment in the foreign country,

(B) the level of research and development in the foreign country,

(C) the nature of the production process in the foreign country,

(D) the extent of production facilities in the foreign country, and

(E) whether the value of the processing performed in the foreign country represents a small proportion of the value of the merchandise imported into the United States.

(3) **FACTORS TO CONSIDER.—**In determining whether to include merchandise assembled or completed in a foreign country

in a countervailing duty order or an antidumping duty order or finding under paragraph (1), the administering authority shall take into account such factors as—

- (A) the pattern of trade, including sourcing patterns,
- (B) whether the manufacturer or exporter of the merchandise described in paragraph (1)(B) is affiliated with the person who uses the merchandise described in paragraph (1)(B) to assemble or complete in the foreign country the merchandise that is subsequently imported into the United States, and
- (C) whether imports into the foreign country of the merchandise described in paragraph (1)(B) have increased after the initiation of the investigation which resulted in the issuance of such order or finding.

* * * * *

(f) **TIME LIMITS FOR ADMINISTERING AUTHORITY DETERMINATIONS.**—The administering authority shall, to the maximum extent practicable, make the determinations under this section within 300 days from the date of the initiation of a countervailing duty or antidumping circumvention inquiry under this section.

SEC. 782. CONDUCT OF INVESTIGATIONS AND ADMINISTRATIVE REVIEWS.

(a) **TREATMENT OF VOLUNTARY RESPONSES IN COUNTERVAILING OR ANTIDUMPING DUTY INVESTIGATIONS AND REVIEWS.**—In any investigation under subtitle A or B or a review under section 751(a) in which the administering authority has, under section 777A(c)(2) or section 777A(e)(2)(A) (whichever is applicable), limited the number of exporters or producers examined, or determined a single country-wide rate, the administering authority shall establish an individual countervailable subsidy rate or an individual weighted average dumping margin for any exporter or producer not initially selected for individual examination under such sections who submits to the administering authority the information requested from exporters or producers selected for examination, if—

(1) such information is so submitted by the date specified—

(A) for exporters and producers that were initially selected for examination, or

(B) for the foreign government, in a countervailing duty case where the administering authority has determined a single country-wide rate; and

(2) the number of exporters or producers who have submitted such information is not so large that individual examination of such exporters or producers would be unduly burdensome and inhibit the timely completion of the investigation.

(b) **CERTIFICATION OF SUBMISSIONS.**—Any person providing factual information to the administering authority or the Commission in connection with a proceeding under this title on behalf of the petitioner or any other interested party shall certify that such information is accurate and complete to the best of that person's knowledge.

(c) **DIFFICULTIES IN MEETING REQUIREMENTS.**—

(1) **NOTIFICATION BY INTERESTED PARTY.**—If an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the ad-

ministering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority or the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party.

(2) ASSISTANCE TO INTERESTED PARTIES.—The administering authority and the Commission shall take into account any difficulties experienced by interested parties, particularly small companies, in supplying information requested by the administering authority or the Commission in connection with investigations and reviews under this title, and shall provide to such interested parties any assistance that is practicable in supplying such information.

(d) DEFICIENT SUBMISSIONS.—If the administering authority or the Commission determines that a response to a request for information under this title does not comply with the request, the administering authority or the Commission (as the case may be) shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of investigations or reviews under this title. If that person submits further information in response to such deficiency and either—

(1) the administering authority or the Commission (as the case may be) finds that such response is not satisfactory, or

(2) such response is not submitted within the applicable time limits,

then the administering authority or the Commission (as the case may be) may, subject to subsection (e), disregard all or part of the original and subsequent responses.

(e) USE OF CERTAIN INFORMATION.—In reaching a determination under section 703, 705, 733, 735, 751, or 753 the administering authority and the Commission shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority or the Commission, if—

(1) the information is submitted by the deadline established for its submission,

(2) the information can be verified,

(3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination,

(4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the administering authority or the Commission with respect to the information, and

(5) the information can be used without undue difficulties.

(f) NONACCEPTANCE OF SUBMISSIONS.—If the administering authority or the Commission declines to accept into the record any information submitted in an investigation or review under this title,

it shall, to the extent practicable, provide to the person submitting the information a written explanation of the reasons for not accepting the information.

(g) **PUBLIC COMMENT ON INFORMATION.**—Information that is submitted on a timely basis to the administering authority or the Commission during the course of a proceeding under this title shall be subject to comment by other parties to the proceeding within such reasonable time as the administering authority or the Commission shall provide. The administering authority and the Commission, before making a final determination under section 705, 735, 751, or 753 shall cease collecting information and shall provide the parties with a final opportunity to comment on the information obtained by the administering authority or the Commission (as the case may be) upon which the parties have not previously had an opportunity to comment. Comments containing new factual information shall be disregarded.

(h) **TERMINATION OF INVESTIGATION OR REVOCATION OF ORDER FOR LACK OF INTEREST.**—The administering authority may—

(1) terminate an investigation under subtitle A or B with respect to a domestic like product if, prior to publication of an order under section 706 or 736, the administering authority determines that producers accounting for substantially all of the production of that domestic like product have expressed a lack of interest in issuance of an order; and

(2) revoke an order issued under section 706 or 736 with respect to a domestic like product, or terminate an investigation suspended under section 704 or 734 with respect to a domestic like product, if the administering authority determines that producers accounting for substantially all of the production of that domestic like product, have expressed a lack of interest in the order or suspended investigation.

(i) **VERIFICATION.**—The administering authority shall verify all information relied upon in making—

(1) a final determination in an investigation,

(2) a revocation under section 751(d), and

(3) a final determination in a review under section 751(a),
if—

(A) verification is timely requested by an interested party as defined in section 771(9)(C), (D), (E), (F), or (G), and

(B) no verification was made under this subparagraph during the 2 immediately preceding reviews and determinations under section 751(a) of the same order, finding, or notice, except that this clause shall not apply if good cause for verification is shown.

SEC. 783. ANTIDUMPING PETITIONS BY THIRD COUNTRIES.

(a) **FILING OF PETITION.**—The government of a WTO member may file with the Trade Representative a petition requesting that an investigation be conducted to determine if—

(1) imports from another country are being sold in the United States at less than fair value, and

(2) an industry in the petitioning country is materially injured by reason of those imports.

(b) *INITIATION.*—The Trade Representative, after consultation with the administering authority and the Commission and obtaining the approval of the WTO Council for Trade in Goods, shall determine whether to initiate an investigation described in subsection (a).

(c) *DETERMINATIONS.*—Upon initiation of an investigation under this section, the Trade Representative shall request the following determinations be made according to substantive and procedural requirements specified by the Trade Representative, notwithstanding any other provision of this title:

(1) The administering authority shall determine whether imports into the United States of the subject merchandise are being sold at less than fair value.

(2) The Commission shall determine whether an industry in the petitioning country is materially injured by reason of imports of the subject merchandise into the United States.

(d) *PUBLIC COMMENT.*—An opportunity for public comment shall be provided, as appropriate—

(1) by the Trade Representative, in making the determination required by subsection (b), and

(2) by the administering authority and the Commission, in making the determination required by subsection (c).

(e) *ISSUANCE OF ORDER.*—If the administering authority makes an affirmative determination under paragraph (1) of subsection (c), and the Commission makes an affirmative determination under paragraph (2) of subsection (c), the administering authority shall issue an antidumping duty order in accordance with section 736 and take such other actions as are required by section 736.

(f) *REVIEWS OF DETERMINATIONS.*—For purposes of review under section 516A or review under section 751, if an order is issued under subsection (d), the final determinations of the administering authority and the Commission under this section shall be treated as final determinations made under section 735.

(g) *ACCESS TO INFORMATION.*—Section 777 shall apply to investigations under this section, to the extent specified by the Trade Representative, after consultation with the administering authority and the Commission.

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TRADE ACT OF 1974

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TITLE I—NEGOTIATING AND OTHER AUTHORITY

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CHAPTER 2—OTHER AUTHORITY

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SEC. 125. TERMINATION AND WITHDRAWAL AUTHORITY.

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(c) Whenever the United States, acting in pursuance of any of its rights or obligations under any trade agreement entered into pursuant to this Act, section 201 of the Trade Expansion Act of 1962, or section 350 of the Tariff Act of 1930, withdraws, suspends, or modifies any obligation with respect to the trade of any foreign country or instrumentality thereof, the President is authorized to proclaim increased duties or other import restrictions, to the extent, at such times, and for such periods as he deems necessary or appropriate, in order to exercise the rights or fulfill the obligations of the United States. No proclamation shall be made under this subsection increasing any existing duty to a rate more than 50 percent above the rate set forth in rate column numbered 2 of the Tariff Schedules of the United States, as in effect on January 1, 1975, or [20] 350 percent ad valorem above the rate existing on January 1, 1975, whichever is higher.

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CHAPTER 3—HEARINGS AND ADVICE CONCERNING NEGOTIATIONS

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SEC. 135. INFORMATION AND ADVICE FROM PRIVATE AND PUBLIC SECTORS.**(a) IN GENERAL.—**

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

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

[(B) the operation of any trade agreement once entered into; and]

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

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

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

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

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

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

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

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

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

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

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

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CHAPTER 4—OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

SEC. 141. OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE.

* * * * *

(c)(1) The United States Trade Representative shall—

* * * * *

(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 Organizations*, 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;

* * * * *

CHAPTER 5—CONGRESSIONAL PROCEDURES WITH RESPECT TO PRESIDENTIAL ACTIONS

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

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

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

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

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

(1) The term “implementing bill” means only a bill of either House of Congress which is introduced as provided in subsection (c) with respect to one or more trade agreements, or with respect to an extension described in section 282(c)(3) of the Uruguay Round Agreements Act, submitted to the House of Representatives and the Senate under section 102 of this Act [or section 1103(a)(1) of the Omnibus Trade and Competitiveness Act of 1988], section 1103(a)(1) of the Omnibus Trade and Competitiveness Act of 1988, or section 282 of the Uruguay Round Agreements Act and which contains—

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

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

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

(2) The term “implementing revenue bill or resolution” means an implementing bill, or approval resolution, which con-

tains 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 the follows: "That the Congress approves the extension of nondiscriminatory treatment with respect to the products of _____ transmitted by the President to the Congress on _____", the first blank space being filled with the name of the country involved and the second blank space being filled with the appropriate date.

(c) INTRODUCTION AND REFERRAL.—

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

* * * * *

SEC. 152. 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 follow: "That the Congress does not approve the action taken by, or the determination of, the President under section 203 of the Trade Act of 1974 transmitted to the Congress on _____", the blank space being filled with the appropriate date; and

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

(2) The first blank space referred to in paragraph (1)(B) shall be filled as follows:

[(A) in the case of a resolution referred to in section 303(e) of the Tariff Act of 1930, with the phrase "the determination of the Secretary of the Treasury under section 303(d) of the Tariff Act of 1930"; and]

[(B)] in the case of a resolution referred to in section 407(c)(2), with the phrase "the report of the President submitted under section _____ of the Trade Act of 1974 with respect to _____" (with the first blank space being filled with "402(b)" or "409(b)", as appropriate, and the second blank space being filled with the name of the country involved).

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

* * * * *

SEC. 154. SPECIAL RULES RELATING TO CONGRESSIONAL PROCEDURES.

(a) Whenever, pursuant to section 102(e), 203(b), 402(d), or 407(a) or (b), [or section 303(e) of the Tariff Act of 1930,] 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.

* * * * *

CHAPTER 8—IDENTIFICATION OF MARKET BARRIERS AND CERTAIN UNFAIR TRADE ACTIONS

SEC. 181. ESTIMATES OF BARRIERS TO MARKET ACCESS.

* * * * *

(b) REPORT TO CONGRESS.—

* * * * *

(2) REPORTS TO INCLUDE INFORMATION WITH RESPECT TO ACTION BEING TAKEN.—The Trade Representative shall include in each report submitted under paragraph (1) information with respect to any action taken (or the reasons for no action taken) to eliminate any act, policy, or practice identified under subsection (a), including, but not limited to—

(A) any action under section 301, [or]

(B) negotiations or consultations with foreign governments [], or

(C) a section on foreign anticompetitive practices, the toleration of which by foreign governments is adversely affecting exports of United States goods or services.

(3) CONSULTATION WITH CONGRESS ON TRADE POLICY PRIORITIES.—The Trade Representative shall keep the committees

described in paragraph (1) currently informed with respect to trade policy priorities for the purposes of expanding market opportunities. *After the submission of the report required by paragraph (1), the Trade Representative shall also consult periodically with, and take into account the views of, the committees described in that paragraph regarding means to address the foreign trade barriers identified in the report, including the possible initiation of investigations under section 302 or other trade actions.*

(c) ASSISTANCE OF OTHER AGENCIES.—

(1) FURNISHING OF INFORMATION.—The head of each department or agency of the executive branch of the Government, including any independent agency, is authorized and directed to furnish to the Trade Representative or to the appropriate agency, upon request, such data, reports, and other information as is necessary for the Trade Representative to carry out his functions under this section. *In preparing the section of the report required by subsection (b)(2)(C), the Trade Representative shall consult in particular with the Attorney General.*

* * * * *

SEC. 182. IDENTIFICATION OF COUNTRIES THAT DENY ADEQUATE PROTECTION, OR MARKET ACCESS, FOR INTELLECTUAL PROPERTY RIGHTS.

* * * * *

(b) SPECIAL RULES FOR IDENTIFICATIONS.—

(1) In identifying priority foreign countries under subsection (a)(2), the Trade Representative shall only identify those foreign countries—

(A) that have the most onerous or egregious acts, policies, or practices that—

(i) deny adequate and effective intellectual property rights, or

(ii) deny fair and equitable market access to United States persons that rely upon intellectual property protection,

(B) whose acts, policies, or practices described in subparagraph (A) have the greatest adverse impact (actual or potential) on the relevant United States products, and

(C) that are not—

(i) entering into good faith negotiations, or

(ii) making significant progress in bilateral or multilateral negotiations,

to provide adequate and effective protection of intellectual property rights.

(2) In identifying priority foreign countries under subsection (a)(2), the Trade Representative shall—

(A) consult with the Register of Copyrights, the Commissioner of Patents and Trademarks, other appropriate officers of the Federal Government, and

(B) take into account information from such sources as may be available to the Trade Representative and such information as may be submitted to the Trade Representative by interested persons, including information contained

in reports submitted under section 181(b) and petitions submitted under section 302.

(3) The Trade Representative may identify a foreign country under subsection (a)(1)(B) only if the Trade Representative finds that there is a factual basis for the denial of fair and equitable market access as a result of the violation of international law or agreement, or the existence of barriers, referred to in subsection (d)(3).

(4) *In identifying foreign countries under paragraphs (1) and (2) of subsection (a), the Trade Representative shall take into account—*

(A) *the history of intellectual property laws and practices of the foreign country, including any previous identification under subsection (a)(2), and*

(B) *the history of efforts of the United States, and the response of the foreign country, to achieve adequate and effective protection and enforcement of intellectual property rights.*

(c) REVOCATIONS AND ADDITIONAL IDENTIFICATIONS.—

(1) The Trade Representative may at any time—

(A) revoke the identification of any foreign country as a priority foreign country under this section, or

(B) identify any foreign country as a priority foreign country under this section,

if information available to the Trade Representative indicates that such action is appropriate.

(2) The Trade Representative shall include in the semi-annual report submitted to the Congress under section 309(3) a detailed explanation of the reasons for the revocation under paragraph (1) of the identification of any foreign country as a priority foreign country under this section.

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

(1) The term “persons that rely upon intellectual property protection” means persons involved in—

(A) the creation, production or licensing of works of authorship (within the meaning of sections 102 and 103 of title 17, United States Code) that are copyrighted, or

(B) the manufacture of products that are patented or for which there are process patents.

(2) A foreign country denies adequate and effective protection of intellectual property rights if the foreign country denies adequate and effective means under the laws of the foreign country for persons who are not citizens or nationals of such foreign country to secure, exercise, and enforce rights relating to patents, process patents, registered trademarks, copyrights and mask works.

[(3) A foreign country denies fair and equitable market access if the foreign country effectively denies access to a market for a product protected by a copyright, patent, or process patent through the use of laws, procedures, practices, or regulations which—]

(3) *A foreign country denies fair and equitable market access if the foreign country effectively denies access to a market for a product protected by a copyright or related right, patent,*

trademark, mask work, trade secret, or plant breeder's right, through the use of laws, procedures, practices, or regulations which—

(A) violate provisions of international law or international agreements to which both the United States and the foreign country are parties, or

(B) constitute discriminatory nontariff trade barriers.

(4) *A foreign country may be determined to deny adequate and effective protection of intellectual property rights, notwithstanding the fact that the foreign country may be in compliance with the specific obligations of the Agreement on Trade-Related Aspects of Intellectual Property Rights referred to in section 101(d)(15) of the Uruguay Round Agreements Act.*

(e) PUBLICATION.—The Trade Representative shall publish in the Federal Register a list of foreign countries identified under subsection (a) and shall make such revisions to the list as may be required by reason of action under subsection (c).

(f) SPECIAL RULE FOR ACTIONS AFFECTING UNITED STATES CULTURAL INDUSTRIES.—

(1) IN GENERAL.—By no later than the date that is 30 days after the date on which the annual report is submitted to Congressional committees under section 181(b), the Trade Representative shall identify any act, policy, or practice of Canada which—

(A) affects cultural industries,

(B) is adopted or expanded after December 17, 1992,

and

(C) is actionable under article 2106 of the North American Free Trade Agreement.

(2) SPECIAL RULES FOR IDENTIFICATIONS.—For purposes of section 302(b)(2)(A), an act, policy, or practice identified under this subsection shall be treated as an act, policy, or practice that is the basis for identification of a country under subsection (a)(2), unless the United States has already taken action pursuant to article 2106 of the North American Free Trade Agreement in response to such act, policy, or practice. In deciding whether to identify an act, policy, or practice under paragraph (1), the Trade Representative shall—

(A) consult with and take into account the views of representatives of the relevant domestic industries, appropriate committees established pursuant to section 135, and appropriate officers of the Federal Government, and

(B) take into account the information from such sources as may be available to the Trade Representative and such information as may be submitted to the Trade Representative by interested persons, including information contained in reports submitted under section 181(b).

(3) CULTURAL INDUSTRIES.—For purposes of this subsection, the term “cultural industries” means persons engaged in any of the following activities:

(A) The publication, distribution, or sale of books, magazines, periodicals, or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing.

(B) The production, distribution, sale, or exhibition of film or video recordings.

(C) The production, distribution, sale, or exhibition of audio or video music recordings.

(D) The publication, distribution, or sale of music in print or machine readable form.

(E) Radio communications in which the transmissions are intended for direct reception by the general public, and all radio, television, and cable broadcasting undertakings and all satellite programming and broadcast network services.

(g) *ANNUAL REPORT.*—*The Trade Representative shall, by not later than the date by which countries are identified under subsection (a), transmit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, a report on actions taken under this section during the 12 months preceding such report, and the reasons for such actions, including a description of progress made in achieving improved intellectual property protection and market access for persons relying on intellectual property rights.*

TITLE II—RELIEF FROM INJURY CAUSED BY IMPORT COMPETITION

CHAPTER 1—POSITIVE ADJUSTMENT BY INDUSTRIES INJURED BY IMPORTS

* * * * *

SEC. 202. INVESTIGATIONS, DETERMINATIONS, AND RECOMMENDATIONS BY COMMISSION.

(a) PETITIONS AND ADJUSTMENT PLANS.—

(1) A petition requesting action under this chapter for the purpose of facilitating positive adjustment to import competition may be filed with the Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry.

(2) A petition under paragraph (1)—

(A) shall include a statement describing the specific purposes for which action is being sought, which may include facilitating the orderly transfer of resources to more productive pursuits, enhancing competitiveness, or other means of adjustment to new conditions of competition; and

(B) may—

(i) subject to subsection (d)(1)(C)(i), request provisional relief under subsection (d)(1); or

(ii) request[, or at any time before the 150th day after the date of filing be amended to request,] provisional relief under subsection (d)(2).

* * * * *

(8) The procedures concerning the release of confidential business information set forth in section 332(g) of the Tariff Act of 1930 shall apply with respect to information received by

the Commission in the course of investigations conducted under this chapter and part 1 of title III of the North American Free Trade Agreement Implementation Act. *The Commission may request that parties providing confidential business information furnish nonconfidential summaries thereof or, if such parties 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 [(b)] (a), the request of the President or the Trade Representative, the resolution of either the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate, or on its own motion, the Commission shall promptly make an investigation to determine whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

(B) For purposes of this section, the term “substantial cause” means a cause which is important and not less than any other cause.

(2)(A) Except as provided in subparagraph (B), the Commission shall make the determination under paragraph (1) within 120 days (*180 days if the petition alleges that critical circumstances exist*) after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be.

(B) If before the 100th day after a petition is filed under subsection (a)(1) the Commission determines that the investigation is extraordinarily complicated, the Commission shall make the determination under paragraph (1) within 150 days (*210 days if the petition alleges that critical circumstances exist*) after the date referred to in subparagraph (A).

[(3)(A) If the Commission makes an affirmative determination under paragraph (1) and the petitioner alleges the existence of critical circumstances, the Commission shall make a determination regarding such allegation—

[(i) on or before the 120th day after the day on which the petition was filed, if such allegation was included in the petition on or before the 90th day after such filing date; or

[(ii) on or before the date the report required under subsection (f) regarding the determination is submitted to the President, if such allegation was included in the petition after the 90th day, and on or before the 150th day, after such filing date.

[(B) For purposes of this paragraph and subsection (d)(2), critical circumstances exist if a substantial increase in imports (either actual or relative to domestic production) over a rel-

atively short period of time has led to circumstances in which a delay in taking action under this chapter would cause harm that would significantly impair the effectiveness of such action.

[(4) In the course of any proceeding under this subsection, the Commission shall, after reasonable notice, hold public hearings and 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), and to be heard at such hearings.]

(3) *The Commission shall publish notice of the commencement of any proceeding under this subsection in the Federal Register and shall, within a reasonable time thereafter, hold public hearings at which the Commission shall afford interested parties and consumers an opportunity to be present, to present evidence, to comment on the adjustment plan, if any, submitted under subsection (a), to respond to the presentations of other parties and consumers, and otherwise to be heard.*

(c) FACTORS APPLIED IN MAKING DETERMINATIONS.—

(1) In making determinations under subsection (b), the Commission shall take into account all economic factors which it considers relevant, including (but not limited to)—

(A) with respect to serious injury—

(i) the significant idling of productive facilities in the domestic industry,

(ii) the inability of a significant number of firms to carry out domestic production operations at a reasonable level of profit, and

(iii) significant unemployment or underemployment within the domestic industry;

(B) with respect to threat of serious injury—

(i) a decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, *productivity*, or employment (or increasing underemployment) in the domestic industry,

* * * * *

(6) For purposes of this [subsection] section:

[(A) The term “domestic industry” includes producers located in the United States insular possession.]

(A)(i) *The term “domestic industry” means, with respect to an article, the producers as a whole of the like or directly competitive article or those producers whose collective production of the like or directly competitive article constitutes a major proportion of the total domestic production of such article.*

(ii) *The term “domestic industry” includes producers located in the United States insular possessions.*

(B) The term “significant idling of productive facilities” includes the closing of plants or the underutilization of production capacity.

(C) *The term “serious injury” means a significant overall impairment in the position of a domestic industry.*

(D) The term "threat of serious injury" means serious injury that is clearly imminent.

(d) PROVISIONAL RELIEF.—

(1)(A) An entity representing a domestic industry that produces a perishable agricultural product or citrus product that is like or directly competitive with an imported perishable agricultural product or citrus product may file a request with the Trade Representative for the monitoring of imports of that product under subparagraph (B). Within 21 days after receiving the request, the Trade Representative shall determine if—

(i) the imported product is a perishable agricultural product or citrus product; and

(ii) there is a reasonable indication that such product is being imported into the United States in such increased quantities as to be, or likely to be, a substantial cause of serious injury, or the threat thereof, to such domestic industry.

(B) If the determinations under subparagraph (A) (i) and (ii) are affirmative, the Trade Representative shall request, under section 332(g) of the Tariff Act of 1930, the Commission to monitor and investigate the imports concerned for a period not to exceed 2 years. The monitoring and investigation may include the collection and analysis of information that would expedite an investigation under subsection (b).

(C) If a petition filed under subsection (a)—

(i) alleges injury from imports of a perishable agricultural product or citrus product that has been, on the date the allegation is included in the petition, subject to monitoring by the Commission under [paragraph (2)] *subparagraph (B)* for not less than 90 days; and

(ii) requests that provisional relief be provided under this subsection with respect to such imports;

the Commission shall, not later than the 21st day after the day on which the request was filed, make a determination, on the basis of available information, whether increased imports (either actual or relative to domestic production) of the perishable agricultural product or citrus product are a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a like or directly competitive perishable product or citrus product, and whether either—

(I) the serious injury is likely to be difficult to repair by reason of perishability of the like or directly competitive agricultural product; or

(II) the serious injury cannot be timely prevented through investigation under subsection (b) and action under section 203.

(D) At the request of the Commission, the Secretary of Agriculture shall promptly provide to the Commission any relevant information that the Department of Agriculture may have for purposes of making determinations and findings under this subsection.

(E) Whenever the Commission makes an affirmative preliminary determination under subparagraph (C), the Commission shall find the amount or extent of provisional relief that

is necessary to prevent or remedy the serious injury [or threat thereof]. 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 or threat thereof.

(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 [or threat thereof].

[(2)(A) The Commission shall, at the same time it makes an affirmative determination under subsection (b)(3)(A) regarding the existence of critical circumstances, find the amount or extent of provisional relief that is appropriate to address such critical circumstances. The Commission shall immediately report to the President each such affirmative determination and finding.

[(B) After receiving a report from the Commission under subparagraph (A), the President shall, within 7 days after the day on which the report is received and after taking into account the finding of the Commission under subparagraph (A), proclaim such provisional relief, if any, that the President considers appropriate to address the critical circumstances.]

(2)(A) When a petition filed under subsection (a) alleges that critical circumstances exist and requests that provisional relief be provided under this subsection with respect to imports of the article identified in the petition, the Commission shall, not later than 60 days after the petition containing the request was filed, determine, on the basis of available information, whether—

(i) there is clear evidence that increased imports (either actual or relative to domestic production) of the article are a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article; and

(ii) delay in taking action under this chapter would cause damage to that industry that would be difficult to repair.

(B) If the determinations under subparagraph (A)(i) and (ii) are affirmative, the Commission shall find the amount or extent of provisional relief that is necessary to prevent or remedy the serious injury. In carrying out this subparagraph, the Commission shall give preference to increasing or imposing a duty on imports, if such form of relief is feasible and would prevent or remedy the serious injury.

(C) The Commission shall immediately report to the President its determinations under subparagraph (A)(i) and (ii) and, if the determinations are affirmative, the finding under subparagraph (B).

(D) *Within 30 days after receiving a report from the Commission under subparagraph (C) containing an affirmative determination under subparagraph (A)(i) and (ii), the President, if he considers provisional relief to be warranted and after taking into account the finding of the Commission under subparagraph (B), shall proclaim, for a period not to exceed 200 days, such provisional relief that the President considers necessary to prevent or remedy the serious injury. Such relief shall take the form of an increase in, or the imposition of, a duty on imports, if such form of relief is feasible and would prevent or remedy the serious injury.*

(3) If provisional relief is proclaimed under paragraph (1)(G) or (2) [(B)] (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 [subsection (b)(1)] 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 section [203(a)] 202(b) regarding injury or the threat thereof by imports of such article;

* * * * *

(f) REPORT BY COMMISSION.—

(1) The Commission shall submit to the President a report on each investigation undertaken under subsection (b). The report shall be submitted at the earliest practicable time, but not later than 180 days (240 days if the petition alleges that critical circumstances exist) 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.

* * * * *

(G) A description of—

(i) the short- and long-term effects that implementation of the action recommended under subsection (e) is likely to have on the petitioning domestic industry, on other domestic industries, and on consumers, and

(ii) the short- and long-term effects of not taking the recommended action on the petitioning domestic industry, its workers and the communities where production facilities of such industry [is] are located, and on other domestic industries.

* * * * *

(h) LIMITATIONS ON INVESTIGATIONS.—

(1) Except for good cause determined by the Commission to exist, no investigation for the purposes of this section shall be made with respect to the same subject matter as a previous investigation under this chapter, unless 1 year has elapsed

since the Commission made its report to the President of the results of such previous investigation.

[(2) If an article was the subject of an investigation under this section that resulted in any action described in section 203(a)(3) (A), (B), (C), or (E) being taken under section 203, no other investigation under this chapter may be initiated with respect to such article while such action is in effect or during the period beginning on the date on which such action terminates that is equal in duration to the period during which such action was in effect.]

(2) No new investigation shall be conducted with respect to an article that is or has been the subject of an action under section 203(a)(3)(A), (B), (C), or (E) if the last day on which the President could take action under section 203 in the new investigation is a date earlier than that permitted under section 203(e)(7).

(3)(A) Not later than the date on which the Textiles Agreement enters into force with respect to the United States, the Secretary of Commerce shall publish in the Federal Register a list of all articles that are subject to the Textiles Agreement. An investigation may be conducted under this section concerning imports of any article that is subject to the Textiles Agreement only if the United States has integrated that article into GATT 1994 pursuant to the Textiles Agreement, as set forth in notices published in the Federal Register by the Secretary of Commerce, including the notice published under section 331 of the Uruguay Round Agreements Act.

(B) For purposes of this paragraph:

(i) The term "Textiles Agreement" means the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act.

(ii) The term "GATT 1994" has the meaning given that term in section 2(1)(B) of the Uruguay Round Agreements Act.

(i) LIMITED DISCLOSURE OF CONFIDENTIAL BUSINESS INFORMATION UNDER PROTECTIVE ORDER.—The Commission shall promulgate regulations to provide access to confidential business information under protective order to authorized representatives of interested parties who are parties to an investigation under this section.

SEC. 203. ACTION BY PRESIDENT AFTER DETERMINATION OF IMPORT INJURY.

(a) IN GENERAL.—

* * * * *

(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 [201(b)] 202(a) to make a positive adjustment to import competition;

* * * * *

(3) The President may, for purposes of taking action under paragraph (1)—

(A) proclaim an increase in, or the imposition of, any duty on the imported article;

(B) proclaim a tariff-rate quota on the article;

(C) proclaim a modification or imposition of any quantitative restriction on the importation of the article into the United States;

(D) implement one or more appropriate adjustment measures, including the provision of trade adjustment assistance under chapter 2;

(E) negotiate, conclude, and carry out [orderly marketing] agreements with foreign countries limiting the export from foreign countries and the import into the United States of such article;

* * * * *

(4) [The](A) *Subject to subparagraph (B), the President shall take action under paragraph (1) within 60 days (50 days if the President has proclaimed provisional relief under section 202(d)(2)(D) with respect to the article concerned) after receiving a report from the Commission containing an affirmative determination under section 202(b)(1) (or a determination under such section which he considers to be an affirmative determination by reason of section 330(d) of the Tariff Act of 1930)[; 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.]*

(B) If a supplemental report is requested under paragraph (5), the President shall take action under paragraph (1) within 30 days after the supplemental report is received, except that, in a case in which the President has proclaimed provisional relief under section 202(d)(2)(D) with respect to the article concerned, action by the President under paragraph (1) may not be taken later than the 200th day after the provisional relief was proclaimed.

(5) The President may, within 15 days after the date on which he receives a report from the Commission containing an affirmative determination under section 202(b)(1), request additional information from the Commission. The Commission shall, as soon as practicable but in no event more than 30 days after the date on which it receives the President's request, furnish additional information with respect to the industry in a supplemental report.

* * * * *

(c) IMPLEMENTATION OF ACTION RECOMMENDED BY COMMISSION.—If the President reports under subsection (b)(1) or (2) that—

(1) the action taken under subsection (a)(1) differs from the action recommended by the Commission under section 202(e)(1); or

(2) no action will be taken under subsection (a)(1) with respect to the domestic industry;

the action recommended by the Commission shall take effect (as provided in subsection [(c)(2)] (d)(2)) upon the enactment of a joint resolution described in section 152(a)(1)(A) within the 90-day period beginning on the date on which the document referred to in subsection (b)(1) or (2) is transmitted to the Congress.

(d) TIME FOR TAKING EFFECT OF CERTAIN RELIEF.—

(1) Except as provided in paragraph (2), any action described in subsection (a)(3)(A), (B), or (C), that is taken under subsection (a)(1) shall take effect within 15 days after the day on which the President proclaims the action, unless the President announces, on the date he decides to take such action, his intention to negotiate one or more [orderly marketing agreements] *agreements described in subsection (a)(3)(E) in which case the action under subsection (a)(3)(A), (B), or (C) shall be proclaimed and take effect within 90 days after the date of such decision.*

(2) If the contingency set forth in subsection (c) occurs, the President shall, within 30 days after the date of the enactment of the joint resolution referred to in such subsection, proclaim the action recommended by the Commission under section 202(e)(1).

(e) LIMITATIONS ON ACTIONS.—

[(1)(A) 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.]

(1)(A) Subject to subparagraph (B), the duration of the period in which an action taken under this section may be in effect shall not exceed 4 years. Such period shall include the period, if any, in which provisional relief under section 202(d) was in effect.

(B)(i) Subject to clause (ii), the President, after receiving an affirmative determination from the Commission under section 204(c) (or, if the Commission is equally divided in its determination, a determination which the President considers to be an affirmative determination of the Commission), may extend the effective period of any action under this section if the President determines that—

(I) the action continues to be necessary to prevent or remedy the serious injury; and

(II) there is evidence that the domestic industry is making a positive adjustment to import competition.

(ii) The effective period of any action under this section, including any extensions thereof, may not, in the aggregate, exceed 8 years.

(2) Action [may be taken under subsection (a)(1)(A), (B), or (C) or under section 202(d)(2)(B)] *of a type described in sub-*

section (a)(3)(A), (B), or (C) may be taken under subsection (a)(1), under section 202(d)(1)(G), or under section 202(d)(2)(D) only to the extent the cumulative impact of such action does not exceed the amount necessary to prevent or remedy the serious injury [or threat thereof].

(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 quantity or value of such article imported into the United States during the most recent period that is representative of imports of such article.]

(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) To the extent feasible, an effective period of more than 3 years for an action described in subsection (a)(3)(A), (B), or (C) 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.]

(5) An action described in subsection (a)(3)(A), (B), or (C) that has an effective period of more than 1 year shall be phased down at regular intervals during the period in which the action is in effect.

(6)(A) The suspension, pursuant to any action taken under this section, of—

(i) subheading 9802.00.60 or 9802.00.80 of the Harmonized Tariff Schedule of the United States with respect to an article; and

(ii) the designation of any article as an eligible article for purposes of title V;

shall be treated as an increase in duty.

(B) No proclamation providing for a suspension referred to in subparagraph (A) with respect to any article may be made by the President, nor may any such suspension be recommended by the Commission under section [203(c)] 202(e), unless the Commission, in addition to making an affirmative determination under section 202(b)(1), determines in the course of its investigation under section [203(a)] 202(b) that the serious injury, or threat thereof, substantially caused by imports to the domestic industry producing a like or directly competitive article results from, as the case may be—

(i) the application of 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 title V.

(7)(A) *If an article was the subject of an action under subparagraph (A), (B), (C), or (E) of subsection (a)(3), no new action may be taken under any of those subparagraphs with respect to such article for—*

(i) a period beginning on the date on which the previous action terminates that is equal to the period in which the previous action was in effect, or

(ii) a period of 2 years beginning on the date on which the previous action terminates,

whichever is greater.

(B) Notwithstanding subparagraph (A), if the previous action under subparagraph (A), (B), (C), or (E) of subsection (a)(3) with respect to an article was in effect for a period of 180 days or less, the President may take a new action under any of those subparagraphs with respect to such article if—

(i) at least 1 year has elapsed since the previous action went into effect; and

(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) **【ORDERLY MARKETING AND OTHER】 CERTAIN AGREEMENTS.—**

(1) If the President takes action under this section other than the implementation of **【orderly marketing agreements】 agreements of the type described in subsection (a)(3)(E)**, the President may, after such action takes effect, negotiate **【orderly marketing agreements with foreign countries】 agreements of the type described in subsection (a)(3)(E)**, and may, after such agreements take effect, suspend or terminate, in whole or in part, any action previously taken.

(2) If an **【orderly marketing agreement implemented under subsection (a)】 agreements implemented under subsection (a)(3)(E)** is not effective, the President may, consistent with the limitations contained in subsection (e), take additional action under subsection (a).

(g) **REGULATIONS.—**

(1) The President shall by regulation provide for the efficient and fair administration of all actions taken for the purpose of providing import relief under this chapter.

(2) In order to carry out an **【orderly marketing or other】 international agreement concluded under this chapter**, the President may prescribe regulations governing the entry or withdrawal from warehouse of articles covered by such agreement. In addition, in order to carry out any **【orderly marketing agreement】 agreement of the type described in subsection (a)(3)(E)** that is concluded under this chapter with one or more countries accounting for a major part of United States imports of the article covered by such **【agreements】 agreement**, including imports into a major geographic area of the United States, the President may issue regulations governing the entry or

withdrawal from warehouse of like articles which are the product of countries not parties to such agreement.

(3) Regulations prescribed under this subsection shall, to the extent practicable and consistent with efficient and fair administration, insure against inequitable sharing of imports by a relatively small number of the larger importers.

SEC. 204. MONITORING, MODIFICATION, AND DERMINATION OF ACTION.

(a) **MONITORING.**—

(1) So long as any action taken under section 203 remains in effect, the Commission shall monitor developments with respect to the domestic industry, including the progress and specific efforts made by workers and firms in the domestic industry to make a positive adjustment to import competition.

[(2) 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—

[(A) the 2nd-anniversary of the day on which the action under section 203 first took effect; and

[(B) the last day of each 2-year period occurring after the 2-year period referred to in subparagraph (A).]

(2) *If the initial period during which the action taken under section 203 is in effect exceeds 3 years, or if an extension of such action exceeds 3 years, the Commission shall submit a report on the results of the monitoring under paragraph (1) to the President and to the Congress not later than the date that is the mid-point of the initial period, and of each such extension, during which the action is in effect.*

(3) In the course of preparing each report under paragraph (2), the Commission shall hold a hearing at which interested persons shall be given a reasonable opportunity to be present, to produce evidence, and to be heard.

(4) Upon request of the President, the Commission shall advise the President of its judgment as to the probable economic effect on the industry concerned of any [extension,] reduction, modification, or termination of the action taken under section 203 which is under consideration.

(b) **REDUCTION, MODIFICATION, AND TERMINATION OF ACTION.**—

(1) Action taken under section 203 may be reduced, modified, or terminated by the President (but not before the President receives the report required under subsection (a)(2)(A)) if the President—

(A) after taking into account any report or advice submitted by the Commission under subsection (a) and after seeking the advice of the Secretary of Commerce and the Secretary of Labor, determines, on the basis that either—

(i) the domestic industry has not made adequate efforts to make a positive adjustment to import competition, or

(ii) the effectiveness of the action taken under section 203 has been impaired by changed economic circumstances,

that changed circumstances warrant such reduction, or termination; or

(B) determines, after a majority of the representatives of the domestic industry submits to the President a petition requesting such reduction, modification, or termination on such basis, that the domestic industry has made a positive adjustment to import competition.

(2) Notwithstanding paragraph (1), the President is authorized to take such additional action under section 203 as may be necessary to eliminate any circumvention of any action previously taken under such section.

(3) *Notwithstanding paragraph (1), the President may, after receipt of a Commission determination under section 129(a)(4) of the Uruguay Round Agreements Act and consulting with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, reduce, modify, or terminate action taken under section 203.*

(c) *EXTENSION OF ACTION.—*

(1) *Upon request of the President, or upon petition on behalf of the industry concerned filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date any action taken under section 203 is to terminate, the Commission shall investigate to determine whether action under section 203 continues to be necessary to prevent or remedy serious injury and whether there is evidence that the industry is making a positive adjustment to import competition.*

(2) *The Commission shall publish notice of the commencement of any proceeding under this subsection in the Federal Register and shall, within a reasonable time thereafter, hold a public hearing at which the Commission shall afford interested parties and consumers an opportunity to be present, to present evidence, and to respond to the presentations of other parties and consumers, and otherwise to be heard.*

(3) *The Commission shall transmit to the President a report on its investigation and determination under this subsection not later than 60 days before the action under section 203 is to terminate, unless the President specifies a different date.*

[(c)] (d) *EVALUATION OF EFFECTIVENESS OF ACTION.—*

(1) *After any action taken under section 203 has terminated, the Commission shall evaluate the effectiveness of the actions in facilitating positive adjustment by the domestic industry to import competition, consistent with the reasons set out by the President in the report submitted to the Congress under section 203(b).*

(2) *During the course of the evaluation conducted under paragraph (1), the Commission shall, after reasonable public notice, hold a hearing on the effectiveness of the action. All interested persons shall have the opportunity to attend such hearing and to present evidence or testimony at such hearing.*

(3) *A report on the evaluation made under paragraph (1) and the hearings held under paragraph (2) shall be submitted by the Commission to the President and to the Congress by no*

later than the 180th day after the day on which the actions taken under section 203 terminated.

[(d)] (e) OTHER PROVISIONS.—

(1) Action by the President under this chapter may be taken without regard to the provisions of section 126(a) of this Act but only after consideration of the relation of such actions to the international obligations of the United States.

(2) If the Commission treats as the domestic industry production located in a major geographic area of the United States under section 202(c)(4)(C), then the President shall take into account the geographic concentration of domestic production and of imports in that area in taking any action authorized under paragraph (1).

* * * * *

TITLE III—RELIEF FROM UNFAIR TRADE PRACTICES

CHAPTER 1—ENFORCEMENT OF UNITED STATES RIGHTS UNDER TRADE AGREE- MENTS AND RESPONSE TO CERTAIN FOR- EIGN TRADE PRACTICES

SEC. 301. ACTIONS BY UNITED STATES TRADE REPRESENTATIVE.

(a) MANDATORY ACTION.—

(1) If the United States Trade Representative determines under section 304(a)(1) that—

(A) the rights of the United States under any trade agreement are being denied; or

(B) an act, policy, or practice of a foreign country—

(i) violates, or is inconsistent with, the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or

(ii) is unjustifiable and burdens or restricts United States commerce;

the Trade Representative shall take action authorized in subsection (c), subject to the specific direction, if any, of the President regarding any such action, and shall take all other appropriate and feasible action within the power of the President that the President may direct the Trade Representative to take under this subsection, to enforce such rights or to obtain the elimination of such act, policy, or practice. *Actions may be taken that are within the power of the President with respect to trade in any goods or services, or with respect to any other area of pertinent relations with the foreign country.*

(2) The Trade Representative is not required to take action under paragraph (1) in any case in which—

(A) [the Contracting Parties to the General Agreement on Tariffs and Trade have determined, a panel of experts has reported to the Contracting Parties,] *the Dispute Settlement Body (as defined in section 121(5) of the Uruguay Round Agreements Act) has adopted a report, or a ruling*

issued under the formal dispute settlement proceeding provided under any other trade agreement finds, that—

* * * * *

(b) **DISCRETIONARY ACTION.**—If the Trade Representative determines under section 304(a)(1) that—

(1) an act, policy, or practice of a foreign country is unreasonable or discriminatory and burdens or restricts United States commerce, and

(2) action by the United States is appropriate, the Trade Representative shall take all appropriate and feasible action authorized under subsection (c), subject to the specific direction, if any, of the President regarding any such action, and all other appropriate and feasible action within the power of the President that the President may direct the Trade Representative to take under this subsection, to obtain the elimination of that act, policy, or practice. *Actions may be taken that are within the power of the President with respect to trade in any goods or services, or with respect to any other area of pertinent relations with the foreign country.*

(c) **SCOPE OF AUTHORITY.**—

(1) For purposes of carrying out the provisions of subsection (a) or (b), the Trade Representative is authorized to—

(A) suspend, withdraw, or prevent the application of, benefits of trade agreement concessions to carry out a trade agreement with the foreign country referred to in such subsection;

(B) impose duties or other import restrictions on the goods of, and, notwithstanding any other provision of law, fees or restrictions on the services of, such foreign country for such time as the Trade Representative determines appropriate; [or]

(C) *in a case in which the act, policy, or practice also fails to meet the eligibility criteria for receiving duty-free treatment under subsections (b) and (c) of section 502 of this Act, subsections (b) and (c) of section 212 of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(b) and (c)), or subsections (c) and (d) of section 203 of the Andean Trade Preference Act (19 U.S.C. 3202(c) and (d)), withdraw, limit, or suspend such treatment under such provisions, notwithstanding the provisions of subsection (a)(3) of this section; or*

[(C)] (D) enter into binding agreements with such foreign country that commit such foreign country to—

(i) eliminate, or phase out, the act, policy, or practice that is the subject of the action to be taken under subsection (a) or (b),

(ii) eliminate any burden or restriction on United States commerce resulting from such act, policy, or practice, or

(iii) provide the United States with compensatory trade benefits that—

(I) are satisfactory to the Trade Representative, and

(II) meet the requirements of paragraph (4).

(2)(A) Notwithstanding any other provision of law governing any service sector access authorization, and in addition to the authority conferred in paragraph (1), the Trade Representative may, for purposes of carrying out the provisions of subsection (a) or (b)—

(i) restrict, in the manner and to the extent the Trade Representative determines appropriate, the terms and conditions of any such authorization, or

(ii) deny the issuance of any such authorization.

(B) Actions described in subparagraph (A) may only be taken under this section with respect to service sector access authorizations granted, or applications therefor pending, on or after the date on which—

(i) a petition is filed under section 302(a), or

(ii) a determination to initiate an investigation is made by the Trade Representative under section 302(b).

(C) Before the Trade Representative takes any action under this section involving the imposition of fees or other restrictions on the services of a foreign country, the Trade Representative shall, if the services involved are subject to regulation by any agency of the Federal Government or of any State, consult, as appropriate, with the head of the agency concerned.

(3) The actions the Trade Representative is authorized to take under subsection (a) or (b) may be taken against any goods or economic sector—

(A) on a nondiscriminatory basis or solely against the foreign country described in such subsection, and

(B) without regard to whether or not such goods or economic sector were involved in the act, policy, or practice that is the subject of such action.

(4) Any trade agreement described in paragraph (1)(C)(iii) shall provide compensatory trade benefits that benefit the economic sector which includes the domestic industry that would benefit from the elimination of the act, policy, or practice that is the subject of the action to be taken under subsection (a) or (b), or benefit the economic sector as closely related as possible to such economic sector, unless—

(A) the provision of such trade benefits is not feasible,

or

(B) trade benefits that benefit any other economic sector would be more satisfactory than such trade benefits.

[(5) In taking actions under subsection (a) or (b), the Trade Representative shall—

[(A) give preference to the imposition of duties over the imposition of other import restrictions, and]

(5) If the Trade Representative determines that actions to be taken under subsection (a) or (b) are to be in the form of import restrictions, the Trade Representative shall—

(A) give preference to the imposition of duties over the imposition of other import restrictions, and

(B) if an import restriction other than a duty is imposed, consider substituting, on an incremental basis, an equivalent duty for such other import restriction.

(6) Any action taken by the Trade Representative under this section with respect to export targeting shall, to the extent possible, reflect the full benefit level of the export targeting to the beneficiary over the period during which the action taken has an effect.

(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this chapter—

* * * * *

(3)(A) An act, policy, or practice is unreasonable if the act, policy, or practice, while not necessarily in violation of, or inconsistent with, the international legal rights of the United States, is otherwise unfair and inequitable.

(B) Acts, policies, and practices that are unreasonable include, but are not limited to, any act, policy, or practice, or any combination of acts, policies, or practices, which—

(i) denies fair and equitable—

(I) opportunities for the establishment of an enterprise,

[(II) provision of adequate and effective protection of intellectual property rights, or

[(III) market opportunities, including the toleration by a foreign government 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 inconsistent with commercial considerations, access of United States goods to purchasing by such firms,]

(II) provision of adequate and effective protection of intellectual property rights notwithstanding the fact that the foreign country may be in compliance with the specific obligations of the Agreement on Trade-Related Aspects of Intellectual Property Rights referred to in section 101(d)(15) of the Uruguay Round Agreements Act,

(III) nondiscriminatory market access opportunities for United States persons that rely upon intellectual property protection, or

(IV) market opportunities, including the toleration by a foreign government of systematic anticompetitive activities by enterprises or among enterprises in the foreign country that have the effect of restricting, on a basis that is inconsistent with commercial considerations, access of United States goods or services to a foreign market,

(ii) constitutes export targeting, or

(iii) constitutes a persistent pattern of conduct that—

(I) denies workers the right of association,

(II) denies workers the right to organize and bargain collectively,

(III) permits any form of forced or compulsory labor,

(IV) fails to provide a minimum age for the employment of children, or

(V) fails to provide standards for minimum wages, hours of work, and occupational safety and health of workers.

(C)(i) Acts, policies, and practices of a foreign country described in subparagraph (B)(iii) shall not be treated as being unreasonable if the Trade Representative determines that—

(I) the foreign country has taken, or is taking, actions that demonstrate a significant and tangible overall advancement in providing throughout the foreign country (including any designated zone within the foreign country) the rights and other standards described in the subclauses of subparagraph (B)(iii), or

(II) such acts, policies, and practices are not inconsistent with the level of economic development of the foreign country.

(ii) The Trade Representative shall publish in the Federal Register any determination made under clause (i), together with a description of the facts on which such determination is based.

(D) For purposes of determining whether any act, policy, or practice is unreasonable, reciprocal opportunities in the United States for foreign nationals and firms shall be taken into account, to the extent appropriate.

(E) The term “export targeting” means any government plan or scheme consisting of a combination of coordinated actions (whether carried out severally or jointly) that are bestowed on a specific enterprise, industry, or group thereof, the effect of which is to assist the enterprise, industry, or group to become more competitive in the export of a class or kind of merchandise.

(F)(i) For the purposes of subparagraph (B)(i)(II), adequate and effective protection of intellectual property rights includes adequate and effective means under the laws of the foreign country for persons who are not citizens or nationals of such country to secure, exercise, and enforce rights and enjoy commercial benefits relating to patents, trademarks, copyrights and related rights, mask works, trade secrets, and plant breeder’s rights.

(ii) For purposes of subparagraph (B)(i)(IV), the denial of fair and equitable nondiscriminatory market access opportunities includes restrictions on market access related to the use, exploitation, or enjoyment of commercial benefits derived from exercising intellectual property rights in protected works or fixations or products embodying protected works.

(4)(A) An act, policy, or practice is unjustifiable if the act, policy, or practice is in violation of, or inconsistent with, the international legal rights of the United States.

* * * * *

SEC. 304. DETERMINATIONS BY THE TRADE REPRESENTATIVE.

(a) IN GENERAL.—

(1) On the basis of the investigation initiated under section 302 and the consultations (and the proceedings, if applicable) under section 303, the Trade Representative shall—

(A) determine whether—

- (i) the rights to which the United States is entitled under any trade agreement are being denied, or
- (ii) any act, policy, or practice described in subsection (a)(1)(B) or (b)(1) of section 301 exists, and

(B) if the determination made under subparagraph (A) is affirmative, determine what action, if any, the Trade Representative should take under subsection (a) or (b) of section 301.

(2) The Trade Representative shall make the determinations required under paragraph (1) on or before—

(A) in the case of an investigation involving a trade agreement [(other than the agreement on subsidies and countervailing measures described in section 2(c)(5) of the Trade Agreements Act of 1979)], the earlier of—

- (i) the date that is 30 days after the date on which the dispute settlement procedure is concluded, or
- (ii) the date that is 18 months after the date on which the investigation is initiated, or

(B) in all cases not described in subparagraph (A) or paragraph (3), the date that is 12 months after the date on which the investigation is initiated.

(3)(A) If an investigation is initiated under this chapter by reason of section 302(b)(2) and the Trade Representative *does not consider that a trade agreement, including the Agreement on Trade-Related Aspects of Intellectual Property (referred to in section 101(d)(15) of the Uruguay Round Agreements Act), is involved or does not make a determination described in subparagraph (B) with respect to such investigation, the Trade Representative shall make the determinations required under paragraph (1) with respect to such investigation by no later than the date that is 6 months after the date on which such investigation is initiated.*

(B) If the Trade Representative determines with respect to [any investigation initiated by reason of section 302(b)(2)] *an investigation initiated by reason of section 302(b)(2) (other than an investigation involving a trade agreement) that—*

(i) complex or complicated issues are involved in the investigation that require additional time,

(ii) the foreign country involved in the investigation is making substantial progress in drafting or implementing legislative or administrative measures that will provide adequate and effective protection of intellectual property rights, or

(iii) such foreign country is undertaking enforcement measures to provide adequate and effective protection of intellectual property rights,

the Trade Representative shall publish in the Federal Register notice of such determination and shall make the determinations required under paragraph (1) with respect to such investigation by no later than the date that is 9 months after the date on which such investigation is initiated.

(4) In any case in which a dispute is not resolved before the close of the minimum dispute settlement period provided

for in a trade agreement [(other than the agreement on subsidies and countervailing measures described in section 2(c)(5) of the Trade Agreements Act of 1979)], 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.

* * * * *

SEC. 306. MONITORING OF FOREIGN COMPLIANCE.

[(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 301(a)(2)(B) that is entered into under subsection (a) or (b) of section 301, 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 301.

[(b) FURTHER ACTION.—If, on the basis of the monitoring carried out under subsection (a), the Trade Representative considers that a foreign country is not satisfactorily implementing a measure or agreement referred to in subsection (a), the Trade Representative shall determine what further action the Trade Representative shall take under section 301(a). For purposes of section 301, any such determination shall be treated as a determination made under section 304(a)(1).]

(a) IN GENERAL.—The Trade Representative shall monitor the implementation of each measure undertaken, or agreement that is entered into, by a foreign country to provide a satisfactory resolution of a matter subject to investigation under this chapter or subject to dispute settlement proceedings to enforce the rights of the United States under a trade agreement providing for such proceedings.

(b) FURTHER ACTION.—

(1) IN GENERAL.—If, on the basis of the monitoring carried out under subsection (a), the Trade Representative considers that a foreign country is not satisfactorily implementing a measure or agreement referred to in subsection (a), the Trade Representative shall determine what further action the Trade Representative shall take under section 301(a). For purposes of section 301, any such determination shall be treated as a determination made under section 304(a)(1).

(2) WTO DISPUTE SETTLEMENT RECOMMENDATIONS.—If the measure or agreement referred to in subsection (a) concerns the implementation of a recommendation made pursuant to dispute settlement proceedings under the World Trade Organization, and the Trade Representative considers that the foreign country

has failed to implement it, the Trade Representative shall make the determination in paragraph (1) no later than 30 days after the expiration of the reasonable period of time provided for such implementation under paragraph 21 of the Understanding on Rules and Procedures Governing the Settlement of Disputes that is referred to in section 101(d)(16) of the Uruguay Round Agreements Act.

(c) **CONSULTATIONS.**—Before making any determination under subsection (b), the Trade Representative shall—

(1) consult with the petitioner, if any, involved in the initial investigation under this chapter and with representatives of the domestic industry concerned; and

(2) provide an opportunity for the presentation of views by interested persons.

* * * * *

[SEC. 310. IDENTIFICATION OF TRADE LIBERALIZATION PRIORITIES.

[(a) IDENTIFICATION.—

[(1) By no later than the date that is 30 days after the date in calendar year 1989, and also the date in calendar year 1990, on which the report required under section 181(b) is submitted to the appropriate Congressional committees, the Trade Representative shall identify United States trade liberalization priorities, including—

[(A) priority practices, including major barriers and trade distorting practices, the elimination of which are likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent;

[(B) priority foreign countries that, on the basis of such report, satisfy the criteria in paragraph (2);

[(C) estimate the total amount by which United States exports of goods and services to each foreign country identified under subparagraph (B) would have increased during the preceding calendar year if the priority practices of such country identified under subparagraph (A) did not exist; and

[(D) submit to the Committee on Finance of the Senate, the Committee on Ways and Means of the House of Representatives, and publish in the Federal Register, a report which lists—

[(i) the priority foreign countries identified under subparagraph (B),

[(ii) the priority practices identified under subparagraph (A) with respect to each of such priority foreign countries, and

[(iii) the amount estimated under subparagraph (C) with respect to each of such priority foreign countries.

[(2) In identifying priority foreign countries under paragraph (1)(B), the Trade Representative shall take into account—

[(A) the number and pervasiveness of the acts, policies, and practices described in section 181(a)(1)(A), and

[(B) the level of United States exports of goods and services that would be reasonably expected from full implementation of existing trade agreements to which that foreign country is a party, based on the international competitive position and export potential of such products and services.

[(3) In identifying priority practices under paragraph (1)(A), the Trade Representative shall take into account—

[(A) the international competitive position and export potential of United States products and services,

[(B) circumstances in which the sale of a small quantity of a product or service may be more significant than its value, and

[(C) the measurable medium-term and long-term implications of government procurement commitments to United States exporters.

[(b) INITIATION OF INVESTIGATIONS.—By no later than the date that is 21 days after the date on which a report is submitted to the appropriate Congressional committees under subsection (a)(1)(D), the Trade Representative shall initiate under section 302(b)(1) investigations under this chapter with respect to all of those priority practices identified in such report by reason of subsection (a)(1)(D) for each of the priority foreign countries. The Trade Representative may initiate investigations under section 302(b)(1) with respect to all other priority practices identified under subsection (a)(1)(A).

[(c) AGREEMENTS FOR THE ELIMINATION OF BARRIERS.—

[(1) In the consultations with a priority foreign country identified under subsection (a)(1) that the Trade Representative is required to request under section 303(a) with respect to an investigation initiated by reason of subsection (b), the Trade Representative shall seek to negotiate an agreement which provides for—

[(A) the elimination of, or compensation for, the priority practices identified under subsection (a)(1)(A) by no later than the close of the 3-year period beginning on the date on which such investigation is initiated, and

[(B) the reduction of such practices over a 3-year period with the expectation that United States exports to the foreign country will, as a result, increase incrementally during each year within such 3-year period.

[(2) Any investigation initiated under this chapter by reason of subsection (b) shall be suspended if an agreement described in subparagraphs (A) and (B) of paragraph (1) is entered into with the foreign country before the date on which any action under section 301 with respect to such investigation may be required under section 305(a) to be implemented.

[(3) If an agreement described in paragraph (1) is entered into with a foreign country before the date on which any action under section 301 with respect to such investigation may be required under section 305(a) to be implemented and the Trade Representative determines that the foreign country is not in compliance with such agreement, the Trade Representative shall continue the investigation that was suspended by reason

of such agreement as though such investigation had not been suspended.

[(d) ANNUAL REPORTS.—

[(1) On the date on which the report the Trade Representative is required to submit under subsection (a)(1)(D) in calendar year 1990, and on the anniversary of such date in the succeeding calendar years, the Trade Representative shall submit a report which includes—

[(A) revised estimates of the total account determined under subsection (a)(1)(C) for each priority foreign country that has been identified under subsection (a)(1)(B),

[(B) evidence that demonstrates, in the form of increased United States exports to each of such priority foreign countries during the previous calendar year—

[(i) in the case of a priority foreign country that has entered into an agreement described in subsection (c)(1), substantial progress during each year within the 3-year period described in subsection (c)(1)(A) toward the goal of eliminating the priority practices identified under subsection (a)(1)(A) by the close of such 3-year period, and

[(ii) in the case of a country which has not entered into (or has not complied with) an agreement described in subsection (c)(1), the elimination of such practices, and

[(C) to the extent that the evidence described in subparagraph (B) cannot be provided, any actions that have been taken by the Trade Representative under section 301 with respect to such priority practices of each of such foreign countries.

[(2) The Trade Representative may exclude from the requirements of paragraph (1) in any calendar year beginning after 1993 any foreign country that has been identified under subsection (a)(1)(A) if the evidence submitted under paragraph (1)(B) in the 2 previous reports demonstrated that all the priority practices identified under subsection (a)(1)(A) with respect to such foreign country have been eliminated.]

SEC. 310. IDENTIFICATION OF TRADE EXPANSION PRIORITIES.

(a) IDENTIFICATION.—

(1) Within 180 days after the submission in calendar year 1995 of the report required by section 181(b), the Trade Representative shall—

(A) review United States trade expansion priorities,

(B) identify priority foreign country practices, the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent, and

(C) submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives and publish in the Federal Register a report on the priority foreign country practices identified.

(2) In identifying priority foreign country practices under paragraph (1) of this section, the Trade Representative shall take into account all relevant factors, including—

(A) the major barriers and trade distorting practices described in the National Trade Estimate Report required under section 181(b);

(B) the trade agreements to which a foreign country is a party and its compliance with those agreements;

(C) the medium- and long-term implications of foreign government procurement plans; and

(D) the international competitive position and export potential of United States products and services.

(3) The Trade Representative may include in the report, if appropriate—

(A) a description of foreign country practices that may in the future warrant identification as priority foreign country practices; and

(B) a statement about other foreign country practices that were not identified because they are already being addressed by provisions of United States trade law, by existing bilateral trade agreements, or as part of trade negotiations with other countries and progress is being made toward the elimination of such practices.

(b) INITIATION OF INVESTIGATIONS.—By no later than the date which is 21 days after the date on which a report is submitted to the appropriate congressional committees under subsection (a)(1), the Trade Representative shall initiate under section 302(b)(1) investigations under this chapter with respect to all of the priority foreign country practices identified.

(c) AGREEMENTS FOR THE ELIMINATION OF BARRIERS.—In the consultations with a foreign country that the Trade Representative is required to request under section 303(a) with respect to an investigation initiated by reason of subsection (b), the Trade Representative shall seek to negotiate an agreement that provides for the elimination of the practices that are the subject of the investigation as quickly as possible or, if elimination of the practices is not feasible, an agreement that provides for compensatory trade benefits.

(d) REPORTS.—The Trade Representative shall include in the semiannual report required by section 309 a report on the status of any investigations initiated pursuant to subsection (b) and, where appropriate, the extent to which such investigations have led to increased opportunities for the export of products and services of the United States.

* * * * *

SEC. 331. * * *

* * * * *

(d)(1) The amendments made by this section shall take effect on the date of the enactment of this Act.

(2) For purposes of applying the provisions of section 303(a)(4) of the Tariff Act of 1930 (as amended by subsection (a)) with respect to any investigation which was initiated before the date of the enactment of this Act under section 303 of such Act (as in effect before such date), such investigation shall be treated as having been initiated on the day after such date of enactment under section 303(a)(3)(B) of such Act.

[(3) Any article which is entered or withdrawn from warehouse free of duty as a result of action taken under title V of this Act shall be considered a nondutiable article for purposes of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. sec. 1303).]

SEC. 331(d)(3). [Repealed.]

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TITLE V—GENERALIZED SYSTEM OF PREFERENCES

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SEC. 503. ELIGIBLE ARTICLES.

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(d) *TARIFF-RATE QUOTAS.*—No quantity of an agricultural product subject to a tariff-rate quota that exceeds the in-quota quantity shall be eligible for duty-free treatment under this title.

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SEC. 505. TERMINATION OF DUTY-FREE TREATMENT AND REPORTS.

(a) No duty-free treatment provided under this title shall remain in effect after [September 30, 1994] *July 31, 1995.*

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TRADE AGREEMENTS ACT OF 1979

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TITLE III—GOVERNMENT PROCUREMENT

SECTION 1. SHORT TITLE; TABLE OF CONTENTS; PURPOSES.

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(b) TABLE OF CONTENTS—

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[Sec. 306. Labor surplus area studies.]

Sec. 306. [Repealed.]

* * * * *

SEC. 302. AUTHORITY TO ENCOURAGE RECIPROCAL COMPETITIVE PROCUREMENT PRACTICES.

[(a) AUTHORITY TO BAR PROCUREMENT FROM NON-DESIGNATED COUNTRIES.—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 301(a) first takes effect, of products (A) which are products of a foreign country or instrumentality which is not designated pursuant to section 301(b), and (B) which would otherwise be eligible products; and

[(2) may take such other actions within his authority as he deems necessary.]

(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 301(a) first takes effect, of products—

(i) which are products of a foreign country or instrumentality which is not designated pursuant to section 301(b), and

(ii) which would otherwise be eligible products; and

(B) may, with respect to procurement covered by the Agreement, take such other actions within the President's authority as the President deems necessary.

(2) **EXCEPTION.**—Paragraph (1) shall not apply in the case of procurements for which—

(A) there are no offers of products or services of the United States or of eligible products; or

(B) the offers of products or services of the United States or of eligible products are insufficient to fulfill the requirements of the United States Government.

(b) **DEFERRALS AND WAIVERS.**—Notwithstanding subsection (a), but in furtherance of the objective of encouraging countries to become parties to the Agreement and provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products, the President may—

[(1) delay, for a period not to exceed two years, the prohibition of procurement, required pursuant to subsection (a)(1), of products of a foreign country or instrumentality which is not designated pursuant to section 301(b), except that no such delay shall be granted with respect to the procurement of products of any major industrial country;]

(1) waive the prohibition required by subsection (a)(1) on procurement of products of a foreign country or instrumentality which has not yet become a party to the Agreement but—

(A) has agreed to apply transparent and competitive procedures to its government procurement equivalent to those in the Agreement, and

(B) maintains and enforces effective prohibitions on bribery and other corrupt practices in connection with its government procurement;

* * * * *

(3) authorize the Secretary of Defense to waive, subject to interagency review and policy guidance by the organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a)), such prohibition for products of any

country or instrumentality which enters into a reciprocal procurement agreement with the Department of Defense.

Before exercising the waiver authority under paragraph (1), the President shall consult with the appropriate private sector advisory committees established under section 135 of the Trade Act of 1974 and with the appropriate committees of the Congress.

* * * * *

SEC. 303. WAIVER OF DISCRIMINATORY PURCHASING REQUIREMENTS WITH RESPECT TO PURCHASES OF CIVIL AIRCRAFT.

The President may waive the application of the provisions of title III of the Act of March 3, 1933 (41 U.S.C. 10a et seq.), popularly referred to as the Buy American Act, in the case of any procurement of civil aircraft and related articles of a country or instrumentality which is a party to the Agreement on Trade in Civil Aircraft referred to in section 2(c) and approved under section 2(a). The President may modify or withdraw any waiver granted pursuant to this section.

SEC. 304. EXPANSION OF THE COVERAGE OF THE AGREEMENT.

(a) **OVERALL NEGOTIATING OBJECTIVE.**—The President shall seek in the renegotiations provided for in [part IX, paragraph 6] *article XXIV(7)*, of the Agreement more open and equitable market access abroad, and the harmonization, reduction, or elimination of devices which distort trade or commerce related to Government procurement, with the overall goal of maximizing the economic benefit to the United States through maintaining and enlarging foreign markets for products of United States agriculture, industry, mining, and commerce, the development of fair and equitable market opportunities, and open and nondiscriminatory world trade. In carrying out the provisions of this subsection, the President shall consider the assessment made in the report required under section 306(a).

(b) **SECTOR NEGOTIATING OBJECTIVES.**—The President shall seek, consistent with the overall objective set forth in subsection (a) and to the maximum extent feasible, with respect to appropriate product sectors, competitive opportunities for the export of United States products to the developed countries of the world equivalent to the competitive opportunities afforded by the United States, taking into account all barriers to, and other distortions of, international trade affecting that sector.

(c) **INDEPENDENT VERIFICATION OBJECTIVE.**—The President shall seek to establish in the renegotiation provided for in [part IX, paragraph 6] *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 [part VI, paragraph 9] *article XIX(5)*, of the Agreement.

* * * * *

(e) **EXTENSION OF NONDISCRIMINATION AND NATIONAL TREATMENT.**—Before exercising the waiver authority in section 301 for procurement not covered by the Agreement on the [date of enactment of this Act] *date it enters into force with respect to the United States*, the President shall follow the consultation provisions of sec-

tion 135 and chapter 6 of title I of the Trade Act of 1974 for private sector and congressional consultations.

SEC. 305. MONITORING AND ENFORCEMENT.

* * * * *

(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,] *April 30 of each year*, submit to the appropriate committees of the House of Representatives and the Committee on Governmental Affairs of the Senate, as well as other appropriate Senate committees, a report on the extent to which foreign countries discriminate against United States products or services in making government procurements.

(2) IDENTIFICATIONS REQUIRED.—In the annual report, the President shall identify (and continue to identify subject to subsections (f)(5) and (g)(3)) any countries, other than least developed countries, that—

(A) are signatories to the Agreement and not in compliance with the requirements of the Agreement;

(B)(i) are signatories to the Agreement; (ii) are in compliance with the Agreement but, in the government procurement of products or services not covered by the Agreement, maintain a significant and persistent pattern or practice of discrimination against United States products or services which results in identifiable harm to United States businesses; and (iii) whose products or services are acquired in significant amounts by the United States Government; or

(C)(i) are not signatories to the Agreement; (ii) maintain, in government procurement, a significant and persistent pattern or practice of discrimination against United States products or services which results in identifiable harm to United States businesses; and (iii) whose products or services are acquired in significant amounts by the United States Government.

(D)(i) are not signatories to the Agreement;

(ii) fail to apply transparent and competitive procedures to its government procurement equivalent to those in the Agreement; and

(iii) whose products or services are acquired in significant amounts by the United States Government; or

(E)(i) are not signatories to the Agreement;

(ii) fail to maintain and enforce effective prohibitions on bribery and other corrupt practices in connection with government procurement; and

(iii) whose products or services are acquired in significant amounts by the United States Government.

* * * * *

(3) CONSIDERATIONS IN MAKING IDENTIFICATIONS.—In making the identifications required by paragraph (1), the President shall—

* * * * *

(C) use any other additional criteria deemed appropriate, including the failure to maintain and enforce effective prohibitions on bribery and other corrupt practices in connection with government procurement.

* * * * *

(f) PROCEDURES WITH RESPECT TO VIOLATIONS OF THE AGREEMENT.—

* * * * *

(2) SETTLEMENT OF DISPUTES.—If, before the end of [a year] the 18 months following the initiation of dispute settlement procedures—

(A) the other participant to the dispute settlement procedures has complied with the Agreement,

(B) the other participant to the procedures takes the action recommended as a result of the procedures to the satisfaction of the President, [or]

(C) the procedures result in a determination providing a specific period of time for the other participant to bring its practices into compliance with the Agreement, or

[(C)] (D) the procedures result in a determination requiring no action by the other participant, the President shall take no action to limit Government procurement from that participant.

[(3) SANCTIONS AFTER 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 4 of the Act of March 3, 1933, 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 301(a) of this Act.]

(3) SANCTIONS AFTER DISPUTE RESOLUTION FAILS.—

(A) FAILURES RESULTING IN SANCTIONS.—If—

(i) within 18 months from the date dispute settlement procedures are initiated with a signatory country pursuant to this section—

(I) such procedures are not concluded, or

(II) the country has not met the requirements of subparagraph (A) or (B) of paragraph (2), or

(ii) the period of time provided for pursuant to paragraph (2)(C) has expired and procedures for suspending concessions under the Agreement have been completed,

then the sanctions described in subparagraph (B) shall be imposed.

(B) SANCTIONS.—

(i) *IN GENERAL.*—If subparagraph (A) applies to any signatory country—

(I) the signatory country shall be considered as a signatory not in good standing of the Agreement and the prohibition on procurement contained in section 4 of the Act of March 3, 1933 (41 U.S.C. 10b-1) shall apply to such country, and

(II) the President shall revoke the waiver of discriminatory purchasing requirements granted to the signatory country pursuant to section 301(a).

(ii) *TIME SANCTIONS ARE IMPOSED.*—Any sanction—

(I) described in clause (i)(I) shall apply from the date that is the last day of the 18-month period described in subparagraph (A)(i) or, in the case of paragraph (2)(C), from the date procedures for suspending concessions under the Agreement have been completed, and

(II) described in clause (i)(II) shall apply beginning on the day after the date described in subclause (I).

(4) *WITHHOLDING AND MODIFICATION OF SANCTIONS.*—If the President determines that imposing or continuing the sanctions required by [subparagraph (A) or (B) of paragraph (3)] subclause (I) or (II) of paragraph (3)(B)(i) would harm the public interest of the United States, the President may, to the extent necessary to apply appropriate limitations that are equivalent, in their effect, to the noncompliance with the Agreement by that signatory country—

* * * * *

(g) *PROCEDURES WITH RESPECT TO OTHER DISCRIMINATION.*—

(1) *IMPOSITION OF SANCTIONS.*—If, within 60 days after the annual report is submitted under subsection (d)(1), a country that is identified pursuant to subparagraph [(B) or (C)] (B), (C), (D), or (E) of such subsection has not eliminated [their discriminatory procurement practices] the practices regarding government procurement identified under subparagraph (B)(ii), (C)(ii), (D)(ii), or (E)(ii) (as the case may be), then, on the day after the end of such 60-day period—

* * * * *

(3) *TERMINATION OF SANCTIONS.*—The President may terminate the sanctions imposed under paragraph (1) or (2) and remove a country from the report under subsection (d)(1) at such time as the President determines that the country has eliminated the [discrimination identified pursuant to subsection (d)(2) (B) or (C)] the practices regarding government procurement identified under subparagraph (B)(ii), (C)(ii), (D)(ii), or (E)(ii) (as the case may be).

* * * * *

[SEC. 306. LABOR SURPLUS AREA STUDIES.

[(a) *EFFECT ON THE ECONOMY.*—Prior to the renegotiations provided for in part IX, paragraph 6, of the Agreement, the Presi-

dent shall prepare and transmit to the Congress a report, which assesses the economic impact, including the impact on employment in various regions of the United States, of the waiver of the provisions of title III of the Act of March 3, 1933 (41 U.S.C. 10a et seq.), commonly referred to as the Buy American Act, in the procurement of products produced in labor surplus areas and of the waiver of procurement set-asides for labor surplus areas.

[(b) EFFECT ON TARGETS.—On or before July 1, 1981, the President shall prepare and transmit to the Congress a report which assesses the effect of the waiver of the provisions of such title III in the procurement of products produced in labor surplus areas and the waiver of procurement set-asides for labor surplus areas on the fulfillment of the objectives of Executive Order 12073, issued August 16, 1978, relating to the encouragement of procurement in labor surplus areas, including an assessment of such waiver on the procurement targets set by the Administrator of the General Services Administration pursuant to such Executive order. On or before January 1, 1980, the President shall begin consultation with and provide interim reports to the congressional committees referred to in section 302(c)(1) concerning the report required by the preceding sentence.]

SEC. 306. [Repealed.]

SEC. 307. AVAILABILITY OF INFORMATION TO CONGRESSIONAL ADVISERS.

The United States Trade Representative shall make available to the Members of Congress designated as official advisers pursuant to section 161 of the Trade Act of 1974 information compiled by the Committee on Government Procurement under [part IV, paragraph 9,] *article XIX(5)* of the Agreement.

SEC. 308. DEFINITIONS.

As used in this title—

(1) AGREEMENT.—The term “Agreement” means the Agreement on Government Procurement referred to in [section 2(c) of this Act] *section 101(d)(17) of the Uruguay Round Agreements Act*, as submitted to the Congress, but including rectifications, modifications, and amendments which are accepted by the United States.

* * * * *

(4) ELIGIBLE PRODUCTS.—

* * * * *

(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 [having a contract value of \$50,000 or more which would be covered for procurement by the United States under the Agreement on Government Procurements as in effect on the date on which the Agreement on the Establishment of a Free Trade Area between the Government of Israel enters into force, but for the SDR 150,000 threshold provided for in article I(1)(b) of the Agreement on Government Procurement.] *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 [GATT Agreement on Government Procurement, but for the SDR threshold provided for in article I(1)(b) of the GATT Agreement on Government Procurement.] *the Agreement (as defined in paragraph (1)), but for the thresholds provided for in the Agreement.*

* * * * *

TITLE IV—TECHNICAL BARRIERS TO TRADE (STANDARDS)

SUBTITLE A—OBLIGATIONS OF THE UNITED STATES

SEC. 401. CERTAIN STANDARDS-RELATED ACTIVITIES.

(a) *NO BAR TO ENGAGING IN STANDARDS ACTIVITY.*—*Nothing in this title may be construed—*

(1) *to prohibit a Federal agency from engaging in activity related to standards-related measures, including any such measure relating to safety, the protection of human, animal, or plant life or health, the environment, or consumers; or*

(2) *to limit the authority of a Federal agency to determine the level it considers appropriate of safety or of protection of human, animal, or plant life or health, the environment, or consumers.*

[Nothing] (b) *UNNECESSARY OBSTACLES.*—*Nothing in this title may be construed as prohibiting any private person, Federal agency, or State agency from engaging in standards-related activities that do not create unnecessary obstacles to the foreign commerce of the United States. No standards-related activity of any private person, Federal agency, or State agency shall be deemed to constitute an unnecessary obstacle to the foreign commerce of the United States if the demonstrable purpose of the standards-related activity is to achieve a legitimate domestic objective including, but not limited to, the protection of legitimate health or safety, essential security, environmental, or consumer interests and if such ac-*

tivity does not operate to exclude imported products which fully meet the objectives of such activity.

* * * * *

SEC. 402. FEDERAL STANDARDS-RELATED ACTIVITIES.

No Federal agency may engage in any standards-related activity that creates unnecessary obstacles to the foreign commerce of the United States, including, but not limited to, standards-related activities that violate any of the following requirements:

* * * * *

(4) **[CERTIFICATION ACCESS]** ACCESS FOR FOREIGN SUPPLIERS.—Each Federal agency shall, with respect to any **[certification system]** *conformity assessment procedure* used by it, permit access for obtaining **[certification under that system]** *an assessment of conformity and the mark of the system, if any* to foreign suppliers of a product on the same basis as access is permitted to suppliers of like products whether of domestic or foreign origin.

* * * * *

SEC. 414. STANDARDS INFORMATION CENTER.

(a) **ESTABLISHMENT.**—The Secretary of Commerce shall maintain within the Department of Commerce a standards information center.

(b) **FUNCTIONS.**—The standards information center shall—

(1) serve as the central national collection facility for information relating to (A) standards, **[certification systems]** *technical regulation, conformity assessment procedures*, and standards-related activities, whether **[such standards, systems,]** *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;*

* * * * *

(c) **SANITARY AND PHYTOSANITARY MEASURES.**—

(1) **PUBLIC INFORMATION.**—*The standards information center shall, in addition to the functions specified under subsection (b), make available to the public relevant documents, at such reasonable fees as the Secretary of Commerce may prescribe, and information regarding—*

(A) *any sanitary or phytosanitary measure of general application, including any inspection procedure or approval procedure proposed, adopted, or maintained by a Federal agency or agency of a State or local government;*

(B) *the procedures of a Federal agency or an agency of a State or local government for risk assessment and factors the agency considers in conducting the assessment;*

(C) the determination of the levels of protection that a Federal agency or an agency of a State or local government considers appropriate; and

(D) the membership and participation of the Federal Government and State and local governments in international and regional sanitary and phytosanitary organizations and systems, and in bilateral and multilateral arrangements regarding sanitary and phytosanitary measures, and the provisions of those systems and arrangements.

(2) **DEFINITIONS.**—*The definitions in section 463 apply for purposes of this subsection.*

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CHAPTER 2—OTHER PROCEEDINGS REGARDING CERTAIN STANDARDS-RELATED ACTIVITIES

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SUBTITLE D—DEFINITIONS AND MISCELLANEOUS PROVISIONS

SEC. 451. DEFINITIONS.

As used in this title—

(1) **AGREEMENT.**—The term “Agreement” means the Agreement on Technical Barriers to Trade [Approved under section 2(a) of this Act] referred to in section 101(d)(5) of the Uruguay Round Agreements Act.

[(2) **CERTIFICATION SYSTEM.**—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 modifications of, or change to, any such system.]

(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 1 of title 5, United States Code:

(A) Any executive department.

(B) Any military department.

(C) Any Government corporation.

(D) Any Government-controlled corporation.

(E) Any independent establishment.

(4) **INTERNATIONAL [CERTIFICATION SYSTEM] CONFORMING ASSESSMENT PROCEDURE.**—The term “international [certification system] conforming assessment procedure” means a [certification system] conforming 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—

[(i) all Parties to the Agreement, or

[(ii) some but not all Parties to the Agreement;

and

[(B) that is engaged in international standards-related activities.]

(A) the membership of which is open to representatives, whether public or private, of the United States and at least all Members.

(7) **INTERNATIONAL STANDARD-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 [certification system] *conforming assessment procedure*, or both.

[(8) **PARTY TO THE AGREEMENT.**—The term “Party to the Agreement” means any foreign country or instrumentality determined by the President to have assumed, and to be applying, the obligations of the Agreement with respect to the United States.]

(8) **MEMBER.**—*The term “Member” means a WTO member as defined in section 2(10) of the Uruguay Round Agreements Act.*

* * * * *

[(13) **STANDARD.**—The term “standard” means any of the following, and any amendment or change to any of the following:

[(A) The specification of the characteristics of a product, including, but not limited to, levels of quality, performance, safety, or dimensions.

[(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).]

(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 applica-

tion of any standard [or any certification system] , *technical regulation, or conformity assessment procedures.*

(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.*

[(17)] (18) UNITED STATES.—The term “United States,” when used in a geographical context, means all States.

* * * * *

SEC. 453. REPORTS TO CONGRESS ON OPERATION OF AGREEMENT.

As soon as practicable after the close of the 3-year period beginning on the date on which this title takes effect, and as soon as practicable after the close of each succeeding 3-year period *through 2001*, the Trade Representative shall prepare and submit to Congress a report containing an evaluation of the operation of the Agreement, both domestically and internationally, during the period.

[SEC. 454. EFFECTIVE DATE.

[This title shall take effect on January 1, 1980, if the Agreement enters into force with respect to the United States by that date.]

* * * * *

SUBTITLE F—INTERNATIONAL STANDARD-SETTING ACTIVITIES

SEC. 491. NOTICE OF UNITED STATES PARTICIPATION IN INTERNATIONAL STANDARD-SETTING ACTIVITIES.

(a) *IN GENERAL.*—The President shall designate an agency to be responsible for informing the public of the sanitary and phytosanitary standard-setting activities of each international standard-setting organization.

(b) *NOTIFICATION.*—Not later than June 1 of each year, the agency designated under subsection (a) with respect to each international standard-setting organization shall publish notice in the Federal Register of the information specified in subsection (c) with respect to that organization. The notice shall cover the period ending on June 1 of the year in which the notice is published, and beginning on the date of the preceding notice under this subsection, except that the first such notice shall cover the 1-year period ending on the date of the notice.

(c) *REQUIRED INFORMATION.*—The information to be provided in the notice under subsection (b) is—

(1) the sanitary or phytosanitary standards under consideration or planned for consideration by that organization;

(2) for each sanitary or phytosanitary standard specified in paragraph (1)—

(A) a description of the consideration or planned consideration of the standard;

(B) whether the United States is participating or plans to participate in the consideration of the standard;

(C) the agenda for the United States participation, if any; and

(D) the agency responsible for representing the United States with respect to the standard.

(d) **PUBLIC COMMENT.**—The agency specified in subsection (c)(2)(D) shall provide an opportunity for public comment with respect to the standards for which the agency is responsible and shall take the comments into account in participating in the consideration of the standards and in proposing matters to be considered by the organization.

SEC. 492. EQUIVALENCE DETERMINATIONS.

(a) **IN GENERAL.**—An agency may not determine that a sanitary or phytosanitary measure of a foreign country is equivalent to a sanitary or phytosanitary measure established under the authority of Federal law unless the agency determines that the sanitary or phytosanitary measure of the foreign country provides at least the same level of sanitary or phytosanitary protection as the comparable sanitary or phytosanitary measure established under the authority of Federal law.

(b) **FDA DETERMINATION.**—If the Commissioner proposes to issue a determination of the equivalency of a sanitary or phytosanitary measure of a foreign country to a measure that is required to be promulgated as a rule under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or other statute administered by the Food and Drug Administration, the Commissioner shall issue a proposed regulation to incorporate such determination and shall include in the notice of proposed rulemaking the basis for the determination that the sanitary or phytosanitary measure of a foreign country provides at least the same level of sanitary or phytosanitary protection as the comparable Federal sanitary or phytosanitary measure. The Commissioner shall provide opportunity for interested persons to comment on the proposed regulation. The Commissioner shall not issue a final regulation based on the proposal without taking into account the comments received.

(c) **NOTICE.**—If the Commissioner proposes to issue a determination of the equivalency of a sanitary or phytosanitary measure of a foreign country to a sanitary or phytosanitary measure of the Food and Drug Administration that is not required to be promulgated as a rule under the Federal Food, Drug, and Cosmetic Act or other statute administered by the Food and Drug Administration, the Commissioner shall publish a notice in the Federal Register that identifies the basis for the determination that the measure provides at least the same level of sanitary or phytosanitary protection as the comparable Federal sanitary or phytosanitary measure. The Commissioner shall provide opportunity for interested persons to comment on the notice. The Commissioner shall not issue a final deter-

mination on the issue of equivalency without taking into account the comments received.

SEC. 493. DEFINITIONS.

(a) **IN GENERAL.**—As used in this subtitle:

(1) **AGENCY.**—The term “agency” means a Federal department or agency (or combination of Federal departments or agencies).

(2) **COMMISSIONER.**—The term “Commissioner” means the Commissioner of Food and Drugs.

(3) **INTERNATIONAL STANDARD-SETTING ORGANIZATION.**—The term “international standard-setting organization” means an organization consisting of representatives of 2 or more countries, the purpose of which is to negotiate, develop, promulgate, or amend an international standard.

(4) **SANITARY OR PHYTOSANITARY STANDARD.**—The term “sanitary or phytosanitary standard” means a standard intended to form a basis for a sanitary or phytosanitary measure.

(5) **INTERNATIONAL STANDARD.**—The term “international standard” means a standard, guideline, or recommendation—

(A) regarding food safety, adopted by the Codex Alimentarius Commission, including a standard, guideline, or recommendation regarding decomposition elaborated by the Codex Committee on Fish and Fishery Products, food additives, contaminants, hygienic practice, and methods of analysis and sampling;

(B) regarding animal health and zoonoses, developed under the auspices of the International Office of Epizootics;

(C) regarding plant health, developed under the auspices of the Secretariat of the International Plant Protection Convention in cooperation with the North American Plant Protection Organization; or

(D) established by or developed under any other international organization agreed to by the NAFTA countries (as defined in section 2(4) of the North American Free Trade Agreement Implementation Act) or by the WTO members (as defined in section 2(10) of the Uruguay Round Agreements Act).

(b) **OTHER DEFINITIONS.**—The definitions set forth in section 463 apply for purposes of this subtitle except that in applying paragraph (7) of section 463 with respect to a sanitary or phytosanitary measure of a foreign country, any reference in such paragraph to the United States shall be deemed to be a reference to that foreign country.

* * * * *

TITLE VII—CERTAIN AGRICULTURAL MEASURES

[SEC. 701. LIMITATION ON CHEESE IMPORTS.

[(a) **PROCLAMATION.**—The President shall by proclamation limit the amount of quota cheese which may enter the customs territory of the United States in any calendar year after 1979 to not more than 111,000 metric tons. Any such proclamation shall be considered a proclamation which is issued by the President under

section 22 of the Agricultural Adjustment Act (7 U.S.C. 624) and which meets the requirements of such section.

[(b) RESTRICTION ON EMERGENCY ACTION.—No increase in the amount proclaimed under subsection (a) to an amount greater than 111,000 metric tons for any calendar year may be proclaimed except in accordance with section 22 of the Agricultural Adjustment Act. The President may not proclaim any such increase to an amount greater than 111,000 metric tons by use of the procedure established for immediate action by the second paragraph of subsection (b) of such section, at any time before January 1, 1983, unless the Secretary determines that extraordinary circumstances warrant such action and reports such determination to the President.

[(c) DEFINITIONS.—For purposes of this title—

[(1) QUOTA CHEESE.—The term “quota cheese” means the articles provided for in the following items of the Tariff Schedules of the United States:

[(A) 117.00 (except Stilton produced in the United Kingdom);

[(B) 117.05 (except Stilton produced in the United Kingdom);

[(C) 117.15;

[(D) 117.20;

[(E) 117.25;

[(F) 117.40 (except Goya in original loaves);

[(G) 117.55;

[(H) 117.60 (except Gammelost and Nokkelost);

[(I) 117.75 (except goat's milk cheeses and soft-ripened cow's milk cheeses);

[(J) 117.81; and

[(K) 117.85 (except goat's milk cheeses and soft-ripened cow's milk cheeses).

[(2) SECRETARY.—The term “Secretary” means the Secretary of Agriculture.]

SEC. 701. [Repealed.]

SEC. 702. ENFORCEMENT.

(a) DETERMINATION AND LISTING OF SUBSIDIES.—

(1) INITIAL DETERMINATION AND ANNUAL LISTING.—Not later than January 1, 1980, the administering authority shall—

(A) determine, in consultation with the Secretary, whether any foreign government is providing a subsidy with respect to any article [of quota cheese] of cheese subject to an in-quota rate of duty, and

(B) publish a list of the type and the amount of each such subsidy which is determined to exist.

Not later than January 1 of each year beginning with 1981, the administering authority shall republish such list, incorporating the changes and additional subsidies determined for the preceding calendar year under paragraph (2).

(2) QUARTERLY DETERMINATION OF CHANGES AND ADDITIONAL SUBSIDIES.—Not later than April 1, July 1, and October 1 of each year beginning with 1980, and not later than Janu-

ary 1 of each year beginning with 1981, the administering authority shall determine, in consultation with the Secretary—

(A) whether any changes in the type or amount of any subsidy included in the current annual list under paragraph (1) (as modified by quarterly lists under this paragraph) have occurred, and

(B) whether any subsidy not included in such list is being provided with respect to any article [of quota cheese] *of cheese subject to an in-quota rate of duty* by a foreign government, and the type and amount of any such subsidy which is determined to exist.

Not later than April 1, July 1, and October 1, the administering authority shall publish such changes and additional subsidies for the preceding calendar quarter.

(3) ADDITIONAL DETERMINATIONS.—Any person, including the Secretary, may request the administering authority to make a determination under subparagraph (A) or (B) of paragraph (2). Not later than 30 days after receiving such a request, the administering authority shall (A) make the determination, in consultation with the Secretary, (B) notify the person making the request of such determination, and (C) publish such modification, if any. Any such determination shall be in addition to the quarterly determinations required under paragraph (2). Requests made under this paragraph shall be supported by information reasonably available to the person requesting the determination.

(b) COMPLAINTS OF PRICE-UNDERCUTTING BY SUBSIDIZED IMPORTS.—

(1) IN GENERAL.—Any person may make a written complaint to the Secretary alleging that—

(A) the price at which any article [of quota cheese] *of cheese subject to an in-quota rate of duty* is offered for sale in the United States on a duty-paid wholesale basis (hereinafter in this section referred to as the “duty-paid wholesale price”) is less than the domestic wholesale market price of similar articles produced in the United States, and

(B) a foreign government is providing a subsidy with respect to such article [of quota cheese] *of cheese subject to an in-quota rate of duty*.

(2) DETERMINATIONS.—(A) The Secretary shall investigate and determine, not later than 30 days after receiving a complaint under paragraph (1), the validity of the allegations made under paragraph (1)(A).

(B) Except as otherwise provided in this subparagraph, the existence and the type and amount of any subsidy alleged under paragraph (1)(B) shall be determined by reference to the current list, as determined and published under subsection (a). If the complaint alleges a subsidy which is not included in such current list, or which is different in type or amount from a subsidy which is included in such current list, the Secretary shall immediately request the administering authority to make a determination with respect to the subsidy pursuant to subsection (a)(3). The administering authority shall make such determina-

tion in accordance with such subsection and shall report such determination to the Secretary.

(c) REPORTS OF DETERMINATIONS.—

(1) PUBLICATION.—The Secretary shall publish the determinations made under subsection (b) in the Federal Register not later than 5 days after the date on which the Secretary makes his determination under subsection (b)(2)(A).

(2) NOTIFICATION OF FOREIGN GOVERNMENT.—Whenever it is determined under subsection (b) that the duty-paid wholesale price of any article [of quota cheese] of cheese subject to an in-quota rate of duty is less than the domestic wholesale market price of a similar article produced in the United States and that a foreign government is providing a subsidy with respect to such article [of quota cheese] of cheese subject to an in-quota rate of duty, the Secretary shall immediately notify [the Special Representative for Trade Negotiations] the United States Trade Representative. [The Special Representative] The United States Trade Representative shall notify the foreign government or governments involved of such determination not later than 3 days after the date on which the Secretary makes his determination under subsection (b)(2)(A).

(3) REPORT TO PRESIDENT.—If, within 15 days after receiving notification under paragraph (2), the foreign government does not eliminate the subsidy or take such action as may be necessary to ensure that the duty-paid wholesale price of the article [of quota cheese] of cheese subject to an in-quota rate of duty will not be less than the domestic wholesale market price of similar articles produced in the United States, the Secretary shall immediately—

(A) report the determinations under subsection (b) to the President, and

(B) recommend the imposition of a fee [or quantitative limitation] with respect to the importation of such article [of quota cheese] of cheese subject to an in-quota rate of duty from the country involved, in such amount as the Secretary determines necessary.

(d) PRESIDENTIAL ACTION.—

[(1) IN GENERAL.—Not later than 7 days after receiving a report under subsection (c)(3) with respect to an article of quota cheese (or not later than 3 days after receiving a report under paragraph (2) of this subsection in any case in which such paragraph applies), the President shall—

[(A) proclaim the imposition of a fee on the importation of such article from the country involved in such amount (not to exceed the amount of the subsidy determined under subsection (b)(2)(B)) as may be necessary to ensure that the duty-paid wholesale price of such article will not be less than the domestic wholesale market price of similar articles produced in the United States, or

[(B) proclaim a prohibition on the entry, in whole or part, of such article of quota cheese from such country into the United States,

[and shall direct the Commissioner of Customs to administer and enforce such fee or quantitative limitation. Any fee im-

posed under subparagraph (A) or any quantitative limitation imposed under subparagraph (B) shall be in addition to any other fee or quantitative limitation imposed by law on the importation of quota cheese.]

(1) *IN GENERAL.*—*Not later than 7 days after receiving a report under subsection (c)(3) with respect to an article of cheese subject to an in-quota rate of duty (or not later than 3 days after receiving a report under paragraph (2) in any case in which such paragraph applies), the President shall proclaim the imposition of a fee on the importation of such article from the country involved in such amount (not to exceed the amount of the subsidy determined under subsection (b)(2)(B)) as may be necessary to ensure that the duty-paid wholesale price of such article will not be less than the domestic wholesale market price of similar articles produced in the United States, and shall direct the Commissioner of Customs to administer and enforce such fee. Any such fee imposed shall be in addition to any customs duty or other fee imposed by law.*

(2) *ADDITIONAL INVESTIGATION.*—*If the President finds that the determinations or recommendations of the Secretary reported under subsection (c)(3) are unsubstantiated by fact, he shall, not later than 7 days after receiving such report, notify the Secretary and direct him to make a further investigation. The Secretary shall, within 7 days of receiving such notification, make such investigation and report his findings to the President, including any modification in such determinations or recommendations. The President shall thereupon make the proclamation required by paragraph (1), unless the Secretary finds that there is no basis for the determinations or recommendations reported under subsection (c)(3) whether or not modified.*

(e) *ADMINISTRATION.*—*Any fee [or quantitative limitation] proclaimed pursuant to subsection (d) and any termination or modification thereof pursuant to subsection (g) shall apply with respect to articles entered, or withdrawn from warehouse, for consumption after the date which is 3 days after the President makes the proclamation required by subsection (d). Such fees shall be treated for administrative purposes as duties imposed by the Tariff Act of 1930, but shall not be considered as duties for the purpose of granting any preferential concession under any law or international obligation of the United States.*

(f) *INAPPLICABILITY OF COUNTERVAILING DUTIES DURING EFFECTIVE PERIOD OF CHEESE AGREEMENTS.*—*No countervailing duty shall be imposed [under title I of this Act] under title VII of the Tariff Act of 1930 or under section 303 of the Tariff Act of 1930 (as in effect on the day before the effective date of title II of the Uruguay Round Agreements Act) with respect to an article [of quota cheese] of cheese subject to an in-quota rate of duty which is the product of any country at any time during which an agreement relating to cheese described in section 2(c)(8) containing a commitment from a foreign government with respect to price undercutting is in effect between the United States and such country.*

(g) *TERMINATION OR MODIFICATION OF PRESIDENTIAL ACTION.*—

(1) **TERMINATION.**—If, at any time after the President takes an action under subsection (d) with respect to the importation from a foreign country of an article [of quota cheese] of cheese subject to an in-quota rate of duty, the Secretary receives reasonable evidence and assurance that, with respect to future entries of such article into the customs territory of the United States—

(A) the duty-paid wholesale price of such article will not be less than the domestic wholesale market price of similar articles produced in the United States, or

(B) the foreign government will no longer provide a subsidy with respect to such article [of quota cheese] of cheese subject to an in-quota rate of duty, the Secretary shall notify the President of such finding and the President shall, by proclamation, terminate such action with respect to the importation of such article from such country.

(2) **MODIFICATION.**—The Secretary shall recommend to the President such modifications of fees [or quantitative limitations] imposed under subsection (d) with respect to any article [of quota cheese] of cheese subject to an in-quota rate of duty as may be necessary to ensure that the duty-paid whole sale price of such article will not be less than the domestic wholesale market price of similar articles produced in the United States, and the President shall, by proclamation, make such modifications. The amount of any fee, as so modified, shall not be greater than the amount of the subsidy provided by the foreign government with respect to the article [of quota cheese] of cheese subject to an in-quota rate of duty.

(h) **DEFINITIONS.**—For purposes of this section—

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

(2) **SUBSIDY.**—The term “subsidy” has the same meaning such term has in section 771(5) of the Tariff Act of 1930.

(3) **DOMESTIC WHOLESALE MARKET, DOMESTIC WHOLESALE MARKET PRICE, AND DUTY-PAID WHOLESALE PRICE.**—The domestic wholesale market and the domestic wholesale market price of any article similar to an article [of quota cheese] of cheese subject to an in-quota rate of duty, and the duty-paid wholesale price of any article [of quota cheese] of cheese subject to an in-quota rate of duty shall be determined under regulations prescribed by the Secretary not later than January 1, 1980, in accordance with chapter 5 of title 5 of the United States Code.

(4) **CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY.**—The term “cheese subject to an in-quota rate of duty” means the articles and the quantities of such articles provided for in the Additional U.S. Notes 14 through 23 of chapter 4 of Schedule XX (as defined in section 2(5) of the Uruguay Round Agreements Act).

(5) **SECRETARY.**—The term “Secretary” means the Secretary of Agriculture.

[SEC. 703. LIMITATION ON IMPORTS OF CHOCOLATE CRUMB.

[The President shall by proclamation—

[(1) increase the amount of the articles of chocolate provided for in item 950.15 of the Tariff Schedules of the United States which may enter the customs territory of the United States in any calendar year after 1979 to include—

[(A) 2,000 metric tons from Australia, and

[(B) one kilogram from New Zealand, and

[(2) increase the amount of the articles of chocolate and the articles containing chocolate provided for in item 950.16 of the Tariff Schedules of the United States which may enter the customs territory of the United States in any calendar year after 1979 to include one kilogram from New Zealand.

Such proclamation shall be considered a proclamation which is issued by the President pursuant to section 22 of the Agricultural Adjustment Act (7 U.S.C. 624) and which meets the requirements of such section.]

SEC. 703. [Repealed.]

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UNITED STATES CODE ANNOTATED

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Title 7

Agriculture

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CHAPTER 7—INSECT PESTS GENERALLY

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§ 149. Regulation, cleaning, etc., of vehicles and materials entering from Mexico

(a) Administration by Secretary; fees

To prevent the introduction of insect pests and plant diseases the Secretary of Agriculture is authorized and directed to promulgate such rules and regulations as he may deem necessary to regulate the entry into the United States [from Mexico] of railway cars and other vehicles and freight, express, baggage, and other materials which may carry such pests and to provide for the inspection, cleaning, and, when necessary, disinfection of such vehicles and materials; to carry out the activities required to accomplish this purpose, the Secretary of Agriculture shall use such means as he may deem necessary, including construction and repair of buildings, plants, and equipment for fumigation and disinfection or cleaning of vehicles and materials; the cleaning and disinfection of vehicles or materials necessary to accomplish the purpose shall be carried out by or under the direction of authorized inspectors of the Department of Agriculture and the Secretary of Agriculture shall make and collect such charge as will cover, as nearly as may be, the average cost of materials, facilities, and special labor used in

performing such disinfection, and fees so collected shall be covered into the Treasury of the United States as miscellaneous receipts.

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CHAPTER 7B—PLANT PESTS

* * * * *

§ [150bb. Movement of pests; permit; permission by Secretary

[(a) Except as provided in subsection (c) of this section, no person shall move any plant pest from a foreign country into or through the United States, or interstate, or accept delivery of any plant pest moving from any foreign country into or through the United States, or interstate, unless such movement is authorized under general or specific permit from the Secretary and is made in accordance with such conditions as the Secretary may prescribe in the permit and in such regulations as he may promulgate under this section to prevent the dissemination into the United States, or interstate, of plant pests.

[(b) The Secretary may refuse to issue a permit for the movement of any plant pest when, in his opinion, such movement would involve a danger of dissemination of such pests. The Secretary may permit the movement of host materials otherwise barred under the Plant Quarantine Act when they must necessarily accompany the plant pest to be moved.

[(c) No person shall move any plant pest from Canada into or through the United States or accept delivery of any plant pest moving from Canada into or through the United States, unless such movement is made in accordance with such regulations as the Secretary may promulgate under this section to prevent the dissemination into the United States of plant pests.]

§ 150bb. Movement of pests prohibited

(a) In General

No person shall import or enter any plant pest into the United States, or move any plant pest interstate, or accept delivery of any plant pest moving from any foreign country into or through the United States, or interstate, unless the movement is made in accordance with such regulations as the Secretary may promulgate to prevent the dissemination into the United States, or interstate, of plant pests.

(b) Regulations

The regulations promulgated by the Secretary to implement subsection (a) may include regulations requiring that a plant pest moving into or through the United States, or interstate—

(1) be accompanied by a permit issued by the Secretary prior to the movement of the plant pest; or

(2) be accompanied by a certificate of inspection issued, in a manner and form required by the Secretary, by appropriate officials of the country or State from which the plant pest is to be moved.

§ 150cc. Mailing of pests; opening of mail; exception

[(a) Except as provided in subsection (b) of this section, any letter, parcel, box, or other package containing any plant pest, whether sealed as letter-rate postal matter or not, is declared to be nonmailable, and will not knowingly be conveyed in the mail or delivered from any post office or by any mail carrier, except when accompanied by a copy of a permit issued under this chapter.]

(a) Any letter, parcel, box, or other package containing any plant pest, whether sealed as letter-rate postal matter or not, is nonmailable, and shall not knowingly be conveyed in the mail or delivered from any post office or by any mail carrier, unless it is mailed in conformance with such regulations as the Secretary may promulgate to prevent the dissemination into the United States, or interstate, of plant pests.

[(b) Any letter, parcel, box, or other package from Canada containing any plant pest, whether sealed as letter-rate postal matter or not, is declared to be nonmailable, and shall not knowingly be conveyed in the mail or delivered from any post office or by any mail carrier, except in accordance with such regulations as the Secretary may promulgate under this section to prevent the dissemination into the United States of plant posts.]

[(c)](b) Nothing in this chapter shall authorize any person to open any letter or other sealed matter except in accordance with the postal laws and regulations.

[(d)](c) The prohibitions of this chapter shall not apply to any employee of the United States in the performance of his duties in handling mail.

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**CHAPTER 8—NURSERY STOCK AND OTHER PLANTS
AND PLANT PRODUCTS**

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[§ 154. General restriction on importation of nursery stock; exceptions

[It shall be unlawful for any person to import or offer for entry into the United States any nursery stock unless and until a permit shall have been issued therefor by the Secretary of Agriculture, under such conditions and regulations as the said Secretary of Agriculture may prescribe, and unless such nursery stock shall be accompanied by a certificate of inspection, in manner and form as required by the Secretary of Agriculture, of the proper official of the country from which the importation is made, to the effect that the stock has been thoroughly inspected and is believed to be free from injurious plant diseases and insect pests: *Provided*, That the Secretary of Agriculture may waive the permit requirement for nursery stock imported or offered for entry from Canada: *Provided further*, That the Secretary of Agriculture shall issue the permit for any particular importation of nursery stock when the conditions and regulations as prescribed in this chapter shall have been complied with: *Provided further*, That nursery stock may be imported for experimental or scientific purposes by the Department of Agriculture upon such conditions and under such regulations as the

said Secretary of Agriculture may prescribe: *And provide further*, That nursery stock imported from countries where no official system of inspection for such stock is maintained may be admitted upon such conditions and under such regulations as the Secretary of Agriculture may prescribe: *And provide further*, That the Secretary of Agriculture is authorized to limit entry of nursery stock from foreign countries under such rules and regulations as he may deem necessary, including the requirement, if necessary, that such nursery stock be grown under postentry quarantine by or under the supervision of the United States Department of Agriculture for the purpose of determining whether imported nursery stock may be infested or infected with plant pests not discernible by port-of-entry inspection and provided that if imported nursery stock is found to be infested or infected with such plant pests, he is authorized to prescribe remedial measures as he may deem necessary to prevent the spread thereof.]

§ 154. Importation of nursery stock

(a) In General

No person shall—

(1) *import or enter into the United States any nursery stock; or*

(2) *accept delivery of any nursery stock moving from any foreign country into or through the United States;*

unless the movement is made in accordance with such regulations as the Secretary of Agriculture may promulgate to prevent dissemination into the United States of plant pests, plant diseases, or insect pests.

(b) Regulations

The regulations promulgated by the Secretary of Agriculture to implement subsection (a) may include regulations requiring that nursery stock moving into or through the United States—

(1) *be accompanied by a permit issued by the Secretary of Agriculture prior to the movement of the nursery stock;*

(2) *be accompanied by a certificate of inspection issued, in a manner and form required by the Secretary of Agriculture, by appropriate officials of the country or State from which the nursery stock is to be moved;*

(3) *be grown under postentry quarantine conditions by or under the supervision of the Secretary of Agriculture for the purposes of determining whether the nursery stock may be infested with plant pests or insect pests, or infected with plant diseases, not discernible by port-of-entry inspection; and*

(4) *if the nursery stock is found to be infested with plant pests or insect pests or infected with plant diseases, be subject to remedial measures the Secretary of Agriculture determines to be necessary to prevent the spread of plant pests, insect pests, or plant diseases.*

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§ 156. Notification of arrival at port of entry; forwarding without notification forbidden; inspection before shipment

It shall be the duty of the Secretary of the Treasury promptly to notify the Secretary of Agriculture of the arrival of any nursery stock at port of entry. The person receiving such stock at port of entry shall, immediately upon entry and before such stock is delivered for shipment or removed from the port of entry, advise the Secretary of Agriculture or, at his direction, the proper State, Territorial, or District official of the State or Territory or the District to which such nursery stock is destined, or both, as the Secretary of Agriculture may elect, of the name and address of the consignee, the nature and quantity of the stock it is proposed to ship, and the country and locality where the same was grown. No person shall ship or offer for shipment from one State or Territory or District of the United States into any other State or Territory or District, any nursery stock imported into the United States without notifying the Secretary of Agriculture or, at his direction, the proper State, Territorial, or District official of the State or Territory or District to which such nursery stock is destined, or both, as the Secretary of Agriculture may elect, immediately upon the delivery of the said stock for shipment, of the name and address of the consignee, of the nature and quantity of stock it is proposed to ship, and the country and locality where the same was grown, unless and until such imported stock has been inspected by the proper official of a State, Territory, or District of the United States. [This section shall not apply to nursery stock that arrives from, or is imported from, Canada.] *This section does not apply to nursery stock that is imported or entered from a country or a region of a country that the Secretary of Agriculture designates, pursuant to procedures set forth in such regulations as the Secretary may promulgate, as exempt from the requirements of this section.*

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CHAPTER 11—HONEYBEES

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[§ 281. Importation of honeybees and honeybee semen restricted

[Honeybees

[(a) In order to prevent the introduction and spread of diseases and parasites harmful to honeybees, and the introduction of genetically undesirable germ plasm of honeybees, the importation into the United States of all honeybees is prohibited, except that honeybees may be imported into the United States—

[(1) by the United States Department of Agriculture for experimental or scientific purposes;

[(2) from countries determined by the Secretary of Agriculture—

[(A) to be free of diseases or parasites harmful to honeybees, and undesirable species or subspecies of honeybees; and

[(B) to have in operation precautions adequate to prevent the importation of honeybees from other countries where harmful diseases or parasites, or undesirable species or subspecies, of honeybees exist; or

[(3) from Canada or Mexico, subject to such terms and conditions as the Secretary of Agriculture determines appropriate, if the Secretary determines that the region of Canada or Mexico from which the honeybees originated is, and is likely to remain, free of diseases or parasites harmful to honeybees, and undesirable species or subspecies of honeybees.

[Honeybee semen]

[(b) Honeybee semen may be imported into the United States only from (1) countries determined by the Secretary of Agriculture to be free of undesirable species or subspecies of honeybees, and which have in operation precautions adequate to prevent the importation of such undesirable honeybees and their semen, or (2) Canada or Mexico, if the Secretary of Agriculture determines that the region of Canada or Mexico from which the imports originate is, and is likely to remain, free of undesirable species or subspecies of honeybees.

[Rules and regulations]

[(c) Honeybees and honeybee semen imported pursuant to subsections (a) and (b) of this section shall be imported under such rules and regulations as the Secretary of Agriculture and the Secretary of the Treasury shall prescribe.

[Destruction or immediate exportation of nonexcepted honeybees or honeybee semen offered for import or intercepted]

[(d) Except with respect to honeybees and honeybee semen imported pursuant to subsections (a) and (b) of this section, all honeybees or honeybee semen offered for import or intercepted entering the United States shall be destroyed or immediately exported.

[Definition]

[(e) As used in this chapter, the term "honeybee" means all life stages and the germ plasm of honeybees of the genus *Apis*, except honeybee semen.]

§ 281. Honeybee importation

In general

(a) *The Secretary of Agriculture is authorized to prohibit or restrict the importation or entry of honeybees and honeybee semen into or through the United States in order to prevent the introduction and spread of diseases and parasites harmful to honeybees, the introduction of genetically undesirable germ plasm of honeybees, or the introduction and spread of undesirable species or subspecies of honeybees and the semen of honeybees.*

Regulations

(b) *The Secretary of Agriculture and the Secretary of the Treasury are each authorized to prescribe such regulations as the respective Secretary determines necessary to carry out this section.*

Enforcement

(c) *Honeybees or honeybee semen offered for importation into, intercepted entering, or having entered the United States, other than in accordance with regulations promulgated by the Secretary of Agriculture and the Secretary of the Treasury, shall be destroyed or immediately exported.*

Definition

(d) *As used in this Act, the term "honeybee" means all life stages and the germ plasm of honeybees of the genus *Apis*, except honeybee semen.*

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CHAPTER 26—AGRICULTURAL ADJUSTMENT

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§ 624. Limitation on imports; authority of President

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[(f) No trade agreement or other international agreement heretofore or hereafter entered into by the United States shall be applied in a manner inconsistent with the requirements of this section; except that the President may, pursuant to articles 705.5 and 707 of the United States-Canada Free-Trade Agreement, exempt products of Canada from any import restriction imposed under this section.]

(f) *No quantitative limitation or fee shall be imposed under this section with respect to any article that is the product of a WTO member (as defined in section 2(10) of the Uruguay Round Agreements Act).*

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CHAPTER 31—RURAL ELECTRIFICATION AND TELEPHONE SERVICE

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§ 903. Funds of Administrator

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HISTORICAL AND STATUTORY NOTES

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Restrictions on Borrower

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Act June 21, 1938, as amended Pub.L. 103-182, Title III, § 381(d), Dec. 8, 1993, 107 Stat. 2129, in addition to amending sub-

secs. (a) and (e), provided in part as follows: "In making loans, pursuant to this title [Title IV of such act] and pursuant to the Rural Electrification Act of 1936 [this chapter]; the Administrator of the Rural Electrification Administration shall require that, to the extent practicable and the cost of which is not unreasonable, the borrower agree to use in connection with the expenditure of such funds only such unmanufactured articles, materials, and supplies, as have been mined or produced in the United States[, Mexico, or Canada] or in any eligible country, and only such manufactured articles, materials, and supplies as have been manufactured in the United States[, Mexico, or Canada] or in any eligible country substantially all from articles, materials, or supplies mined produced, or manufactured, as the case may be, in the United States[, Mexico, or Canada] or in any eligible country."

* * * * *

CHAPTER 35—AGRICULTURAL ADJUSTMENT ACT OF 1938

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§ 13144i. Domestic marketing assessment

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Effective date

(g) *This section shall be effective only for calendar year 1994.*

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§ 1359a. Marketing penalties and disposition of additional peanuts for 1991 through 1997 crops of peanuts

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(f) Contracts for purchase of additional peanuts

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(6) Suspension of restrictions on imported peanuts

Notwithstanding any other provision of this chapter, if the President [issues a proclamation] under section 404(b) of the Uruguay Round Agreements Act expanding the quantity of peanuts subject to the in-quota rate of duty under a tariff-rate quota, or under section 624 of this title, temporarily suspending restrictions on the importation of peanuts, the Secretary shall, subject to such terms and conditions as the Secretary may prescribe, permit a handler, with the written consent of the producer, to purchase additional peanuts from any producer who contracted with the handler and to offer the peanuts for sale for domestic edible use.

* * * * *

CHAPTER 37—SEEDS

* * * * *

§ 1581. Prohibitions relating to importations

[(a)] The importation into the United States is prohibited of—

(1) any agricultural or vegetable seeds if any such seed contains noxious-weed seeds[, or is required to be stained and is not so stained, under the terms of this subchapter,] or the labeling of which is false or misleading in any respect;

* * * * *

[(3) any seed containing 10 per centum or more of the seeds of alfalfa or red clover, which has been stained prior to being offered for entry in a manner that does not permit compliance with the provisions of this subchapter and the regulations made and promulgated thereunder.¹]

[(4)](3) any seed containing 10 per centum or more of any agricultural or vegetable seeds, unless the invoice pertaining to such seed and any other labeling of such seed bear a lot identification and the name of each kind and variety of vegetable seed present in any amount and each kind or kind and variety of agricultural seed present in excess of 5 per centum of the whole, and unless in the case of hybrid seed present in excess of 5 per centum of the whole it is designated as hybrid.¹

[(5)](4) any agricultural seeds or any mixture thereof, or any vegetable seeds or any mixture thereof, for seeding purposes, that have been treated, unless each container thereof bears a label giving the following information and statements in accordance with rules and regulations prescribed under section 1592 of this title:

* * * * *

§ 1582. Procedure relating to importations; disposal of refuse; exceptions

(a) The Secretary of the Treasury shall deliver to the Secretary of Agriculture, subject to joint rules and regulations prescribed under section 1592 of this title, samples of seed and screenings which are being imported into the United States, or offered for import, giving notice thereof to the owner or consignee, and if it appears from the examination of such samples that any seed or screenings offered to be imported into the United States are subject to the provisions of this subchapter and do not comply with the provisions of this subchapter, or if the labeling of such seed is false or misleading in any respect, such seed or screenings shall be refused admission, and the Secretary of the Treasury shall refuse delivery to the owner or consignee, who may appear, however, before the Secretary of Agriculture and show cause why the seed or screenings should be admitted. Seed or screenings refused admission and not exported by the owner or consignee within twelve months from the date of notice of such refusal shall be destroyed in accordance with joint rules and regulations prescribed under section 1592 of this title: *Provided*, That the Secretary of the Treasury may authorize the delivery of seed or screenings which are being imported or offered for import to the owner or consignee thereof,

¹So in original. Probably should be a semicolon instead of a period.

pending decision as to the admission of such seed or screenings and for [staining,] cleaning, labeling, or other reconditioning if required to bring such seed or screenings into compliance with the provisions of this chapter, upon the execution by such owner or consignee of a good and sufficient bond conditioned upon redelivery of the seed or screenings upon demand unless redelivery is waived because the seed is reconditioned to bring it into compliance with this chapter or is destroyed under Government supervision under this chapter, and providing for the payment of such liquidated damages in the event of default as may be required pursuant to regulations of the Secretary of the Treasury: *And provided further*, That all expenses incurred by the United States (including travel, per diem or subsistence, and salaries of officers or employees of the United States) in connection with the supervision of [staining,] cleaning, labeling, other reconditioning, or destruction, of seed or screenings under this subchapter shall be reimbursed to the United States by the owner or consignee of the seed or screenings, and such reimbursements shall be recredited to the appropriation from which the expenses were paid, the amount of such expenses to be determined in accordance with joint regulations under section 1592 of this title, and all expenses in connection with the storage, cartage, and labor on the seed or screenings which are refused admission or delivery, shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against future importations made by such owner or consignee.

* * * * *

[(e) The provisions of this subchapter requiring certain seeds to be stained shall not apply—

[(1) to alfalfa or clover seed originating Canada or Mexico, or

[(2) when seeds otherwise required to be stained will not be sold within the United States and will be used for seed production only by or for the importer or consignee and the importer of record or consignee files a statement in accordance with the rules and regulations prescribed under section 1592 of this title certifying that such seeds will be used only for seed production by or for the importer or consignee.]

* * * * *

[§ 1585. Certain seeds required to be stained

[(a) Any seed containing 10 per centum or more of the seeds of alfalfa and/or red clover, subject to the provisions of section 1581 of this title, shall be stained in such manner and to such extent as the Secretary of Agriculture by regulation may prescribe and, when practicable, the color produced by such stain shall indicate the country or region of origin.

[(b) Whenever the Secretary of Agriculture, after public hearing, determines that seed of alfalfa or red clover from any foreign country or region is not adapted for general agricultural use in the United States, he shall publish such determination. On and after the expiration of ninety days after the date of such publication, and until such determination is revoked, 10 per centum or more of the seeds in each container of such alfalfa or red clover seed, or any

seed containing 10 per centum or more of such alfalfa or red clover seed, shall be stained a red color, in accordance with such regulations as the Secretary of Agriculture may prescribe.

[(c) Whenever the origin of the seed of alfalfa or of red clover present in excess of 10 per centum in any seed subject to section 1581 of this title is unestablished, 10 per centum of the seed in each container shall be stained a red color.

[(d) Whenever the seeds of alfalfa or of red clover of different origins are present in excess of 10 per centum in any seed subject to section 1581 of this title, and different colors are required by reason of such different origins, 10 per centum of the seed in each container shall be stained red.

[(e) Whenever any seed required to be stained under the provisions of this chapter is commingled with seed of the same kind grown in the United States, the seed in each container thereof shall be stained 10 per centum red.]

§ 1585. *Certain seeds not adapted for general agricultural use*

Whenever the Secretary of Agriculture, after a public hearing, determines that seed of alfalfa or red clover from any foreign country is not adapted for general agricultural use in the United States, the Secretary shall publish the determination and the reasons for the determination.

§ 1586. *Certain acts prohibited*

It shall be unlawful for any person—

(a) To sell or offer for sale—

(1) any seed for seeding purposes if imported under this subchapter for other than seeding purposes;

(2) any screenings of any seeds for seeding purposes if imported under this subchapter for other than seeding purposes; or

(3) any seed which is prohibited entry under the provisions of this chapter[;].

[(4) any seed which has been stained to resemble seed stained in accordance with the provisions of this chapter and the rules and regulations made and promulgated thereunder;

[(5) any seed stained under the provisions of this chapter and the rules and regulations made and promulgated thereunder, when mixed with seed of the same kind produced in the United States;

[(6) any seed stained with different colors;

[(7) any seed stained under the provisions of this chapter, the labeling of which states that such seed is adapted.]

[(b) To change the proportion of seeds stained under the provisions of this chapter and the rules and regulations made and promulgated thereunder, or to alter, modify, conceal, or remove in any manner or by any means the color of such stained seeds.]

[(c)](b) To make any false or misleading representation with respect to any seed subject to this subchapter being imported into the United States or offered for import: *Provided*, That this sub-

section shall not be deemed violated by any person if the false or misleading representation is the name of a variety indistinguishable in appearance from the seed being imported or offered for import and the records and other pertinent facts reveal that such person relied in good faith upon representations with respect to the name of the indistinguishable variety made by the shipper of the seed.

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CHAPTER 41—AGRICULTURAL TRADE DEVELOPMENT AND ASSISTANCE

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§ 1731. Commodity determinations

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HISTORICAL AND STATUTORY NOTES

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Export Sales of Dairy Products

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["(a) In each of the fiscal year 1986 through 1995, the Secretary of Agriculture shall sell for export, at such prices as the Secretary determines appropriate, not less than 150,000 metric tons of dairy products owned by the Commodity Credit Corporation of which not less than 100,000 metric tons shall be butter and not less than 20,000 metric tons shall be cheese, if that disposition of such commodities will not interfere with the usual marketings of the United States nor disrupt world price of agricultural commodities and normal patterns of commercial trade.]

“(a) In each fiscal year, the Secretary of Agriculture may sell dairy products for export, at such prices as the Secretary determines appropriate, in a quantity and allocated as determined by the Secretary, consistent with the obligations undertaken by the United States set forth in the Uruguay Round Agreements, if the disposition of the commodities will not interfere with the usual marketings of the United States nor disrupt world prices of agricultural commodities and patterns of commercial trade.”

* * * * *

CHAPTER 46—SURPLUS DISPOSAL OF AGRICULTURAL COMMODITIES

* * * * *

§ 1852. Extra-long staple cotton; quota; sale for export

[(a) On and after May 28, 1956, the quota for cotton having a staple length of one and one-eighth inches or more, established September 20, 1939, pursuant to section 624 of this title, shall apply to the same grades and staple lengths included in the quota when such quota was initially established. Such quota shall provide for cotton having a staple length of one and eleven-sixteenths

inches and longer, and shall establish dates for the quota year which will recognize and permit entry to conform to normal marketing practices and requirements for such cotton.]

[(b)] Beginning not later than August 1, 1956, the Commodity Credit Corporation is directed to sell for export at competitive world prices its stocks of domestically produced extra long staple cotton on hand on May 28, 1956. The amount offered and the price accepted by the Commodity Credit Corporation shall be such as to dispose of such quantity in an orderly manner and within a reasonable period of time.

[§ 1853. Export sales program for cotton

[In furtherance of the current policy of the Commodity Credit Corporation of offering surplus agricultural commodities for sale for export at competitive world prices, the Commodity Credit Corporation is directed to use its existing powers and authorities immediately upon the enactment of this Act to encourage the export of cotton by offering to make cotton available at prices not in excess of the level of prices at which cottons of comparable qualities are being offered in substantial quantity by other exporting countries and, in any event, for the cotton marketing year beginning August 1, 1956, at prices not in excess of the minimum prices (plus carrying charges, beginning October 1, 1956, as established pursuant to section 1427 of this title) at which cottons of comparable qualities were sold under the export program announced by the United States Department of Agriculture on August 12, 1955. The Commodity Credit Corporation may accept bids in excess of the maximum prices specified herein but shall not reject bids at such maximum prices unless a higher bid is received for the same cotton. Cottons of qualities not comparable to those of cottons sold under the program announced on August 12, 1955, shall be offered at prices not in excess of the maximum prices prescribed hereunder for cottons of qualities comparable to those of cottons sold under such program, with appropriate adjustment for differences in quality. Such quantities of cotton shall be sold as will reestablish and maintain the fair historical share of the world market for United States cotton, said volume to be determined by the Secretary of Agriculture.]

§ 1853. [Repealed.]

§ 1854. Agreements limiting imports

The President may, whenever he determines such action appropriate, negotiate with representatives of foreign governments in an effort to obtain agreements limiting the export from such countries and the importation into the United States of any agricultural commodity or product manufactured therefrom or textiles or textile products, and the President is authorized to issue regulations governing the entry or withdrawal from warehouse of any such commodity, product, textiles, or textile products to carry out any such agreement. [In addition, if a multilateral agreement has been or shall be concluded under the authority of this section among countries accounting for a significant part of world trade in the articles with respect to which the agreement was concluded, the President

may also issue, in order to carry out such an agreement, regulations governing the entry or withdrawal from warehouse of the same articles which are the products of countries not parties to the agreement.] *In addition, if a multilateral agreement, including but not limited to the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Implementation Act, has been or is concluded under the authority of this section among countries accounting for a significant part of world trade in the articles with respect to which the agreement was concluded, the President may also issue, in order to carry out such agreement, regulations governing the entry or withdrawal from warehouse of the same articles which are the products of countries not parties to the agreement, or countries to which the United States does not apply the agreement. Nothing herein shall affect the authority provided under section 624 of this title.*

* * * * *

CHAPTER 61—NOXIOUS WEEDS

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§ 2803. Movement of noxious weeds into or through the United States or interstate

[(a) Permits; regulations]

[No person shall knowingly move any noxious weed identified in a regulation promulgated by the Secretary into or through the United States or interstate, unless such movement is—

[(1) from Canada, or authorized under general or specific permit from the Secretary; and

[(2) made in accordance with such conditions as the Secretary may prescribe in the permit and in such regulations as the Secretary may prescribe under this chapter to prevent the dissemination into the United States, or interstate, of such noxious weeds.

[(b) Refusal of permit to prevent danger of dissemination]

[The Secretary may refuse to issue a permit for the movement of any such noxious weed when, in his opinion, such movement would involve a danger of dissemination of such noxious weeds into the United States or interstate.]

(a) No person shall import or enter any noxious weed identified in a regulation promulgated by the Secretary into or through the United States or move any noxious weed interstate, unless the movement is in accordance with such conditions as the Secretary may prescribe by regulation under this Act to prevent the dissemination into the United States, or interstate, of such noxious weeds.

(b) The regulations prescribed by the Secretary to implement subsection (a) may include regulations requiring that any noxious weed imported or entered into the United States or moving interstate be accompanied by a permit issued by the Secretary prior to the movement of the noxious weed.

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Title 15 Commerce and Trade

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CHARTER 15—ECONOMIC RECOVERY

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§ 713a-14. Dairy export incentive program

(a) Establishment and operation

During the period beginning 60 days after December 23, 1985, and ending on December 31, [1995] 2001, the Commodity Credit Corporation shall establish and operate an export incentive program as described in this section for dairy products under section 714c of this title.

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CHAPTER 22—TRADEMARKS

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§ 1052. Trademarks registrable on principal register; concurrent registration

No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it—

[(a) Consists of or comprises immoral, deceptive, or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute.]

(a) Consists of or comprises immoral, deceptive, or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute; or a geographical indication which, when used on or in connection with wines or spirits, identifies a place other than the origin of the goods and is first used on or in connection with wines or spirits by the applicant on or after one year after the date on which the WTO Agreement (as defined in section 2(9) of the Uruguay Round Agreements Act) enters into force with respect to the United States.

* * * * *

§ 1127. Construction and definitions; intent of chapter

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[A mark shall be deemed to be “abandoned” when either of the following occurs:

[(1) When its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for two consecutive years shall be prima facie evidence of abandonment. “Use” of a mark means

the bona fide use of that mark made in the ordinary course of trade, and not made merely to reserve a right in a mark.

[(2) When any course of conduct of the owner, including acts of omission as well as commission, causes the mark to become the generic name for the goods or services on or in connection with which it is used or otherwise to lose its significance as a mark. Purchaser motivation shall not be a test for determining abandonment under this paragraph.]

A mark shall be deemed to be "abandoned" if either of the following occurs:

(1) When its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for 3 consecutive years shall be prima facie evidence of abandonment. "Use" of a mark means the bona fide use of such mark made in the ordinary course of trade, and not made merely to reserve a right in a mark.

(2) When any course of conduct of the owner, including acts of omission as well as commission, causes the mark to become the generic name for the goods or services on or in connection with which it is used or otherwise to lose its significance as a mark. Purchaser motivation shall not be a test for determining abandonment under this paragraph.

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**Title 17
Copyrights**

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Chapter

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11. Sound Recordings and Music Videos..... 1101

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**CHAPTER 1—SUBJECT MATTER AND SCOPE OF
COPYRIGHT**

* * * * *

Sec.

104A. Copyright in [certain motion pictures.] *restored works.*

* * * * *

[§ 104A. Copyright in certain motion pictures

[(a) Restoration of copyright.—Subject to subsections (b) and (c)—

[(1) any motion picture that is first fixed or published in the territory of a NAFTA country as defined in section 2(4) of the North American Free Trade Agreement Implementation Act to which Annex 1705.7 of the North American Free Trade Agreement applies, and

[(2) any work included in such motion picture that is first fixed in or published with such motion picture,

[that entered the public domain in the United States because it was first published on or after January 1, 1978, and before March 1, 1989, without the notice required by section 401, 402, or 403 of this title, the absence of which has not been excused by the operation of section 405 of this title, as such sections were in effect during that period, shall have copyright protection under this title for the remainder of the term of copyright protection to which it would have been entitled in the United States had it been published with such notice.

[(b) Effective date of protection.—The protection provided under subsection (a) shall become effective, with respect to any motion picture or work included in such motion picture meeting the criteria of that subsection, 1 year after the date on which the North American Free Trade Agreement enters into force with respect to, and the United States applies the Agreement to, the country in whose territory the motion picture was first fixed or published if, before the end of that 1 year period, the copyright owner in the motion picture or work files with the Copyright Office a statement of intent to have copyright protection restored under subsection (a). The Copyright Office shall publish in the Federal Register promptly after that effective date a list of motion pictures, and works included in such motion pictures, for which protection is provided under subsection (a).

[(c) Use of previously owned copies.—A national or domiciliary of the United States who, before the date of the enactment of the North American Free Trade Agreement Implementation Act, made or acquired copies of a motion picture, or other work included in such motion picture, that is subject to protection under subsection (a), may sell or distribute such copies or continue to perform publicly such motion picture and other work without liability for such sale, distribution, or performance, for a period of 1 year after the date on which the list of motion picture, and works included in such motion picture, that are subject to protection under subsection (a) is published in the Federal Register under subsection (b).]

§ 104A. *Copyright in restored works*

(a) Automatic Protection and Term.—

(1) Term.—

(A) *Copyright subsists, in accordance with this section, in restored works, and vests automatically on the date of restoration.*

(B) *Any work in which copyright is restored under this section shall subsist for the remainder of the term of copyright that the work would have otherwise been granted in the United States if the work never entered the public domain in the United States.*

(2) Exception.—*Any work in which the copyright was ever owned or administered by the Alien Property Custodian and in which the restored copyright would be owned by a government or instrumentality thereof, is not a restored work.*

(b) Ownership of Restored Copyright.—*A restored work vests initially in the author or initial rightholder of the work as determined by the law of the source country of the work.*

(c) Filing of Notice of Intent to Enforce Restored Copyright Against Reliance Parties.—On or after the date of restoration, any person who owns a copyright in a restored work or an exclusive right therein may file with the Copyright Office a notice of intent to enforce that person's copyright or exclusive right or may serve such a notice directly on a reliance party. Acceptance of a notice by the Copyright Office is effective as to any reliance parties but shall not create a presumption of the validity of any of the facts stated therein. Service on a reliance party is effective as to that reliance party and any other reliance parties with actual knowledge of such service and of the contents of that notice.

(d) Remedies for Infringement of Restored Copyrights.—

(1) Enforcement of copyright in restored works in the absence of a reliance party.—As against any party who is not a reliance party, the remedies provided in chapter 5 of this title shall be available on or after the date of restoration of a restored copyright with respect to an act of infringement of the restored copyright that is commenced on or after the date of restoration.

(2) Enforcement of copyright in restored works as against reliance parties.—As against a reliance party, except to the extent provided in paragraphs (3) and (4), the remedies provided in chapter 5 of this title shall be available, with respect to an act of infringement of a restored copyright, on or after the date of restoration of the restored copyright if the requirements of either of the following subparagraphs are met:

(A)(i) The owner of the restored copyright (or such owner's agent) or the owner of an exclusive right therein (or such owner's agent) files with the Copyright Office, during the 24-month period beginning on the date of restoration, a notice of intent to enforce the restored copyright; and

(ii)(I) the act of infringement commenced after the end of the 12-month period beginning on the date of publication of the notice in the Federal Register;

(II) the act of infringement commenced before the end of the 12-month period described in subclause (I) and continued after the end of that 12-month period, in which case remedies shall be available only for infringement occurring after the end of that 12-month period; or

(III) copies or phonorecords of a work in which copyright has been restored under this section are made after publication of the notice of intent in the Federal Register.

(B)(i) The owner of the restored copyright (or such owner's agent) or the owner of an exclusive right therein (or such owner's agent) serves upon a reliance party a notice of intent to enforce a restored copyright; and

(ii)(I) the act of infringement commenced after the end of the 12-month period beginning on the date the notice of intent is received;

(II) the act of infringement commenced before the end of the 12-month period described in subclause (I) and continued after the end of that 12-month period, in which case remedies shall be available only for the infringement occurring after the end of that 12-month period; or

(III) copies or phonorecords of a work in which copyright has been restored under this section are made after receipt of the notice of intent.

In the event that notice is provided under both subparagraphs (A) and (B), the 12-month period referred to in such subparagraphs shall run from the earlier of publication or service of notice.

(3) Existing derivative works.—(A) In the case of a derivative work that is based upon a restored work and is created—

(i) before the date of the enactment of the Uruguay Round Agreements Act, if the source country of the derivative work is an eligible country on such date, or

(ii) before the date of adherence or proclamation, if the source country of the derivative work is not an eligible country on such date of enactment,

a reliance party may continue to exploit that work for the duration of the restored copyright if the reliance party pays to the owner of the restored copyright reasonable compensation for conduct which would be subject to a remedy for infringement but for the provisions of this paragraph.

(B) In the absence of an agreement between the parties, the amount of such compensation shall be determined by an action in United States district court, and shall reflect any harm to the actual or potential market for or value of the restored work from the reliance party's continued exploitation of the work, as well as compensation for the relative contributions of expression of the author of the restored work and the reliance party to the derivative work.

(4) Commencement of infringement for reliance parties.—For purposes of section 412, in the case of reliance parties, infringement shall be deemed to have commenced before registration when acts which would have constituted infringement had the restored work been subject to copyright were commenced before the date of restoration.

(e) Notices of Intent To Enforce a Restored Copyright.—

(1) Notices of intent filed with the copyright office.—

(A)(i) A notice of intent filed with the Copyright Office to enforce a restored copyright shall be signed by the owner of the restored copyright or the owner of an exclusive right therein, who files the notice under subsection (d)(2)(A)(i) (hereafter in this paragraph referred to as the "owner"), or by the owner's agent, shall identify the title of the restored work, and shall include an English translation of the title and any other alternative titles known to the owner by which the restored work may be identified, and an address and telephone number at which the owner may be contacted. If the notice is signed by an agent, the agency relationship must have been constituted in a writing signed by the owner before the filing of the notice. The Copyright Office may specifically require in regulations other information to be included in the notice, but failure to provide such other information shall not invalidate the notice or be a basis for refusal to list the restored work in the Federal Register.

(ii) If a work in which copyright is restored has no formal title, it shall be described in the notice of intent in detail sufficient to identify it.

(iii) Minor errors or omissions may be corrected by further notice at any time after the notice of intent is filed. Notices of corrections for such minor errors or omissions shall be accepted after the period established in subsection (d)(2)(A)(i). Notices shall be published in the Federal Register pursuant to subparagraph (B).

(B)(i) The Register of Copyrights shall publish in the Federal Register, commencing not later than 4 months after the date of restoration for a particular nation and every 4 months thereafter for a period of 2 years, lists identifying restored works and the ownership thereof if a notice of intent to enforce a restored copyright has been filed.

(ii) Not less than 1 list containing all notices of intent to enforce shall be maintained in the Public Information Office of the Copyright Office and shall be available for public inspection and copying during regular business hours pursuant to sections 705 and 708. Such list shall also be published in the Federal Register on an annual basis for the first 2 years after the applicable date of restoration.

(C) The Register of Copyrights is authorized to fix reasonable fees based on the costs of receipt, processing, recording, and publication of notices of intent to enforce a restored copyright and corrections thereto.

(D)(i) Not later than 90 days before the date the Agreement on Trade-Related Aspects of Intellectual Property referred to in section 101(d)(15) of the Uruguay Round Agreements Act enters into force with respect to the United States, the Copyright Office shall issue and publish in the Federal Register regulations governing the filing under this subsection of notices of intent to enforce a restored copyright.

(ii) Such regulations shall permit owners of restored copyrights to file simultaneously for registration of the restored copyright.

(2) Notices of intent served on a reliance party.—(A) Notices of intent to enforce a restored copyright may be served on a reliance party at any time after the date of restoration of the restored copyright.

(B) Notices of intent to enforce a restored copyright served on a reliance party shall be signed by the owner or the owner's agent, shall identify the restored work and the work in which the restored work is used, if any, in detail sufficient to identify them, and shall include an English translation of the title, any other alternative titles known to the owner by which the work may be identified, the use or uses to which the owner objects, and an address and telephone number at which the reliance party may contact the owner. If the notice is signed by an agent, the agency relationship must have been constituted in writing and signed by the owner before service of the notice.

(3) Effect of material false statements.—Any material false statement knowingly made with respect to any restored copyright identified in any notice of intent shall make void all

claims and assertions made with respect to such restored copyright.

(f) Immunity From Warranty and Related Liability.—

(1) In general.—Any person who warrants, promises, or guarantees that a work does not violate an exclusive right granted in section 106 shall not be liable for legal, equitable, arbitral, or administrative relief if the warranty, promise, or guarantee is breached by virtue of the restoration of copyright under this section, if such warranty, promise, or guarantee is made before January 1, 1995.

(2) Performances.—No person shall be required to perform any act if such performance is made infringing by virtue of the restoration of copyright under the provisions of this section, if the obligation to perform was undertaken before January 1, 1995.

(g) Proclamation of Copyright Restoration.—Whenever the President finds that a particular foreign nation extends, to works by authors who are nationals or domiciliaries of the United States, restored copyright protection on substantially the same basis as provided under this section, the President may by proclamation extend restored protection provided under this section to any work—

(1) of which one or more of the authors is, on the date of first publication, a national, domiciliary, or sovereign authority of that nation; or

(2) which was first published in that nation.

The President may revise, suspend, or revoke any such proclamation or impose any conditions or limitations on protection under such a proclamation.

(h) Definitions.—For purposes of this section and section 109(a):

(1) The term “date of adherence or proclamation” means the earlier of the date on which a foreign nation which, as of the date the WTO Agreement enters into force with respect to the United States, is not a nation adhering to the Berne Convention or a WTO member country, becomes—

(A) a nation adhering to the Berne Convention or a WTO member country; or

(B) subject to a Presidential proclamation under subsection (g).

(2) The “date of restoration” of a restored copyright is the later of—

(A) the date on which the Agreement on Trade-Related Aspects of Intellectual Property referred to in section 101(d)(15) of the Uruguay Round Agreements Act enters into force with respect to the United States, if the source country of the restored work is a nation adhering to the Berne Convention or a WTO member country on such date; or

(B) the date of adherence or proclamation, in the case of any other source country of the restored work.

(3) The term “eligible country” means a nation, other than the United States, that is a WTO member country, adheres to the Berne Convention, or is subject to a proclamation under section 104A(g).

(4) The term "reliance party" means any person who—

(A) with respect to a particular work, engages in acts, before the source country of that work becomes an eligible country, which would have violated section 106 if the restored work had been subject to copyright protection, and who, after the source country becomes an eligible country, continues to engage in such acts;

(B) before the source country of a particular work becomes an eligible country, makes or acquires 1 or more copies or phonorecords of that work; or

(C) as the result of the sale or other disposition of a derivative work covered under subsection (d)(3), or significant assets of a person described in subparagraph (A) or (B), is a successor, assignee, or licensee of that person.

(5) The term "restored copyright" means copyright in a restored work under this section.

(6) The term "restored work" means an original work of authorship that—

(A) is protected under subsection (a);

(B) is not in the public domain in its source country through expiration of term of protection;

(C) is in the public domain in the United States due to—

(i) noncompliance with formalities imposed at any time by United States copyright law, including failure of renewal, lack of proper notice, or failure to comply with any manufacturing requirements;

(ii) lack of subject matter protection in the case of sound recordings fixed before February 15, 1972; or

(iii) lack of national eligibility; and

(D) has at least one author or rightholder who was, at the time the work was created, a national or domiciliary of an eligible country, and if published, was first published in an eligible country and not published in the United States during the 30-day period following publication in such eligible country.

(7) The term "rightholder" means the person—

(A) who, with respect to a sound recording, first fixes a sound recording with authorization, or

(B) who has acquired rights from the person described in subparagraph (A) by means of any conveyance or by operation of law.

(8) The "source country" of a restored work is—

(A) a nation other than the United States;

(B) in the case of an unpublished work—

(i) the eligible country in which the author or rightholder is a national or domiciliary, or, if a restored work has more than 1 author or rightholder, the majority of foreign authors or rightholders are nationals or domiciliaries of eligible countries; or

(ii) if the majority of authors or rightholders are not foreign, the nation other than the United States which has the most significant contacts with the work; and

(C) *in the case of a published work—*

(i) *the eligible country in which the work is first published, or*

(ii) *if the restored work is published on the same day in 2 or more eligible countries, the eligible country which has the most significant contacts with the work.*

(9) *The terms “WTO Agreement” and “WTO member country” have the meanings given those terms in paragraphs (9) and (10), respectively, of section 2 of the Uruguay Round Agreements Act.*

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§ 109. **Limitations on exclusive rights: Effect of transfer of particular copy or phonorecord**

(a) Notwithstanding the provisions of section 106(3), the owner of a particular copy or phonorecord lawfully made under this title, or any person authorized by such owner, is entitled, without the authority of the copyright owner, to sell or otherwise dispose of the possession of that copy or phonorecord. *Notwithstanding the preceding sentence, copies or phonorecords of works subject to restored copyright under section 104A that are manufactured before the date of restoration of copyright or, with respect to reliance parties, before publication or service of notice under section 104A(e), may be sold or otherwise disposed of without the authorization of the owner of the restored copyright for purposes of direct or indirect commercial advantage only during the 12-month period beginning on—*

(1) *the date of the publication in the Federal Register of the notice of intent filed with the Copyright Office under section 104A(d)(2)(A), or*

(2) *the date of the receipt of actual notice served under section 104A(d)(2)(B),*

whichever occurs first.

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HISTORICAL AND STATUTORY NOTES

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Effective and Termination Date of 1990 Amendment

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Section 804 of Pub.L. 101–650 provided that:

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“(c) **Termination.**—[The amendments made by section 802 [amending subsec. (b) of this section] shall not apply to rentals, leasings, or lendings (or acts or practices in the nature of rentals, leasings, or lendings) occurring on or after October 1, 1997.] The amendments made by section 803 [enacting subsec. (e) of this section] shall not apply to public performances or displays that occur on or after October 1, 1995.”

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CHAPTER 11—SOUND RECORDINGS AND MUSIC VIDEOS

Sec.

1101. *Unauthorized fixation and trafficking in sound recordings and music videos.*

§ 1101. *Unauthorized fixation and trafficking in sound recordings and music videos*

(a) **Unauthorized Acts.**—*Anyone who, without the consent of the performer or performers involved—*

(1) *fixes the sounds or sounds and images of a live musical performance in a copy or phonorecord, or reproduces copies or phonorecords of such a performance from an unauthorized fixation,*

(2) *transmits or otherwise communicates to the public the sounds or sounds and images of a live musical performance, or*

(3) *distributes or offers to distribute, sells or offers to sell, rents or offers to rent, or traffics in any copy or phonorecord fixed as described in paragraph (1), regardless of whether the fixations occurred in the United States,*

shall be subject to the remedies provided in sections 502 through 505, to the same extent as an infringer of copyright.

(b) **Definition.**—*As used in this section, the term “traffic in” means transport, transfer, or otherwise dispose of, to another, as consideration for anything of value, or make or obtain control of with intent to transport, transfer, or dispose of.*

(c) **Applicability.**—*This section shall apply to any act or acts that occur on or after the date of the enactment of the Uruguay Round Agreements Act.*

(d) **State Law Not Preempted.**—*Nothing in this section may be construed to annul or limit any rights or remedies under the common law or statutes of any State.*

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Title 18

Crimes and Criminal Procedure

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CHAPTER 113—STOLEN PROPERTY

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Sec.

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2319A. *Unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances.*

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§ 2319A. *Unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances*

(a) **Offense.**—*Whoever, without the consent of the performer or performers involved, knowingly and for purposes of commercial advantage or private financial gain—*

(1) fixes the sounds or sounds and images of a live musical performance in a copy or phonorecord, or reproduces copies or phonorecords of such a performance from an unauthorized fixation;

(2) transmits or otherwise communicates to the public the sounds or sounds and images of a live musical performance; or

(3) distributes or offers to distribute, sells or offers to sell, rents or offers to rent, or traffics in any copy or phonorecord fixed as described in paragraph (1), regardless of whether the fixations occurred in the United States;

shall be imprisoned for not more than 5 years or fined in the amount set forth in this title, or both, or if the offense is a second or subsequent offense, shall be imprisoned for not more than 10 years or fined in the amount set forth in this title, or both.

(b) Forfeiture and Destruction.—When a person is convicted of a violation of subsection (a), the court shall order the forfeiture and destruction of any copies or phonorecords created in violation thereof, as well as any plates, molds, matrices, masters, tapes, and film negatives by means of which such copies or phonorecords may be made. The court may also, in its discretion, order the forfeiture and destruction of any other equipment by means of which such copies or phonorecords may be reproduced, taking into account the nature, scope, and proportionality of the use of the equipment in the offense.

(c) Seizure and Forfeiture.—If copies or phonorecords of sounds or sounds and images of a live musical performance are fixed outside of the United States without the consent of the performer or performers involved, such copies or phonorecords are subject to seizure and forfeiture in the United States in the same manner as property imported in violation of the customs laws. The Secretary of the Treasury shall, not later than 60 days after the date of the enactment of the Uruguay Round Agreements Act, issue regulations to carry out this subsection, including regulations by which any performer may, upon payment of a specified fee, be entitled to notification by the United States Customs Service of the importation of copies or phonorecords that appear to consist of unauthorized fixations of the sounds or sounds and images of a live musical performance.

(d) Definitions.—As used in this section—

(1) the terms “copy”, “fixed”, “musical work”, “phonorecord”, “reproduce”, “sound recordings”, and “transmit” mean those terms within the meaning of title 17; and

(2) the term “traffic in” means transport, transfer, or otherwise dispose of, to another, as consideration for anything of value, or make or obtain control of with intent to transport, transfer, or dispose of.

(e) Applicability.—This section shall apply to any Act or Acts that occur on or after the date of the enactment of the Uruguay Round Agreements Act.

Title 19

Customs Duties

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CHAPTER 1—COLLECTION DISTRICTS, PORTS, AND OFFICERS

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§ 58c. Fees for certain customs services

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(f) Disposition of fees

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(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) (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 cost of the premium pay for that year calculated under such section 267(b) of this title and the cost of such pay calculated under subchapter V of chapter 55 of Title 5,]

(II) *paying premium pay under section 5(b) of the Act of February 13, 1911, but the amount for which reimbursement may be made under this subclause may not, for any fiscal year, exceed the difference between the total cost of all the premium pay for such year calculated under section 5(b) and the cost of the night and holiday premium pay that the Customs Service would have incurred for the same inspectional work on the day before the effective date of section 13813 of the Omnibus Budget Reconciliation Act of 1993,*

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CHAPTER 4—TARIFF ACT OF 1930

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§ 1466. Equipment and repairs of vessels

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HISTORICAL AND STATUTORY NOTES

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Effective Date of 1990 Amendment

Section 484E(b) of Pub.L. 101-382 provided that: "The amendment made by this section [enacting subsec. (h) of this section] shall apply to—

"(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 [Aug. 20, 1990], [and]

"(2) any entry made—

"(A) on or after the date of enactment of this Act [Aug. 20, 1990], and

"(B) on or before December 31, 1992[.], and

"(3) 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."

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CHAPTER 12—TRADE ACT OF 1974

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§ 2253. Action by President after determination of import injury

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HISTORICAL AND STATUTORY NOTES

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Limitation on Meat Imports

MEAT IMPORTS ACT OF 1979

["(a) This section may be cited as the 'Meat Import Act of 1979'.

["(b) For purposes of this section—

["(1) The term 'entered' means entered, or withdrawn from warehouse, for consumption in the customs territory of the United States.

["(2) The term 'meat articles' means the articles provided for in the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) under—

["(A) subheadings 0201.10.00, 0201.20.60, 0201.30.60, 0202.10.00, 0202.20.60 and 0202.30.60 (relating to fresh, chilled, or frozen bovine meat);

["(B) subheadings 0204.50.00, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, and 0204.43.40 (relating to fresh, chilled, or frozen meat of goats and sheep (except lambs)); and

["(C) subheadings 0201.20.40, 0201.30.40, 0202.20.40, and 0202.30.40 (relating to processed meat of beef or veal other than high quality beef cuts).

["(3) The term 'meat articles' does not include any article described in paragraph (2) that—

["(A) originates in a NAFTA country (as determined in accordance with section 202 of the NAFTA Act [section 3332 of this title]), or

["(B) originates in Canada (as determined in accordance with section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988 [section 202 of Pub.L. 100-449, set out as a note under section 2112 of this title]) during such time as the United States-Canada Free-Trade Agreement is in force with respect to, and the United States applies such Agreement to, Canada.

["(4) The term 'Secretary' means the Secretary of Agriculture.

["(5) The term 'NAFTA Act' means the North American Free Trade Agreement Implementation Act.

["(6) The term 'NAFTA country' has the meaning given such term in section 2(4) of the NAFTA Act [section 3301(4) of this title].

["(c) The aggregate quantity of meat articles which may be entered in any calendar year after 1979 may not exceed 1,147,600,000 pounds; except that this aggregate quantity shall be—

["(1) increased or decreased for any calendar year by the same percentage that the estimated average annual domestic commercial production of meat articles in that calendar year and the 2 preceding calendar years increases or decreases in comparison with the average annual domestic commercial production of meat articles during calendar years 1968 through 1977; and

["(2) adjusted further under subsection (d). For purposes of paragraph (1), the estimated annual domestic commercial production of meat articles for any calendar year does not include the carcass weight of live cattle specified in subheadings 0102.90.20 and 0102.90.40 of the Harmonized Tariff Schedule of the United States entered during such year.

["(d) The aggregate quantity referred to in subsection (c), as increased or decreased under paragraph (1) of such subsection, shall be adjusted further for any calendar year after 1979 by multiplying such quantity by a fraction—

["(1) the numerator of which is the average annual per capita production of domestic cow beef during that calendar year (as estimated) and the 4 calendar years preceding such calendar year; and

["(2) the denominator of which is the average annual per capita production of domestic cow beef in that calendar year (as estimated) and the preceding calendar year.

[For the purposes of this subsection, the phrase 'domestic cow beef' means that portion of the total domestic cattle slaughter designated by the Secretary as cow slaughter.

["(e) For each calendar year after 1979, the Secretary shall estimate and publish—

["(1) before the first day of such calendar year, the aggregate quantity prescribed for such calendar year under subsection (c) as adjusted under subsection (d); and

["(2) before the first day of each calendar quarter in such calendar year, the aggregate quantity of meat articles which (but for this section) would be entered during such calendar year.

[In applying paragraph (2) for the second or any succeeding calendar quarter in any calendar year, actual entries for the preceding calendar quarter or quarters in such calendar year shall be taken into account to the extent data is available.

["(f)(1) if the aggregate quantity estimated before any calendar quarter by the Secretary under subsection (e)(2) is 110 percent or more of the aggregate quantity estimated by him under subsection (e)(1), and if there is no limitation in effect under this section for such calendar year with respect to meat articles, the President shall by proclamation limit the total quantity of meat articles which may be entered during such calendar year to the aggregate quantity estimated for such calendar year by the Secretary under subsection (e)(1); except that no limitation imposed under this paragraph for any calendar year may be less than (A) 1,193,000,000 pounds if no import limitation on Canadian products is in effect under subsection (l), or (B) 1,250,000,000 pounds if an import limitation on Canadian products is in effect under subsection (l). The President shall include in the articles subject to any limit proclaimed under this paragraph any article of meat provided for in subheadings 0201.20.20, 0201.30.20, 0202.20.20, and 0202.30.20 of the Harmonized Tariff Schedule of the United States (relating to high-quality beef specially processed into fancy cuts), except that the President may exclude any such article originating in a NAFTA country (as determined in accordance with section 202 of the NAFTA Act [section 3332 of this title]) or, if paragraph (3)(B) applies, any such article originating in Canada as determined in accordance with such paragraph (3)(B).

["(2) If the aggregate quantity estimated before any calendar quarter by the Secretary under subsection (e)(2) is less than 110 percent of the aggregate quantity estimated by him under subsection (e)(1), and if a limitation is in effect under this section for such calendar year with respect to meat articles, such limitation shall cease to apply as of the first day of such calendar quarter. If any such limitation has been in effect for the third calendar quarter of any calendar year, then it shall continue in effect for the fourth calendar quarter of such year unless the proclamation is suspended or the total quantity is increased pursuant to subsection (g).

["(g) The President may, after providing opportunity for public comment by giving 30 days' notice by publication in the Federal Register of his intention to so act, suspend any proclamation made under subsection (f), or increase the total quantity proclaimed under such subsection, if he determines and proclaims that—

["(1) such action is required by overriding economic or national security interests of the United States, giving special weight to the importance to the Nation of the economic well-being of the domestic cattle industry;

["(2) the supply of meat articles will be inadequate to meet domestic demand at reasonable prices; or

["(3) trade agreements entered into after the date of enactment of this Act [probably means Dec. 31, 1979] insure that the policy set forth in subsections (c) and (d) will be carried out.

[Any such suspension shall be for such periods, and any such increase shall be in such amount, as the President determines and proclaims to be necessary to carry out the purposes of this subsection.

[(h) Notwithstanding the previous subsections, the total quantity of meat articles which may be entered during any calendar year may not be increased by the President if the fraction described in subsection (d) for that calendar year yields a quotient of less than 1.0, unless—

[(1) during a period of national emergency declared under section 201 of the National Emergencies Act of 1976 [section 1621 of Title 50, War and National Defense], he determines and proclaims that such action is required by overriding national security interests of the United States;

[(2) he determines and proclaims that the supply of articles of the kind to which the limitation would otherwise apply will be inadequate, because of a natural disaster, disease, or major national market disruption, to meet domestic demand at reasonable prices; or

[(3) on the basis of actual data for the first two quarters of the calendar year, a revised calculation of the fraction described in subsection (d) for the calendar year yields a quotient of 1.0 or more.

[Any such suspension shall be for such period, and any such increase shall be in such amount, as the President determines and proclaims to be necessary to carry out the purposes of this subsection. The effective period of any such suspension or increase made pursuant to paragraph (1) may not extend beyond the termination, in accordance with the provisions of section 202 of the National Emergencies Act of 1976 [section 1622 of Title 50, War and National Defense], of such period of national emergency, notwithstanding the provisions of section 202(a) of that Act [section 1622(a) of Title 50].

[(i) The Secretary shall allocate the total quantity proclaimed under subsection (f)(1) and any increase in such quantity provided for under subsection (g) among supplying countries other than Canada and Mexico on the basis of the shares of the United States market for meat articles such countries other than Canada and Mexico supplied during a representative period. Notwithstanding the preceding sentence, due account may be given to special factors which have affected or may effect the trade in meat articles or cattle. The Secretary shall certify such allocations to the Secretary of the Treasury.

[(j) The Secretary shall issue such regulations as he determines to be necessary to prevent circumvention of the purposes of this section.

[(k) All determinations by the President and the Secretary under this section shall be final.

[(l) If the President—

[(1) has—

[(A) proclaimed limitations on meat articles under the preceding provisions of this section, or

["(B) entered into one or more agreements other than with Canada regarding meat articles pursuant to section 204 of the Agricultural Act of 1956 [7 U.S.C. 1554]; and

["(2) determines that the Government of Canada has not taken equivalent action;

[the President may by proclamation limit the total quantities of articles described in subsection (b)(2)(A), (B), and (C) and originating in Canada (as determined in accordance with section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988 [section 202 of Pub.L. 100-449, set out in a note under section 2112 of this title]) that may enter the United States. A limitation imposed under the preceding sentence shall be only to the extent that, and only for such period of time as, the President determines sufficient to prevent frustration of the limitations placed on meat articles imported from other countries under this section or actions taken with respect to meat articles under agreements negotiated pursuant to section 204 of the Agricultural Act of 1956."]

MEAT IMPORTS ACT OF 1979. [Repealed.]

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Title 21 Food and Drugs

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CHAPTER 4—ANIMALS, MEATS, AND MEAT AND DAIRY PRODUCTS

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[§ 104. Importation of diseased animals prohibited; exception; penalties

[The importation of cattle, sheep, and other ruminants, and swine, which are diseased or infected with any disease, or which shall have been exposed to such infection within sixty days next before their exportation, if prohibited, except that the Secretary of Agriculture, in accordance with such regulations as the Secretary may issue, may (1) permit the importation of cattle, sheep, or other ruminants, and swine, from Canada or Mexico, and (2) permit the importation from the British Virgin Islands into the Virgin Islands of the United States, for slaughter only, of cattle that have been infested with or exposed to ticks on being freed from the ticks. Any person who knowingly violates any provision of this section or sections 101, 102, 103 or 105 of this title or any regulation prescribed by the Secretary of Agriculture under any such section shall be guilty of a misdemeanor and shall, on conviction, be punished by a fine not exceeding \$5,000, by imprisonment not exceeding one year, or both. Any person who violates any such provision or any such regulation may be assessed a civil penalty by the Secretary of Agriculture not exceeding \$1,000. The Secretary may issue an order assessing such civil penalty only after notice and an opportunity for an agency hearing on the record. Such order shall be treated as a final order reviewable under chapter 158 of Title 28.

The validity of such order may not be reviewed in an action to collect such civil penalty.]

§ 104. Importation of animals

(a) In General

The Secretary of Agriculture may by regulation prohibit or restrict the importation or entry of any cattle, sheep, or other ruminants, or swine, that are diseased or infected with any disease, or that have been exposed to an infection, into or through the United States to prevent the dissemination into the United States of a disease.

(b) Penalties

(1) Criminal.—Any person who knowingly violates any regulation promulgated by the Secretary pursuant to this section, or any provision of sections 7 through 10 or any regulation promulgated by the Secretary pursuant to such sections, shall be fined under title 18, United States Code, or imprisoned not more than 1 year, or both.

(2) Civil.—Any person who violates any such provision or any such regulation may be assessed a civil penalty by the Secretary of Agriculture not exceeding \$1,000. The Secretary may issue an order assessing the civil penalty only after notice and an opportunity for an agency hearing on the record. The order shall be treated as a final order reviewable under chapter 158 of title 28, United States Code. The validity of the order may not be reviewed in an action to collect such civil penalty.

§ 105. Inspection of animals

[(a) In general]

[Except as provided in subsection (b) of this section, the] The Secretary of Agriculture [shall cause careful inspection to be made by a suitable officer of all] may cause careful inspection of any imported animals described in sections 101 to 104 of this title, to ascertain whether such animals are infected with contagious diseases or have been exposed to infection so as to be dangerous to other animals, which shall then either be placed in quarantine or dealt with according to the regulations of the Secretary of Agriculture. All food, litter, manure, clothing, utensils, and other appliances that have been so related to such animals on board ship as to be judged liable to convey infection shall be dealt with according to the regulations of the Secretary of Agriculture. The Secretary of Agriculture may cause inspection to be made of all animals described in said sections intended for exportation, and provide for the disinfection of all vessels engaged in the transportation thereof, and of all barges or other vessels used in the conveyance of such animals intended for export to the ocean steamer or other vessels, and of all attendants and their clothing, and of all headropes and other appliances used in such exportation, by such orders and regulations as he may prescribe; and if, upon such inspection, any such animals shall be adjudged, under the regulations of the Secretary of Agriculture, to be infected or to have been exposed to infection so as to be dangerous to other animals, [they shall not be allowed

to be placed] *the Secretary may prohibit or restrict their placement upon any vessel for exportation; the expense of all the inspection and disinfection provided for in this section to be borne by the owners of the vessels on which such animals are exported.*

[(b) Exception

[The Secretary of Agriculture, in accordance with such regulations as the Secretary may issue, may waive any provision of subsection (a) of this section in the case of shipments between the United States and Canada or Mexico.]

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§ 135. International animal quarantine station; establishment; acceptance of gifts; cooperation with breeders' organizations; collection of fees

The Secretary of Agriculture is authorized, in his discretion, to establish and maintain an international animal quarantine station within the territory of the United States. The quarantine station shall be located on an island selected by the Secretary of Agriculture where, in his judgment, maximum animal disease and pest security measures can be maintained. The Secretary of Agriculture is authorized to acquire land or any interest therein, by purchase, donation, exchange, or otherwise and construct or lease buildings, improvements, and other facilities as may be necessary for the establishment and maintenance of such quarantine station. The Secretary of Agriculture, on behalf of the United States, is authorized to accept any gift or donation of money, personal property, buildings, improvements, and other facilities for the purpose of conducting the functions authorized under sections 135 to 135b of this title. Notwithstanding the provisions of any other law to prevent the introduction or dissemination of livestock or poultry disease or pests, animals may be brought into the quarantine station from any country, including but not limited to those countries in which the Secretary of Agriculture determines that rinderpest or foot-and-mouth disease exists, and subsequently moved into other parts of the United States, in accordance with such conditions as the Secretary of Agriculture shall determine are adequate in order to prevent the introduction into and the dissemination within the United States of livestock or poultry diseases or pests. The Secretary of Agriculture is authorized to cooperate in such manner as he deems appropriate, with other [North American] countries or with breeders' organizations or similar organizations or with individuals [within the United States] regarding importation of animals into and through the quarantine station and to charge and collect reasonable fees for use of the facilities of such station from importers. Such fees shall be deposited into the Treasury of the United States to the credit of the appropriation charged with the operating expenses of the quarantine station. The Secretary is authorized to issue such regulations as he deems necessary to carry out the provisions of sections 135 to 135b of this title.

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CHAPTER 10—POULTRY AND POULTRY PRODUCTS INSPECTION

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§ 466. Imports

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(d) Domestic standards and processing facilities applicable; enforcement

[(1) Notwithstanding any other provision of law, except as provided in paragraph (2), all poultry, or parts or products thereof, capable of use as human food offered for importation into the United States shall—

[(A) be subject to the same inspection, sanitary, quality, species verification, and residue standards applied to products produced in the United States; and

[(B) have been processed in facilities and under conditions that are the same as those under which similar products are processed in the United States.]

(1) Notwithstanding any other provision of law, all poultry, or parts or products of poultry, capable of use as human food offered for importation into the United States shall—

(A) be subject to inspection, sanitary, quality, species verification, and residue standards that achieve a level of sanitary protection equivalent to that achieved under United States standards; and

(B) have been processed in facilities and under conditions that achieve a level of sanitary protection equivalent to that achieved under United States standards.

(2)[(A) Notwithstanding any other provision of law, all poultry, or parts or products of poultry, capable of use as human food offered for importation into the United States from Canada and Mexico shall—

[(i) comply with paragraph (1); or

[(ii)(I) be subject to inspection, sanitary, quality, species verification, and residue standards that are equivalent to United States standards; and

[(II) have been processed in facilities and under conditions that meet standards that are equivalent to United States standards.](A) *The Secretary may treat as equivalent to a United States standard a standard of an exporting country described in paragraph (1) if the exporting country provides the Secretary with scientific evidence or other information, in accordance with risk assessment methodologies determined appropriate by the Secretary, to demonstrate that the standard of the exporting country achieves the level of sanitary protection achieved under the United States standard. For the purposes of this subsection, the term “sanitary protection” means protection to safeguard public health.*

[(B) The Secretary may treat as equivalent to a United States standard a standard of Canada or Mexico described in subparagraph (A)(ii) if the exporting country provides the Secretary with scientific evidence or other information, in accordance with risk as-

assessment methodologies agreed to by the Secretary and the exporting country, to demonstrate that the standard of the exporting country achieves the level of protection that the Secretary considers appropriate.]

[(C)] (B) The Secretary may—

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CHAPTER 12—MEAT INSPECTION

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§ 620. Imports

(1)[(A) Subject to subparagraphs (B) and (C) a certification by the Secretary that foreign plants in Canada and Mexico that export carcasses or meat or meat products referred to in subsection (a) of this section have complied with paragraph (2) or with requirements that are equivalent to United States requirements with regard to all inspection and building construction standards, and all other provisions of this chapter and regulations issued under this chapter.](A) *A certification by the Secretary that foreign plants exporting carcasses or meat or meat products referred to in subsection (a) have complied with requirements that achieve a level of sanitary protection equivalent to that achieved under United States requirements with regard to all inspection, building construction standards, and all other provisions of this Act and regulations issued under this Act.*

[(B) Subject to subparagraph (C), the Secretary may treat as equivalent to a United States requirement a requirement described in subparagraph (A) if the exporting country provides the Secretary with scientific evidence or other information, in accordance with risk assessment methodologies agreed to by the Secretary and the exporting country, to demonstrate that the requirement or standard of the exporting country achieves the level of protection that the Secretary considers appropriate.]

(B) *The Secretary may treat as equivalent to a United States requirement a requirement described in subparagraph (A) if the exporting country provides the Secretary with scientific evidence or other information, in accordance with risk assessment methodologies determined appropriate by the Secretary, to demonstrate that the requirement achieves the level of sanitary protection achieved under the United States requirement. For the purposes of this subsection, the term "sanitary protection" means protection to safeguard public health.*

[(2) A certification by the Secretary that, except as provided in paragraph (1), foreign plants that export carcasses or meat or meat products referred to in subsection (a) of this section have complied with requirements that are at least equal to all inspection and building construction standards and all other provisions of this chapter and regulations issued under this chapter.]

[(3)] (2) The names and locations of plants authorized or permitted to have imported into the United States therefrom carcasses or meat or meat products referred to in subsection (a) of this section.

[(4)] (3) The number of inspectors employed by the Department of Agriculture in the calendar year concerned who were assigned to inspect plants referred to in paragraph (e)(2) hereof and the frequency with which each such plant was inspected by such inspectors.

[(5)] (4) The number of inspectors licensed by each country from which any imports subject to the provisions of this section were imported who were assigned, during the calendar year concerned, to inspect such imports and the facilities in which such imports were handled and the frequency and effectiveness of such inspections.

[(6)] (5) The total volume of carcasses or meat or meat products referred to in subsection (a) of this section which was imported into the United States during the calendar year concerned from each country, including a separate itemization of the volume of each major category of such imports from each country during such year, and a detailed report of rejections of plants and products because of failure to meet appropriate standards prescribed by this chapter.

[(7)] (6) The name of each foreign country that applies standards for the importation of meat articles from the United States that are described in subsection (h)(2) of this section.

* * * * *

Title 26
Internal Revenue Code

* * * * *

CHAPTER 1—NORMAL TAXES AND SURTAXES

* * * * *

SEC. 32. EARNED INCOME.

* * * * *

(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) ELIGIBLE INDIVIDUAL.—

* * * * *

(E) LIMITATION ON ELIGIBILITY OF NONRESIDENT ALIENS.—The term “eligible individual” shall not include any individual who is a nonresident alien individual for any portion of the taxable year unless such individual is treated for such taxable year as a resident of the United States for purposes of this chapter by reason of an election under subsection (g) or (h) of section 6013.

(2) EARNED INCOME.—

* * * * *

(B) FOR PURPOSES OF SUBPARAGRAPH (A)—

* * * * *

(ii) no amount received as a pension or annuity shall be taken into account, [and]

(iii) no amount to which section 871(a) applies (relating to income of nonresident alien individuals not connected with United States business) shall be taken into account[.], and

(iv) no amount received for services provided by an individual while the individual is an inmate at a penal institution shall be taken into account.

* * * * *

(3) QUALIFYING CHILD.—

* * * * *

(D) IDENTIFICATION REQUIREMENTS.—

[(i) IN GENERAL.—The requirements of this subparagraph are met if—

[(I) the taxpayer includes the name and age of each qualifying child (without regard to this subparagraph) on the return of tax for the taxable year, and

[(II) in the case of an individual who has attained the age of 1 year before the close of the taxpayer's taxable year, the taxpayer includes the taxpayer identification number of such individual on such return of tax for such taxable year.]

(i) IN GENERAL.—*The requirements of this subparagraph are met if the taxpayer includes the name, age, and TIN of each qualifying child (without regard to this subparagraph) on the return of tax for the taxable year.*

(4) TREATMENT OF MILITARY PERSONNEL STATIONED OUTSIDE THE UNITED STATES.—*For purposes of paragraphs (1)(A)(ii)(I) and (3)(E), the principal place of abode of a member of the Armed Forces of the United States shall be treated as in the United States during any period during which such member is stationed outside the United States while serving on extended active duty (as defined in section 1034(h)(3)) with the Armed Forces of the United States.*

* * * * *

SEC. 401. QUALIFIED PENSION, PROFIT-SHARING, AND STOCK BONUS PLANS.

(a) REQUIREMENTS FOR QUALIFICATION.—A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section—

* * * * *

(17) COMPENSATION LIMIT.—

* * * * *

[(B) COST-OF-LIVING ADJUSTMENT.—

[(i) IN GENERAL.—If, for any calendar year after 1994, the excess (if any) of—

[(I) \$150,000, increased by the cost-of-living adjustment for the calendar year, over

[(II) the dollar amount in effect under subparagraph (A) for taxable years beginning in the calendar year, is equal to or greater than \$10,000, then the \$150,000 amount under subparagraph (A) (as previously adjusted under this subparagraph) for any taxable year beginning in any subsequent calendar year shall be increased by the amount of such excess, rounded to the next lowest multiple of \$10,000.

[(ii) COST-OF-LIVING ADJUSTMENT.—The cost-of-living adjustment for any calendar year shall be the adjustment made under section 415(d) for such calendar year, except that the base period for purposes of section 415(d)(1)(A) shall be the calendar quarter beginning October 1, 1993.]

(B) COST-OF-LIVING ADJUSTMENT.—*The Secretary shall adjust annually the \$150,000 amount in subparagraph (A) for increases in the cost-of-living at the same time and in the same manner as adjustments under section 415(d); except that the base period shall be the calendar quarter beginning October 1, 1993, and any increase which is not a multiple of \$10,000 shall be rounded to the next lowest multiple of \$10,000.*

* * * * *

(32) TREATMENT OF FAILURE TO MAKE CERTAIN PAYMENTS IF PLAN HAS LIQUIDITY SHORTFALL.—

(A) IN GENERAL.—*A trust forming part of a pension plan to which section 412(m)(5) applies shall not be treated as failing to constitute a qualified trust under this section merely because such plan ceases to make any payment described in subparagraph (B) during any period that such plan has a liquidity shortfall (as defined in section 412(m)(5)).*

(B) PAYMENTS DESCRIBED.—*A payment is described in this subparagraph if such payment is—*

(i) *any payment, in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 411(a)(9)), to a participant or beneficiary whose annuity starting date (as defined in section 417(f)(2)) occurs during the period referred to in subparagraph (A),*

(ii) *any payment for the purchase of an irrevocable commitment from an insurer to pay benefits, and*

(iii) *any other payment specified by the Secretary by regulations.*

(C) PERIOD OF SHORTFALL.—*For purposes of this paragraph, a plan has a liquidity shortfall during the period that there is an underpayment of an installment under section 412(m) by reason of paragraph (5)(A) thereof.*

(33) PROHIBITION ON BENEFIT INCREASES WHILE SPONSOR IS IN BANKRUPTCY.—

(A) IN GENERAL.—*A trust which is part of a plan to which this paragraph applies shall not constitute a quali-*

fied trust under this section if an amendment to such plan is adopted while the employer is a debtor in a case under title 11, United States Code, or similar Federal or State law, if such amendment increases liabilities of the plan by reason of—

*(i) any increase in benefits,
(ii) any change in the accrual of benefits, or
(iii) any change in the rate at which benefits become nonforfeitable under the plan,
with respect to employees of the debtor, and such amendment is effective prior to the effective date of such employer's plan of reorganization.*

(B) EXCEPTIONS.—This paragraph shall not apply to any plan amendment if—

(i) the plan, were such amendment to take effect, would have a funded current liability percentage (as defined in section 412(l)(8)) of 100 percent or more,

(ii) the Secretary determines that such amendment is reasonable and provides for only de minimis increases in the liabilities of the plan with respect to employees of the debtor,

(iii) such amendment only repeals an amendment described in subsection 412(c)(8), or

(iv) such amendment is required as a condition of qualification under this part.

(C) PLANS TO WHICH THIS PARAGRAPH APPLIES.—This paragraph shall apply only to plans (other than multiemployer plans) covered under section 4021 of the Employee Retirement Income Security Act of 1974.

(D) EMPLOYER.—For purposes of this paragraph, the term "employer" means the employer referred to in section 412(c)(11) (without regard to subparagraph (B) thereof).

(34) BENEFITS OF MISSING PARTICIPANTS ON PLAN TERMINATION.—In the case of a plan covered by title IV of the Employee Retirement Income Security Act of 1974, a trust forming part of such plan shall not be treated as failing to constitute a qualified trust under this section merely because the pension plan of which such trust is a part, upon its termination, transfers benefits of missing participants to the Pension Benefit Guaranty Corporation in accordance with section 4050 of such Act.

* * * * *

SEC. 402. TAXABILITY OF BENEFICIARY OF EMPLOYEES' TRUST.

* * * * *

(g) LIMITATION ON EXCLUSION FOR ELECTIVE DEFERRALS.—

* * * * *

(5) COST-OF-LIVING ADJUSTMENT.—The Secretary shall adjust the \$7,000 amount under paragraph (1) at the same time and in the same manner as under section 415(d); except that any increase under this paragraph which is not a multiple of \$500 shall be rounded to the next lowest multiple of \$500.

* * * * *

SEC. 404. DEDUCTION FOR CONTRIBUTIONS OF AN EMPLOYER TO AN EMPLOYEES' TRUST OR ANNUITY PLAN AND COMPENSATION UNDER A DEFERRED-PAYMENT PLAN.

* * * * *

(g) CERTAIN EMPLOYER LIABILITY PAYMENTS CONSIDERED AS CONTRIBUTIONS.—

* * * * *

(4) REFERENCES TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—For purposes of this subsection, any reference to a section of the Employee Retirement Income Security Act of 1974 shall be treated as a reference to such section as in effect on the date of the enactment of [the Single-Employer Pension Plan Amendments Act of 1986] *the Retirement Protection Act of 1994*.

* * * * *

SEC. 408. INDIVIDUAL RETIREMENT ACCOUNTS.

* * * * *

(k) SIMPLIFIED EMPLOYEE PENSION DEFINED.—

* * * * *

(8) COST-OF-LIVING ADJUSTMENT.—The Secretary shall adjust the \$300 amount in paragraph (2)(C) at the same time and in the same manner as under section 415(d) and shall adjust the \$150,000 amount in paragraphs (3)(C) and (6)(D)(ii) at the same time, and by the same amount, as any adjustment under section 401(a)(17)(B); *except that any increase in the \$300 amount which is not a multiple of \$50 shall be rounded to the next lowest multiple of \$50.*

* * * * *

SEC. 411. MINIMUM VESTING STANDARDS.

(a) GENERAL RULE.—A trust shall not constitute a qualified trust under section 401(a) unless the plan of which such trust is a part provides that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age (as defined in paragraph (8)) and in addition satisfies the requirements of paragraphs (1), (2), and (11) of this subsection and the requirements of subsection (b)(3), and also satisfies, in the case of a defined benefit plan, the requirements of subsection (b)(1) and, in the case of a defined contribution plan, the requirements of subsection (b)(2).

* * * * *

(11) RESTRICTIONS ON CERTAIN MANDATORY DISTRIBUTIONS.—

* * * * *

[(B) DETERMINATION OF PRESENT VALUE.—

[(i) IN GENERAL.—For purposes of subparagraph (A), the present value shall be calculated—

[(I) by using an interest rate no greater than the applicable interest rate if the vested accrued benefit (using such rate) is not in excess of \$25,000, and

[(II) by using an interest rate no greater than 120 percent of the applicable interest rate if the vested accrued benefit exceeds \$25,000 (as determined under subclause (I)).

[In no event shall the present value determined under subclause (II) be less than \$25,000.

[(ii) APPLICABLE INTEREST RATE.—For purposes of clause (i), the term “applicable interest rate” means the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.]

(B) DETERMINATION OF PRESENT VALUE.—For purposes of subparagraph (A), the present value shall be calculated in accordance with section 417(e)(3).

* * * * *

SEC. 412. MINIMUM FUNDING STANDARDS.

* * * * *

(c) SPECIAL RULES.—

* * * * *

(5) CHANGE IN FUNDING METHOD OR IN PLAN YEAR REQUIRES APPROVAL.—[If the funding method]

(A) IN GENERAL.—If the funding method for a plan is changed, the new funding method shall become the funding method used to determine costs and liabilities under the plan only if the change is approved by the Secretary. If the plan year for a plan is changed, the new plan year shall become the plan year for the plan only if the change is approved by the Secretary.

(B) APPROVAL REQUIRED FOR CERTAIN CHANGES IN ASSUMPTIONS BY CERTAIN SINGLE-EMPLOYER PLANS SUBJECT TO ADDITIONAL FUNDING REQUIREMENT.—

(i) IN GENERAL.—No actuarial assumption (other than the assumptions described in subsection (l)(7)(C)) used to determine the current liability for a plan to which this subparagraph applies may be changed without the approval of the Secretary.

(ii) PLANS TO WHICH SUBPARAGRAPH APPLIES.—This subparagraph shall apply to a plan only if—

(I) the plan is a defined benefit plan (other than a multiemployer plan) to which title IV of the Employee Retirement Income Security Act of 1974 applies;

(II) the aggregate unfunded vested benefits as of the close of the preceding plan year (as determined under section 4006(a)(3)(E)(iii) of the Employee Retirement Income Security Act of 1974) of such plan and all other plans maintained by the contributing sponsors (as defined in section 4001(a)(13) of such Act) and members of such sponsors' controlled groups (as defined in section

4001(a)(14) of such Act) which are covered by title IV of such Act (disregarding plans with no unfunded vested benefits) exceed \$50,000,000; and

(III) the change in assumptions (determined after taking into account any changes in interest rate and mortality table) results in a decrease in the unfunded current liability of the plan for the current plan year that exceeds \$50,000,000, or that exceeds \$5,000,000 and that is 5 percent or more of the current liability of the plan before such change.

* * * * *

(7) FULL-FUNDING LIMITATION.—

(A) IN GENERAL.—For purposes of paragraph (6), the term “full-funding limitation” means the excess (if any) of—

(i) the lesser of (I) 150 percent of current liability (including the expected increase in current liability due to benefits accruing during the plan year), or (II) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

* * * * *

[(B) CURRENT LIABILITY.—For purposes of subparagraphs (A) and (D), the term “current liability” has the meaning given such term by subsection (1)(7) (without regard to subparagraph (D) thereof).]

(B) CURRENT LIABILITY.—For purposes of subparagraph (D) and subclause (I) of subparagraph (A)(i), the term “current liability” has the meaning given such term by subsection (1)(7) (without regard to subparagraphs (C) and (D) thereof) and using the rate of interest used under subsection (b)(5)(B).

* * * * *

(E) MINIMUM AMOUNT.—

(i) IN GENERAL.—In no event shall the full-funding limitation determined under subparagraph (A) be less than the excess (if any) of—

(I) 90 percent of the current liability of the plan (including the expected increase in current liability due to benefits accruing during the plan year), over

(II) the value of the plan’s assets determined under paragraph (2).

(ii) CURRENT LIABILITY; ASSETS.—For purposes of clause (i)—

(I) the term “current liability” has the meaning given such term by subsection (1)(7) (without regard to subparagraph (D) thereof), and

(II) assets shall not be reduced by any credit balance in the funding standard account.

* * * * *

(12) **ANTICIPATION OF BENEFIT INCREASES EFFECTIVE IN THE FUTURE.**—*In determining projected benefits, the funding method of a collectively bargained plan described in section 413(a) (other than a multiemployer plan) shall anticipate benefit increases scheduled to take effect during the term of the collective bargaining agreement applicable to the plan.*

* * * * *

(1) **ADDITIONAL FUNDING REQUIREMENTS FOR PLANS WHICH ARE NOT MULTIEMPLOYER PLANS.**—

(1) **IN GENERAL.**—*In the case of a defined benefit plan (other than a multiemployer plan) [which has an unfunded current liability] to which this subsection applies under paragraph (9) for any plan year, the amount charged to the funding standard account for such plan year shall be increased by the sum of—*

(A) the excess (if any) of—

* * * * *

[(ii) the sum of the charges for such plan year under subparagraphs (B) (other than clauses (iv) and (v) thereof), (C), and (D) of subsection (b)(2), reduced by the sum of the credits for such plan year under subparagraph (B)(i) of subsection (b)(3), plus]

(ii) *the sum of the charges for such plan year under subsection (b)(2), reduced by the sum of the credits for such plan year under subparagraph (B) of subsection (b)(3), plus*

* * * * *

[Such increase shall not exceed the amount necessary to increase the funded current liability percentage to 100 percent.] *Such increase shall not exceed the amount which, after taking into account charges (other than the additional charge under this subsection) and credits under subsection (b), is necessary to increase the funded current liability percentage (taking into account the expected increase in current liability due to benefits accruing during the plan year) to 100 percent.*

* * * * *

(2) **DEFICIT REDUCTION CONTRIBUTION.**—*For purposes of paragraph (1), the deficit reduction contribution determined under this paragraph for any plan year is the sum of—*

* * * * *

(A) the unfunded old liability amount, [plus]

(B) the unfunded new liability amount[.],

(C) *the expected increase in current liability due to benefits accruing during the plan year, plus*

(D) *the aggregate of the unfunded mortality increase amounts.*

(3) UNFUNDED OLD LIABILITY AMOUNT.—For purposes of this subsection—

* * * * *

(D) SPECIAL RULE FOR REQUIRED CHANGES IN ACTUARIAL ASSUMPTIONS.—

(i) IN GENERAL.—*The unfunded old liability amount with respect to any plan for any plan year shall be increased by the amount necessary to amortize the amount of additional unfunded old liability under the plan in equal annual installments over a period of 12 plan years (beginning with the first plan year beginning after December 31, 1994).*

(ii) ADDITIONAL UNFUNDED OLD LIABILITY.—*For purposes of clause (i), the term “additional unfunded old liability” means the amount (if any) by which—*

(I) *the current liability of the plan as of the beginning of the first plan year beginning after December 31, 1994, valued using the assumptions required by paragraph (7)(C) as in effect for plan years beginning after December 31, 1994, exceeds*

(II) *the current liability of the plan as of the beginning of such first plan year, valued using the same assumptions used under subclause (I) (other than the assumptions required by paragraph (7)(C)), using the prior interest rate, and using such mortality assumptions as were used to determine current liability for the first plan year beginning after December 31, 1992.*

(iii) PRIOR INTEREST RATE.—*For purposes of clause (ii), the term “prior interest rate” means the rate of interest that is the same percentage of the weighted average under subsection (b)(5)(B)(ii)(I) for the first plan year beginning after December 31, 1994, as the rate of interest used by the plan to determine current liability for the first plan year beginning after December 31, 1992, is of the weighted average under subsection (b)(5)(B)(ii)(I) for such first plan year beginning after December 31, 1992.*

(E) OPTIONAL RULE FOR ADDITIONAL UNFUNDED OLD LIABILITY.—

(i) IN GENERAL.—*If an employer makes an election under clause (ii), the additional unfunded old liability for purposes of subparagraph (D) shall be the amount (if any) by which—*

(I) *the unfunded current liability of the plan as of the beginning of the first plan year beginning after December 31, 1994, valued using the assumptions required by paragraph (7)(C) as in effect for plan years beginning after December 31, 1994, exceeds*

(II) *the unamortized portion of the unfunded old liability under the plan as of the beginning of the first plan year beginning after December 31, 1994.*

(ii) *ELECTION.*—

(I) *An employer may irrevocably elect to apply the provisions of this subparagraph as of the beginning of the first plan year beginning after December 31, 1994.*

(II) *If an election is made under this clause, the increase under paragraph (1) for any plan year beginning after December 31, 1994, and before January 1, 2002, to which this subsection applies (without regard to this subclause) shall not be less than the increase that would be required under paragraph (1) if the provisions of this title as in effect for the last plan year beginning before January 1, 1995, had remained in effect.*

(4) **UNFUNDED NEW LIABILITY AMOUNT.**—For purposes of this subsection—

* * * * *
 (B) **UNFUNDED NEW LIABILITY.**—The term “unfunded new liability” means the unfunded current liability of the plan for the plan year determined without regard to—

(i) the unamortized portion of the unfunded old liability, *the unamortized portion of the additional unfunded old liability, the unamortized portion of each unfunded mortality increase*, and the unamortized portion of the unfunded existing benefit increase liability, and

* * * * *
 (C) **APPLICABLE PERCENTAGE.**—The term “applicable percentage” means, with respect to any plan year, 30 percent, reduced by the product of—

(i) **[.25]** .40 multiplied by
 (ii) the number of percentage points (if any) by which the funded current liability percentage exceeds **[35]** 60 percent.

* * * * *
 (5) **UNPREDICTABLE CONTINGENT EVENT AMOUNT.**—

(A) **IN GENERAL.**—The unpredictable contingent event amount with respect to a plan for any plan year is an amount equal to the **[greater]** *greatest* of—

(i) the applicable percentage of the product of—
 (I) 100 percent, reduced (but not below zero) by the funded current liability percentage for the plan year, multiplied by

(II) the amount of unpredictable contingent event benefits paid during the plan year, including (except as provided by the Secretary) any payment for the purchase of an annuity contract for a participant or beneficiary with respect to such benefits, **[or]**

(ii) the amount which would be determined for the plan year if the unpredictable contingent event benefit liabilities were amortized in equal annual installments

over 7 plan years (beginning with the plan year in which such event occurs) [1], or

(iii) the additional amount that would be determined under paragraph (4)(A) if the unpredictable contingent event benefit liabilities were included in unfunded new liability notwithstanding paragraph (4)(B)(ii).

* * * * *

(E) **LIMITATION.**—The present value of the amounts described in subparagraph (A) with respect to any one event shall not exceed the unpredictable contingent event benefit liabilities attributable to that event.

* * * * *

(7) **CURRENT LIABILITY.**—For purposes of this subsection—

* * * * *

[(C) **INTEREST RATES USED.**—The rate of interest used to determine current liability shall be the rate of interest used under subsection (b)(5).]

(C) **INTEREST RATE AND MORTALITY ASSUMPTIONS USED.**—Effective for plan years beginning after December 31, 1994—

(i) **INTEREST RATE.**—

(I) **IN GENERAL.**—The rate of interest used to determine current liability under this subsection shall be the rate of interest used under subsection (b)(5), except that the highest rate in the permissible range under subparagraph (B)(ii) thereof shall not exceed the specified percentage under subclause (II) of the weighted average referred to in such subparagraph.

(II) **SPECIFIED PERCENTAGE.**—For purposes of subclause (I), the specified percentage shall be determined as follows:

In the case of plan years beginning in calendar year:	The specified percentage is:
1995	109
1996	108
1997	107
1998	106
1999 and thereafter	105

(ii) **MORTALITY TABLES.**—

(I) **COMMISSIONERS' STANDARD TABLE.**—In the case of plan years beginning before the first plan year to which the first tables prescribed under subclause (II) apply, the mortality table used in determining current liability under this subsection shall be the table prescribed by the Secretary which is based on the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on January 1, 1993.

(II) **SECRETARIAL AUTHORITY.**—The Secretary may by regulation prescribe for plan years begin-

ning after December 31, 1999, mortality tables to be used in determining current liability under this subsection. Such tables shall be based upon the actual experience of pension plans and projected trends in such experience. In prescribing such tables, the Secretary shall take into account results of available independent studies of mortality of individuals covered by pension plans.

(III) PERIODIC REVIEW.—The Secretary shall periodically (at least every 5 years) review any tables in effect under this subsection and shall, to the extent the Secretary determines necessary, by regulation update the tables to reflect the actual experience of pension plans and projected trends in such experience.

(iii) SEPARATE MORTALITY TABLES FOR THE DISABLED.—Notwithstanding clause (ii)—

(I) IN GENERAL.—In the case of plan years beginning after December 31, 1995, the Secretary shall establish mortality tables which may be used (in lieu of the tables under clause (ii)) to determine current liability under this subsection for individuals who are entitled to benefits under the plan on account of disability. The Secretary shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after such date.

(II) SPECIAL RULE FOR DISABILITIES OCCURRING AFTER 1994.—In the case of disabilities occurring in plan years beginning after December 31, 1994, the tables under subclause (I) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

(III) PLAN YEARS BEGINNING IN 1995.—In the case of any plan year beginning in 1995, a plan may use its own mortality assumptions for individuals who are entitled to benefits under the plan on account of disability.

* * * * *

(9) APPLICABILITY OF SUBSECTION.—

(A) IN GENERAL.—Except as provided in paragraph (6)(A), this subsection shall apply to a plan for any plan year if its funded current liability percentage for such year is less than 90 percent.

(B) EXCEPTION FOR CERTAIN PLANS AT LEAST 80 PERCENT FUNDED.—Subparagraph (A) shall not apply to a plan for a plan year if—

(i) the funded current liability percentage for the plan year is at least 80 percent, and

(ii) such percentage for each of the 2 immediately preceding plan years (or each of the 2d and 3d immediately preceding plan years) is at least 90 percent.

(C) FUNDED CURRENT LIABILITY PERCENTAGE.—For purposes of subparagraphs (A) and (B), the term “funded current liability percentage” has the meaning given such term by paragraph (8)(B), except that such percentage shall be determined for any plan year—

(i) without regard to paragraph (8)(E), and

(ii) by using the rate of interest which is the highest rate allowable for the plan year under paragraph (7)(C).

(D) TRANSITION RULES.—For purposes of this paragraph—

(i) FUNDED PERCENTAGE FOR YEARS BEFORE 1995.—The funded current liability percentage for any plan year beginning before January 1, 1995, shall be treated as not less than 90 percent only if for such plan year the plan met one of the following requirements (as in effect for such year):

(I) The full-funding limitation under subsection (c)(7) for the plan was zero.

(II) The plan had no additional funding requirement under this subsection (or would have had no such requirement if its funded current liability percentage had been determined under subparagraph (C)).

(III) The plan’s additional funding requirement under this subsection did not exceed the lesser of 0.5 percent of current liability or \$5,000,000.

(ii) SPECIAL RULE FOR 1995 AND 1996.—For purposes of determining whether subparagraph (B) applies to any plan year beginning in 1995 or 1996, a plan shall be treated as meeting the requirements of subparagraph (B)(ii) if the plan met the requirements of clause (i) of this subparagraph for any two of the plan years beginning in 1992, 1993, and 1994 (whether or not consecutive).

(10) UNFUNDED MORTALITY INCREASE AMOUNT.—

(A) IN GENERAL.—The unfunded mortality increase amount with respect to each unfunded mortality increase is the amount necessary to amortize such increase in equal annual installments over a period of 10 plan years (beginning with the first plan year for which a plan uses any new mortality table issued under paragraph (7)(C)(ii)(II) or (III)).

(B) UNFUNDED MORTALITY INCREASE.—For purposes of subparagraph (A), the term “unfunded mortality increase” means an amount equal to the excess of—

(i) the current liability of the plan for the first plan year for which a plan uses any new mortality table issued under paragraph (7)(C)(ii)(II) or (III), over

(ii) the current liability of the plan for such plan year which would have been determined if the mortal-

ity table in effect for the preceding plan year had been used.

(11) PHASE-IN OF INCREASES IN FUNDING REQUIRED BY RETIREMENT PROTECTION ACT OF 1994.—

(A) IN GENERAL.—For any applicable plan year, at the election of the employer, the increase under paragraph (1) shall not exceed the greater of—

(i) the increase that would be required under paragraph (1) if the provisions of this title as in effect for plan years beginning before January 1, 1995, had remained in effect, or

(ii) the amount which, after taking into account charges (other than the additional charge under this subsection) and credits under subsection (b), is necessary to increase the funded current liability percentage (taking into account the expected increase in current liability due to benefits accruing during the plan year) for the applicable plan year to a percentage equal to the sum of the initial funded current liability percentage of the plan plus the applicable number of percentage points for such applicable plan year.

(B) APPLICABLE NUMBER OF PERCENTAGE POINTS.—

(i) **INITIAL FUNDED CURRENT LIABILITY PERCENTAGE OF 75 PERCENT OR LESS.—**Except as provided in clause (ii), for plans with an initial funded current liability percentage of 75 percent or less, the applicable number of percentage points for the applicable plan year is:

<i>In the case of applicable plan years beginning in:</i>	<i>The applicable number of percentage points is:</i>
1995	3
1996	6
1997	9
1998	12
1999	15
2000	19
2001	24

(ii) **OTHER CASES.—**In the case of a plan to which this clause applies, the applicable number of percentage points for any such applicable plan year is the sum of—

- (I) 2 percentage points;
 - (II) the applicable number of percentage points (if any) under this clause for the preceding applicable plan year;
 - (III) the product of .10 multiplied by the excess (if any) of (a) 85 percentage points over (b) the sum of the initial funded current liability percentage and the number determined under subclause (II);
 - (IV) for applicable plan years beginning in 2000, 1 percentage point; and
 - (V) for applicable plan years beginning in 2001, 2 percentage points.
- (iii) **PLANS TO WHICH CLAUSE (ii) APPLIES.—**

(I) *IN GENERAL.*—Clause (ii) shall apply to a plan for an applicable plan year if the initial funded current liability percentage of such plan is more than 75 percent.

(II) *PLANS INITIALLY UNDER CLAUSE (i).*—In the case of a plan which (but for this subclause) has an initial funded current liability percentage of 75 percent or less, clause (ii) (and not clause (i)) shall apply to such plan with respect to applicable plan years beginning after the first applicable plan year for which the sum of the initial funded current liability percentage and the applicable number of percentage points (determined under clause (i)) exceeds 75 percent. For purposes of applying clause (ii) to such a plan, the initial funded current liability percentage of such plan shall be treated as being the sum referred to in the preceding sentence.

(C) *DEFINITIONS.*—For purposes of this paragraph—

(i) The term “applicable plan year” means a plan year beginning after December 31, 1994, and before January 1, 2002.

(ii) The term “initial funded current liability percentage” means the funded current liability percentage as of the first day of the first plan year beginning after December 31, 1994.

* * * * *

(m) *QUARTERLY CONTRIBUTIONS REQUIRED.*—

(1) *IN GENERAL.*—If a defined benefit plan (other than a multiemployer plan) which has a funded current liability percentage (as defined in subsection (l)(8)) for the preceding plan year of less than 100 percent fails to pay the full amount of a required installment for [any] the plan year, then the rate of interest charged to the funding standard account under subsection (b)(5) with respect to the amount of the underpayment for the period of the underpayment shall be equal to the greater of—

* * * * *

(4) *AMOUNT OF REQUIRED INSTALLMENT.*—For purposes of this subsection—

* * * * *

(D) *SPECIAL RULES FOR UNPREDICTABLE CONTINGENT EVENT BENEFITS.*—In the case of a plan to which subsection (1) applies for any calendar year and which has any unpredictable contingent event benefit liabilities—

* * * * *

(ii) *INCREASE IN INSTALLMENTS.*—Each required installment shall be increased by the [greater] greatest of—

(I) the unfunded percentage of the amount of benefits described in subsection (l)(5)(A)(i) paid during the 3-month period preceding the month in

which the due date for such installment occurs,
[or]

(II) 25 percent of the amount determined under subsection (1)(5)(A)(ii) for the plan year[.],
or

(III) 25 percent of the amount determined under subsection (1)(5)(A)(iii) for the plan year.

* * * * *

(5) LIQUIDITY REQUIREMENT.—

(A) IN GENERAL.—A plan to which this paragraph applies shall be treated as failing to pay the full amount of any required installment to the extent that the value of the liquid assets paid in such installment is less than the liquidity shortfall (whether or not such liquidity shortfall exceeds the amount of such installment required to be paid but for this paragraph).

(B) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to a defined benefit plan (other than a multiemployer plan or a plan described in subsection (1)(6)(A)) which—

(i) is required to pay installments under this subsection for a plan year, and

(ii) has a liquidity shortfall for any quarter during such plan year.

(C) PERIOD OF UNDERPAYMENT.—For purposes of paragraph (1), any portion of an installment that is treated as not paid under subparagraph (A) shall continue to be treated as unpaid until the close of the quarter in which the due date for such installment occurs.

(D) LIMITATION ON INCREASE.—If the amount of any required installment is increased by reason of subparagraph (A), in no event shall such increase exceed the amount which, when added to prior installments for the plan year, is necessary to increase the funded current liability percentage (taking into account the expected increase in current liability due to benefits accruing during the plan year) to 100 percent.

(E) DEFINITIONS.—For purposes of this paragraph—

(i) **LIQUIDITY SHORTFALL.—**The term “liquidity shortfall” means, with respect to any required installment, an amount equal to the excess (as of the last day of the quarter for which such installment is made) of the base amount with respect to such quarter over the value (as of such last day) of the plan’s liquid assets.

(ii) **BASE AMOUNT.—**

(I) IN GENERAL.—The term “base amount” means, with respect to any quarter, an amount equal to 3 times the sum of the adjusted disbursements from the plan for the 12 months ending on the last day of such quarter.

(II) SPECIAL RULE.—If the amount determined under clause (i) exceeds an amount equal to 2 times the sum of the adjusted disbursements from the plan for the 36 months ending on the last day

of the quarter and an enrolled actuary certifies to the satisfaction of the Secretary that such excess is the result of nonrecurring circumstances, the base amount with respect to such quarter shall be determined without regard to amounts related to those nonrecurring circumstances.

(iii) **DISBURSEMENTS FROM THE PLAN.**—The term “disbursements from the plan” means all disbursements from the trust, including purchases of annuities, payments of single sums and other benefits, and administrative expenses.

(iv) **ADJUSTED DISBURSEMENTS.**—The term “adjusted disbursements” means disbursements from the plan reduced by the product of—

(I) the plan’s funded current liability percentage (as defined in subsection (l)(8)) for the plan year, and

(II) the sum of the purchases of annuities, payments of single sums, and such other disbursements as the Secretary shall provide in regulations.

(v) **LIQUID ASSETS.**—The term “liquid assets” means cash, marketable securities and such other assets as specified by the Secretary in regulations.

(vi) **QUARTER.**—The term “quarter” means, with respect to any required installment, the 3-month period preceding the month in which the due date for such installment occurs.

(F) **REGULATIONS.**—The Secretary may prescribe such regulations as are necessary to carry out this paragraph.

[(5)](6) **FISCAL YEARS AND SHORT YEARS.**—

* * * * *

(n) **IMPOSITION OF LIEN WHERE FAILURE TO MAKE REQUIRED CONTRIBUTIONS.**—

* * * * *

(2) **PLANS TO WHICH SUBSECTION APPLIES.**—This subsection shall apply to a defined benefit plan (other than a multiemployer plan) for any plan year for which the funded current liability percentage (within the meaning of subsection (1)(8)(B)) of such plan is less than 100 percent. *This subsection shall not apply to any plan to which section 4021 of the Employee Retirement Income Security Act of 1974 does not apply (as such section is in effect on the date of the enactment of the Retirement Protection Act of 1994).*

[(3) **AMOUNT OF LIEN.**—For purposes of paragraph (1), the amount of the lien shall be equal to the lesser of—

[(A) the amount by which the unpaid balances described in paragraph (1)(B) (including interest) exceed \$1,000,000, or

[(B) the aggregate unpaid balance of required installments and other payments required under this section (including interest)—

[(i) for plan years beginning after 1987, and

[(ii) for which payment has not been made before the due date.]

(3) *AMOUNT OF LIEN.*—For purposes of paragraph (1), the amount of the lien shall be equal to the aggregate unpaid balance of required installments and other payments required under this section (including interest)—

(A) for plan years beginning after 1987, and

(B) for which payment has not been made before the due date.

(4) *NOTICE OF FAILURE; LIEN.*—

* * * * *

(B) *PERIOD OF LIEN.*—The lien imposed by paragraph (1) shall arise on the [60th day following the] due date for the required installment or other payment and shall continue until the last day of the first plan year in which the plan ceases to be described in paragraph (1)(B). Such lien shall continue to run without regard to whether such plan continues to be described in paragraph (2) during the period referred to in the preceding sentence.

* * * * *

SEC. 415. LIMITATIONS ON BENEFITS AND CONTRIBUTION UNDER QUALIFIED PLANS.

* * * * *

(b) *LIMITATION FOR DEFINED BENEFIT PLANS.*—

* * * * *

(2) *ANNUAL BENEFIT.*—

* * * * *

(E) *LIMITATION ON CERTAIN ASSUMPTIONS.*—

[(i) For purposes of adjusting any benefit or limitation under subparagraph (B) or (C), the interest rate assumption shall not be less than the greater of 5 percent or the rate specified in the plan.]

(i) *Except as provided in clause (ii), for purposes of adjusting any benefit or limitation under subparagraph (B) or (C), the interest rate assumption shall not be less than the greater of 5 percent or the rate specified in the plan.*

(ii) *For purposes of adjusting the benefit or limitation of any form of benefit subject to section 417(e)(3), the applicable interest rate (as defined in section 417(e)(3)) shall be substituted for "5 percent" in clause (i).*

(iii) [(ii)] *For purposes of adjusting any limitation under subparagraph (D), the interest rate assumption shall not be greater than the lesser of 5 percent or the rate specified in the plan.*

(iv) [(iii)] *For purposes of this subsection, no adjustments under subsection (d)(1) shall be taken into account before the year for which such adjustment first takes effect.*

(v) For purposes of adjusting any benefit or limitation under subparagraph (B), (C), or (D), the mortality table used shall be the table prescribed by the Secretary. Such table shall be based on the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on the date the adjustment is being made (without regard to any other subparagraph of section 807(d)(5)).

* * * * *

(c) LIMITATION FOR DEFINED CONTRIBUTION PLANS.—

(1) GENERAL.—Contributions and other additions with respect to a participant exceed the limitation of this subsection if, when expressed as an annual addition (within the meaning of paragraph (2)) to the participant's account, such annual addition is greater than the lesser of—

(A) \$30,000 [(or, if greater, $\frac{1}{4}$ of the dollar limitation in effect under subsection (b)(1)(A))], or

* * * * *

[(d) COST-OF-LIVING ADJUSTMENTS.—

[(1) IN GENERAL.—The Secretary shall adjust annually—

[(A) the \$90,000 amount in subsection (b)(1)(A), and

[(B) in the case of a participant who is separated from service, the amount taken into account under subsection (b)(1)(B),

for increases in the cost of living in accordance with regulations prescribed by the Secretary. Such regulations shall provide for adjustment procedures which are similar to the procedures used to adjust benefit amounts under section 215(i)(2)(A) of the Social Security Act.

[(2) BASE PERIODS.—The base period taken into account—

[(A) for purposes of subparagraph (A) of paragraph (1) is the calendar quarter beginning October 1, 1986 and

[(B) for purposes of subparagraph (B) of paragraph (1) is the last calendar quarter of the calendar year before the calendar year in which the participant is separated from service.

[(3) FREEZE ON ADJUSTMENT TO DEFINED CONTRIBUTION AND BENEFIT LIMITS.—The Secretary shall not make any adjustment under subparagraph (A) of paragraph (1) with respect to any year beginning after December 31, 1982, and before January 1, 1988.]

(d) COST-OF-LIVING ADJUSTMENTS.—

(1) IN GENERAL.—The Secretary shall adjust annually—

(A) the \$90,000 amount in subsection (b)(1)(A),

(B) in the case of a participant who separated from service, the amount taken into account under subsection (b)(1)(B), and

(C) the \$30,000 amount in subsection (c)(1)(A),

for increases in the cost-of-living in accordance with regulations prescribed by the Secretary.

(2) METHOD.—The regulations prescribed under paragraph

(1) shall provide for—

(A) an adjustment with respect to any calendar year based on the increase in the applicable index for the calendar quarter ending September 30 of the preceding calendar year over such index for the base period, and

(B) adjustment procedures which are similar to the procedures used to adjust benefit amounts under section 215(i)(2)(A) of the Social Security Act.

(3) **BASE PERIOD.**—For purposes of paragraph (2)—

(A) **\$90,000 AMOUNT.**—The base period taken into account for purposes of paragraph (1)(A) is the calendar quarter beginning October 1, 1986.

(B) **SEPARATIONS AFTER DECEMBER 31, 1994.**—The base period taken into account for purposes of paragraph (1)(B) with respect to individuals separating from service with the employer after December 31, 1994, is the calendar quarter beginning July 1 of the calendar year preceding the calendar year in which such separation occurs.

(C) **SEPARATIONS BEFORE JANUARY 1, 1995.**—The base period taken into account for purposes of paragraph (1)(B) with respect to individuals separating from service with the employer before January 1, 1995, is the calendar quarter beginning October 1 of the calendar year preceding the calendar year in which such separation occurs.

(D) **\$30,000 AMOUNT.**—The base period taken into account for purposes of paragraph (1)(C) is the calendar quarter beginning October 1, 1993.

(4) **ROUNDING.**—Any increase under subparagraph (A) or (C) of paragraph (1) which is not a multiple of \$5,000 shall be rounded to the next lowest multiple of \$5,000.

* * * * *

SEC. 417. DEFINITIONS AND SPECIAL RULES FOR PURPOSES OF MINIMUM SURVIVOR ANNUITY REQUIREMENTS.

* * * * *

(e) **RESTRICTIONS ON CASH-OUTS.**—

* * * * *

[(3) **DETERMINATION OF PRESENT VALUE.**—

[(A) **IN GENERAL.**—For purposes of paragraphs (1) and (2), the present value shall be calculated—

[(i) by using an interest rate no greater than the applicable interest rate if the vested accrued benefit (using such rate) is not in excess of \$25,000, and

[(ii) by using an interest rate no greater than 120 percent of the applicable interest rate if the vested accrued benefit exceeds \$25,000 (as determined under clause (i)).

[In no event shall the present value determined under clause (ii) be less than \$25,000.

[(B) **APPLICABLE INTEREST RATE.**—For purposes of subparagraph (A), the term “applicable interest rate” means the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation

for purposes of determining the present value of a lump sum distribution on plan termination.】

(3) DETERMINATION OF PRESENT VALUE.—

(A) IN GENERAL.—

(i) PRESENT VALUE.—Except as provided in subparagraph (B), for purposes of paragraphs (1) and (2), the present value shall not be less than the present value calculated by using the applicable mortality table and the applicable interest rate.

(ii) DEFINITIONS.—For purposes of clause (i)—

(I) APPLICABLE MORTALITY TABLE.—The term “applicable mortality table” means the table prescribed by the Secretary. Such table shall be based on the prevailing commissioners’ standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on the date as of which present value is being determined (without regard to any other subparagraph of section 807(d)(5)).

(II) APPLICABLE INTEREST RATE.—The term “applicable interest rate” means the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary may by regulations prescribe.

(B) EXCEPTION.—In the case of a distribution from a plan that was adopted and in effect before the date of the enactment of the Retirement Protection Act of 1994, the present value of any distribution made before the earlier of—

(i) the later of the date a plan amendment applying subparagraph (A) is adopted or made effective, or

(ii) the first day of the first plan year beginning after December 31, 1999,

shall be calculated, for purposes of paragraphs (1) and (2), using the interest rate determined under the regulations of the Pension Benefit Guaranty Corporation for determining the present value of a lump sum distribution on plan termination that were in effect on September 1, 1993, and using the provisions of the plan as in effect on the day before such date of enactment; but only if such provisions of the plan met the requirements of section 417(e)(3) as in effect on the day before such date of enactment.

* * * * *

SEC. 420. TRANSFERS OF EXCESS PENSION ASSETS TO RETIREE HEALTH ACCOUNTS.

* * * * *

(b) QUALIFIED TRANSFER.—For purposes of this section—

(1) IN GENERAL.—The term “qualified transfer” means a transfer—

* * * * *

(C) with respect to which the following requirements are met in connection with the plan—

* * * * *

(iii) the minimum **[cost]** *benefits* requirements of subsection (c)(3).

* * * * *

(5) EXPIRATION.—No transfer in any taxable year beginning after December 31, **[1995]** 2000, shall be treated as a qualified transfer.

* * * * *

(c) REQUIREMENTS OF PLANS TRANSFERRING ASSETS.—

* * * * *

[(3) LIMITATION ON AMOUNT TRANSFERRED.—The amount of excess pension assets which may be transferred in a qualified transfer shall not exceed the amount which is reasonably estimated to be the amount the employer maintaining the plan will pay (whether directly or through reimbursement) out of such account during the taxable year of the transfer for qualified current retiree health liabilities.]

(3) MAINTENANCE OF BENEFIT REQUIREMENTS.—

(A) *IN GENERAL.—*The requirements of this paragraph are met if each group health plan or arrangement under which applicable health benefits are provided provides that the applicable health benefits provided by the employer during each taxable year during the benefit maintenance period are substantially the same as the applicable health benefits provided by the employer during the taxable year immediately preceding the taxable year of the qualified transfer.

(B) *ELECTION TO APPLY SEPARATELY.—*An employer may elect to have this paragraph applied separately with respect to individuals eligible for benefits under title XVIII of the Social Security Act at any time during the taxable year and with respect to individuals not so eligible.

(C) *BENEFIT MAINTENANCE PERIOD.—*For purposes of this paragraph, the term “benefit maintenance period” means the period of 5 taxable years beginning with the taxable year in which the qualified transfer occurs. If a taxable year is in 2 or more benefit maintenance periods, this paragraph shall be applied by taking into account the highest level of benefits required to be provided under subparagraph (A) for such taxable year.

* * * * *

(e) DEFINITION AND SPECIAL RULES.—For purposes of this section—

(1) QUALIFIED CURRENT RETIREE HEALTH LIABILITIES.—For purposes of this section—

* * * * *

[(B) REDUCTIONS FOR AMOUNTS PREVIOUSLY SET ASIDE.—The amount determined under subparagraph (A) shall be reduced by any amount previously contributed to

a health benefits account or welfare benefit fund (as defined in section 419(e)(1)) to pay for the qualified current retiree health liabilities. The portion of any reserves remaining as of the close of December 31, 1990, shall be allocated on a pro rata basis to qualified current retiree health liabilities.]

(B) **REDUCTIONS FOR AMOUNTS PREVIOUSLY SET ASIDE.**—*The amount determined under subparagraph (A) shall be reduced by the amount which bears the same ratio to such amount as—*

(i) *the value (as of the close of the plan year preceding the year of the qualified transfer) of the assets in all health benefits accounts or welfare benefit funds (as defined in section 419(e)(1)) set aside to pay for the qualified current retiree health liability, bears to*

(ii) *the present value of the qualified current retiree health liabilities for all plan years (determined without regard to this subparagraph).*

* * * * *

(D) **KEY EMPLOYEES EXCLUDED.**—*If an employee is a key employee (within the meaning of section 416(i)(1)) with respect to any plan year ending in a taxable year, such employee shall not be taken into account in computing qualified current retiree health liabilities for such taxable year [or in calculating applicable employer cost under subsection (c)(3)(B)] and shall not be subject to the minimum benefit requirements of subsection (c)(3).*

* * * * *

SEC. 731. EXTENT OF RECOGNITION OF GAIN OR LOSS ON DISTRIBUTION.

* * * * *

(c) **TREATMENT OF MARKETABLE SECURITIES.**—

(1) **IN GENERAL.**—*For purposes of subsection (a)(1) and section 737—*

(A) *the term “money” includes marketable securities, and*

(B) *such securities shall be taken into account at their fair market value as of the date of the distribution.*

(2) **MARKETABLE SECURITIES.**—*For purposes of this subsection—*

(A) **IN GENERAL.**—*The term “marketable securities” means financial instruments and foreign currencies which are, as of the date of the distribution, actively traded (within the meaning of section 1092(d)(1)).*

(B) **OTHER PROPERTY.**—*Such term includes—*

(i) *any interest in—*

(I) *a common trust fund, or*

(II) *a regulated investment company which is offering for sale or has outstanding any redeemable security (as defined in section 2(a)(32) of the Investment Company Act of 1940) of which it is the issuer,*

(ii) any financial instrument which, pursuant to its terms or any other arrangement, is readily convertible into, or exchangeable for, money or marketable securities,

(iii) any financial instrument the value of which is determined substantially by reference to marketable securities,

(iv) except to the extent provided in regulations prescribed by the Secretary, any interest in a precious metal which, as of the date of the distribution, is actively traded (within the meaning of section 1092(d)(1)) unless such metal was produced, used, or held in the active conduct of a trade or business by the partnership,

(v) except as otherwise provided in regulations prescribed by the Secretary, interests in any entity if substantially all of the assets of such entity consist (directly or indirectly) of marketable securities, money, or both, and

(vi) to the extent provided in regulations prescribed by the Secretary, any interest in an entity not described in clause (v) but only to the extent of the value of such interest which is attributable to marketable securities, money, or both.

(C) **FINANCIAL INSTRUMENT.**—The term “financial instrument” includes stocks and other equity interests, evidences of indebtedness, options, forward or futures contracts, notional principal contracts, and derivatives.

(3) **EXCEPTIONS.**—

(A) **IN GENERAL.**—Paragraph (1) shall not apply to the distribution from a partnership of a marketable security to a partner if—

(i) the security was contributed to the partnership by such partner, except to the extent that the value of the distributed security is attributable to marketable securities or money contributed (directly or indirectly) to the entity to which the distributed security relates,

(ii) to the extent provided in regulations prescribed by the Secretary, the property was not a marketable security when acquired by such partnership, or

(iii) such partnership is an investment partnership and such partner is an eligible partner thereof.

(B) **LIMITATION ON GAIN RECOGNIZED.**—In the case of a distribution of marketable securities to a partner, the amount taken into account under paragraph (1) shall be reduced (but not below zero) by the excess (if any) of—

(i) such partner's distributive share of the net gain which would be recognized if all of the marketable securities of the same class and issuer as the distributed securities held by the partnership were sold (immediately before the transaction to which the distribution relates) by the partnership for fair market value, over

(ii) such partner's distributive share of the net gain which is attributable to the marketable securities of the

same class and issuer as the distributed securities held by the partnership immediately after the transaction, determined by using the same fair market value as used under clause (i).

Under regulations prescribed by the Secretary, all marketable securities held by the partnership may be treated as marketable securities of the same class and issuer as the distributed securities.

(C) DEFINITIONS RELATING TO INVESTMENT PARTNERSHIPS.—For purposes of subparagraph (A)(iii)—

(i) INVESTMENT PARTNERSHIP.—The term “investment partnership” means any partnership which has never been engaged in a trade or business and substantially all of the assets (by value) of which have always consisted of—

- (I) money,
- (II) stock in a corporation,
- (III) notes, bonds, debentures, or other evidences of indebtedness,
- (IV) interest rate, currency, or equity notional principal contracts,
- (V) foreign currencies,
- (VI) interests in or derivative financial instruments (including options, forward or futures contracts, short positions, and similar financial instruments) in any asset described in any other subclause of this clause or in any commodity traded on or subject to the rules of a board of trade or commodity exchange,

(VII) other assets specified in regulations prescribed by the Secretary, or

(VIII) any combination of the foregoing.

(ii) EXCEPTION FOR CERTAIN ACTIVITIES.—A partnership shall not be treated as engaged in a trade or business by reason of—

(I) any activity undertaken as an investor, trader, or dealer in any asset described in clause (i), or

(II) any other activity specified in regulations prescribed by the Secretary.

(iii) ELIGIBLE PARTNER.—

(I) IN GENERAL.—The term “eligible partner” means any partner who, before the date of the distribution, did not contribute to the partnership any property other than assets described in clause (i).

(II) EXCEPTION FOR CERTAIN NONRECOGNITION TRANSACTIONS.—The term “eligible partner” shall not include the transferor or transferee in a non-recognition transaction involving a transfer of any portion of an interest in a partnership with respect to which the transferor was not an eligible partner.

(iv) LOOK-THRU OF PARTNERSHIP TIERS.—Except as otherwise provided in regulations prescribed by the Secretary—

(I) a partnership shall be treated as engaged in any trade or business engaged in by, and as holding (instead of a partnership interest) a proportionate share of the assets of, any other partnership in which the partnership holds a partnership interest, and

(II) a partner who contributes to a partnership an interest in another partnership shall be treated as contributing a proportionate share of the assets of the other partnership.

If the preceding sentence does not apply under such regulations with respect to any interest held by a partnership in another partnership, the interest in such other partnership shall be treated as if it were specified in a subclause of clause (i).

(4) **BASIS OF SECURITIES DISTRIBUTED.**—

(A) **IN GENERAL.**—The basis of marketable securities with respect to which gain is recognized by reason of this subsection shall be—

(i) their basis determined under section 732, increased by

(ii) the amount of such gain.

(B) **ALLOCATION OF BASIS INCREASE.**—Any increase in basis attributable to the gain described in subparagraph (A)(ii) shall be allocated to marketable securities in proportion to their respective amounts of unrealized appreciation before such increase.

(5) **SUBSECTION DISREGARDED IN DETERMINING BASIS OF PARTNER'S INTEREST IN PARTNERSHIP AND OF BASIS OF PARTNERSHIP PROPERTY.**—Sections 733 and 734 shall be applied as if no gain were recognized, and no adjustment were made to the basis of property, under this subsection.

(6) **CHARACTER OF GAIN RECOGNIZED.**—In the case of a distribution of a marketable security which is an unrealized receivable (as defined in section 751(c)) or an inventory item (as defined in section 751(d)(2)), any gain recognized under this subsection shall be treated as ordinary income to the extent of any increase in the basis of such security attributable to the gain described in paragraph (4)(A)(ii).

(7) **REGULATIONS.**—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including regulations to prevent the avoidance of such purposes.

(d) **[(c)] EXCEPTIONS.**—This section shall not apply to the extent otherwise provided by section 736 relating to payments to a retiring partner or a deceased partner's successor in interest), section 751 (relating to unrealized receivables and inventory items), and section 737 (relating to recognition of precontribution gain in case of certain distributions).

* * * * *

SEC. 737. RECOGNITION OF PRECONTRIBUTION GAIN IN CASE OF CERTAIN DISTRIBUTIONS TO CONTRIBUTING PARTNER.

* * * * *

(c) BASIS RULES.—

(1) PARTNER'S INTEREST.—The adjusted basis of a partner's interest in a partnership shall be increased by the amount of any gain recognized by such partner under subsection (a). [Except for purposes of determining the amount recognized under subsection (a), such increase shall be treated as occurring immediately before the distribution.] *For purposes of determining the basis of the distributed property (other than money), such increase shall be treated as occurring immediately before the distribution.*

* * * * *

(e) MARKETABLE SECURITIES TREATED AS MONEY.—

For treatment of marketable securities as money for purposes of this section, see section 731(c).

* * * * *

SEC. 871. TAX ON NONRESIDENT ALIEN INDIVIDUALS.

(a) INCOME NOT CONNECTED WITH UNITED STATES BUSINESS—30 PERCENT TAX.—

* * * * *

(3) TAXATION OF SOCIAL SECURITY BENEFITS.—For purposes of this section and section 1441—

(A) [one-half] 85 percent of any social security benefit (as defined in section 86(d)) shall be included in gross income (notwithstanding section 207 of the Social Security Act), and

* * * * *

CHAPTER 23—FEDERAL UNEMPLOYMENT TAX ACT

* * * * *

SEC. 3304. APPROVAL OF STATE LAWS.

(a) REQUIREMENTS.—The Secretary of Labor shall approve any State law submitted to him, within 30 days of such submission, which he finds provides that—

* * * * *

(4) all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305 (b); except that—

* * * * *

(C) nothing in this paragraph shall be construed to prohibit deducting an amount from unemployment compensation otherwise payable to an individual and using the amount so deducted to pay for health insurance, or the withholding of Federal, State, or local individual income tax, if the individual elected to have such deduction made

and such deduction was made under a program approved by the Secretary of Labor;

* * * * *

(17) any interest required to be paid on advances under title XII of the Social Security Act shall be paid in a timely manner and shall not be paid, directly or indirectly (by an equivalent reduction in State unemployment taxes or otherwise) by such State from amounts in such State's unemployment fund; [and]

(18) *Federal individual income tax from unemployment compensation is to be deducted and withheld if an individual receiving such compensation voluntarily requests such deduction and withholding; and*

[(18)] (19) all the rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal such law at any time.

* * * * *

SEC. 3306. DEFINITIONS.

* * * * *

(f) UNEMPLOYMENT FUND.—* * *

* * * * *

(3) *nothing in this subsection shall be construed to prohibit deducting any amount from unemployment compensation otherwise payable to an individual and using the amount so deducted to pay for health insurance, or the withholding of Federal, State, or local individual income tax, if the individual elected to have such deduction made and such deduction was made under a program approved by the Secretary of Labor;*

[(3)](4) amounts may be deducted from unemployment benefits and used to repay overpayments as provided in section 303(g) of the Social Security Act;

[(4)](5) amounts may be withdrawn for the payment of short-time compensation under a plan approved by the Secretary of Labor; and

(5)¹ amounts may be withdrawn for the payment of allowances under a self-employment assistance program (as defined in subsection (t)).

* * * * *

CHAPTER 24—COLLECTION OF INCOME TAX AT SOURCE ON WAGES

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SEC. 3402. INCOME TAX COLLECTED AT SOURCE.

* * * * *

[(p) VOLUNTARY WITHHOLDING AGREEMENTS.—The Secretary is authorized by regulations to provide for withholding—

¹To be renumbered "(6)" by technical amendment.

[(1) from remuneration for services performed by an employee for his employer which (without regard to this subsection) does not constitute wages, and

[(2) from any other type of payment with respect to which the Secretary finds that withholding would be appropriate under the provisions of this chapter,

[if the employer and the employee, or in the case of any other type of payment the person making and the person receiving the payment, agree to such withholding. Such agreement shall be made in such form and manner as the Secretary may by regulations provide. For purposes of this chapter (and so much of subtitle F as relates to this chapter) remuneration or other payments with respect to which such agreement is made shall be treated as if they were wages paid by an employer to an employee to the extent that such remuneration is paid or other payments are made during the period for which the agreement is in effect.]

(p) **VOLUNTARY WITHHOLDING AGREEMENTS.—**

(1) **CERTAIN FEDERAL PAYMENTS.—**

(A) **IN GENERAL.—***If, at the time a specified Federal payment is made to any person, a request by such person is in effect that such payment be subject to withholding under this chapter, then for purposes of this chapter and so much of subtitle F as relates to this chapter, such payment shall be treated as if it were a payment of wages by an employer to an employee.*

(B) **AMOUNT WITHHELD.—***The amount to be deducted and withheld under this chapter from any payment to which any request under subparagraph (A) applies shall be an amount equal to the percentage of such payment specified in such request. Such a request shall apply to any payment only if the percentage specified is 7, 15, 28, or 31 percent or such other percentage as is permitted under regulations prescribed by the Secretary.*

(C) **SPECIFIED FEDERAL PAYMENTS.—***For purposes of this paragraph, the term "specified Federal payment" means—*

(i) *any payment of a social security benefit (as defined in section 86(d)),*

(ii) *any payment referred to in the second sentence of section 451(d) which is treated as insurance proceeds,*

(iii) *any amount which is includible in gross income under section 77(a), and*

(iv) *any other payment made pursuant to Federal law which is specified by the Secretary for purposes of this paragraph.*

(D) **REQUESTS FOR WITHHOLDING.—***Rules similar to the rules that apply to annuities under subsection (o)(4) shall apply to requests under this paragraph and paragraph (2).*

(2) **VOLUNTARY WITHHOLDING ON UNEMPLOYMENT BENEFITS.—***If, at the time a payment of unemployment compensation (as defined in section 85(b)) is made to any person, a request by such person is in effect that such payment be subject to withholding under this chapter, then for purposes of this chapter*

and so much of subtitle F as relates to this chapter, such payment shall be treated as if it were a payment of wages by an employer to an employee. The amount to be deducted and withheld under this chapter from any payment to which any request under this paragraph applies shall be an amount equal to 15 percent of such payment.

(3) **AUTHORITY FOR OTHER VOLUNTARY WITHHOLDING.**—The Secretary is authorized by regulations to provide for withholding—

(A) from remuneration for services performed by an employee for the employee's employer which (without regard to this paragraph) does not constitute wages, and

(B) from any other type of payment with respect to which the Secretary finds that withholding would be appropriate under the provisions of this chapter, if the employer and employee, or the person making and the person receiving such other type of payment, agree to such withholding. Such agreement shall be in such form and manner as the Secretary may by regulations prescribe. For purposes of this chapter (and so much of subtitle F as relates to this chapter), remuneration or other payments with respect to which such agreement is made shall be treated as if they were wages paid by an employer to an employee to the extent that such remuneration is paid or other payments are made during the period for which the agreement is in effect.

* * * * *

(r) **EXTENSION OF WITHHOLDING TO CERTAIN TAXABLE PAYMENTS OF INDIAN CASINO PROFITS.**—

(1) **IN GENERAL.**—Every person, including an Indian tribe, making a payment to a member of an Indian tribe from the net revenues of any class II or class III gaming activity conducted or licensed by such tribe shall deduct and withhold from such payment a tax in an amount equal to such payment's proportionate share of the annualized tax.

(2) **EXCEPTION.**—The tax imposed by paragraph (1) shall not apply to any payment to the extent that the payment, when annualized, does not exceed an amount equal to the sum of—

(A) the basic standard deduction (as defined in section 63(c)) for an individual to whom section 63(c)(2)(C) applies, and

(B) the exemption amount (as defined in section 151(d)).

(3) **ANNUALIZED TAX.**—For purposes of paragraph (1), the term "annualized tax" means, with respect to any payment, the amount of tax which would be imposed by section 1(c) (determined without regard to any rate of tax in excess of 31 percent) on an amount of taxable income equal to the excess of—

(A) the annualized amount of such payment, over

(B) the amount determined under paragraph (2).

(4) **CLASSES OF GAMING ACTIVITIES, ETC.**—For purposes of this subsection, terms used in paragraph (1) which are defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.), as in effect on the date of the enactment of this

subsection, shall have the respective meanings given such terms by such section.

(5) *ANNUALIZATION.*—Payments shall be placed on an annualized basis under regulations prescribed by the Secretary.

(6) *ALTERNATE WITHHOLDING PROCEDURES.*—At the election of an Indian tribe, the tax imposed by this subsection on any payment made by such tribe shall be determined in accordance with such tables or computational procedures as may be specified in regulations prescribed by the Secretary (in lieu of in accordance with paragraphs (2) and (3)).

(7) *COORDINATION WITH OTHER SECTIONS.*—For purposes of this chapter and so much of subtitle F as relates to this chapter, payments to any person which are subject to withholding under this subsection shall be treated as if they were wages paid by an employer to an employee.

* * * * *

CHAPTER 25—GENERAL PROVISIONS RELATING TO EMPLOYMENT TAXES

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SEC. 3507. ADVANCE PAYMENT OF EARNED INCOME CREDIT.

* * * * *

(c) *EARNED INCOME ADVANCE AMOUNT.*—

(1) *IN GENERAL.*—For purposes of this title, the term “earned income advance amount” means, with respect to any payroll period, the amount determined—

* * * * *

In the case of an employee who is a member of the Armed Forces of the United States, the earned income advance amount shall be determined by taking into account such employee’s earned income as determined for purposes of section 32.

* * * * *

CHAPTER 43—QUALIFIED PENSION, ETC., PLANS

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SEC. 4971. TAXES ON FAILURE TO MEET MINIMUM FUNDING STANDARDS.

* * * * *

(e) *LIABILITY FOR TAX.*—

(1) *IN GENERAL.*—Except as provided in paragraph (2), the tax imposed by subsection [(a) or (b)] (a), (b), or (f) shall be paid by the employer responsible for contributing to or under the plan the amount described in section 412(b)(3)(A).

(2) *JOINT AND SEVERAL LIABILITY WHERE EMPLOYER MEMBER OF CONTROLLED GROUP.*—

(A) *IN GENERAL.*—In the case of a plan other than a multiemployer plan, if the employer referred to in paragraph (1) is a member of a controlled group, each member of such group shall be jointly and severally liable for the tax imposed by subsection [(a) or (b)] (a), (b), or (f).

(B) CONTROLLED GROUP.—For purposes of subparagraph (A), the term “controlled group” means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414.

* * * * *

(f) FAILURE TO PAY LIQUIDITY SHORTFALL.—

(1) IN GENERAL.—In the case of a plan to which section 412(m)(5) applies, there is hereby imposed a tax of 10 percent of the excess (if any) of—

(A) the amount of the liquidity shortfall for any quarter, over

(B) the amount of such shortfall which is paid by the required installment under section 412(m) for such quarter (but only if such installment is paid on or before the due date for such installment).

(2) ADDITIONAL TAX.—If the plan has a liquidity shortfall as of the close of any quarter and as of the close of each of the following 4 quarters, there is hereby imposed a tax equal to 100 percent of the amount on which tax was imposed by paragraph (1) for such first quarter.

(3) DEFINITIONS AND SPECIAL RULE.—

(A) LIQUIDITY SHORTFALL; QUARTER.—For purposes of this subsection, the terms “liquidity shortfall” and “quarter” have the respective meanings given such terms by section 412(m)(5).

(B) SPECIAL RULE.—If the tax imposed by paragraph (2) is paid with respect to any liquidity shortfall for any quarter, no further tax shall be imposed by this subsection on such shortfall for such quarter.

[(f)](g) CROSS REFERENCES.—

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SEC. 4972. TAX ON NONDEDUCTIBLE CONTRIBUTIONS TO QUALIFIED EMPLOYER PLANS.

* * * * *

(c) NONDEDUCTIBLE CONTRIBUTIONS.—For purposes of this section—

* * * * *

(6) EXCEPTIONS.—In determining the amount of nondeductible contributions for any taxable year, there shall not be taken into account—

(A) contributions that would be deductible under section 404(a)(1)(D) if the plan had more than 100 participants if—

(i) the plan is covered under section 4021 of the Employee Retirement Income Security Act of 1974, and

(ii) the plan is terminated under section 4041(b) of such Act on or before the last day of the taxable year, and

(B) contributions to 1 or more defined contribution plans which are not deductible when contributed solely because of section 404(a)(7), but only to the extent such contributions do not exceed 6 percent of compensation (within

the meaning of section 404(a) paid or accrued (during the taxable year for which the contributions were made) to beneficiaries under the plans.

If 1 or more defined benefit plans were taken into account in determining the amount allowable as a deduction under section 404 for contributions to any defined contribution plan, subparagraph (B) shall apply only if such defined benefit plans are described in section 404(a)(1)(D). For purposes of subparagraph (B), the deductible limits under section 404(a)(7) shall first be applied to amounts contributed to a defined benefit plan and then to amounts described in subparagraph (B).

* * * * *

CHAPTER 51—DISTILLED SPIRITS, WINES AND BEER

* * * * *

SEC. 5001. IMPOSITION, RATE, AND ATTACHMENT OF TAX.

* * * * *

(a) RATE OF TAX.—

* * * * *

[(3) IMPORTED PERFUMES CONTAINING DISTILLED SPIRITS.—
There is hereby imposed on all perfumes imported into the United States containing distilled spirits a tax of \$13.50 per wine gallon, and a proportionate tax at a like rate on all fractional parts of such wine gallon.]

[(4)](3) WINES CONTAINING MORE THAN 24 PERCENT ALCOHOL BY VOLUME.—* * *

* * * * *

[(5)](4) DISTILLED SPIRITS WITHDRAWN FREE OF TAX.—* * *

* * * * *

[(6)](5) DENATURED DISTILLED SPIRITS OR ARTICLES.—* * *

* * * * *

[(7)](6) FRUIT-FLAVOR CONCENTRATES.—* * *

* * * * *

[(8)](7) IMPORTED LIQUEURS AND CORDIALS.—* * *

* * * * *

[(9)](8) IMPORTED DISTILLED SPIRITS WITHDRAWN FOR BEVERAGE PURPOSES.—* * *

* * * * *

[(10)](9) ALCOHOLIC COMPOUNDS FROM PUERTO RICO.—* * *

* * * * *

SEC. 5002. DEFINITIONS.

* * * * *

(b) CROSS REFERENCES.—

[(1) For definition of wine gallon, see section 5041(c).]

[(2)](1) For definition of manufacturer of stills, see section 5102.

[(3)](2) For definition of dealer, see section 5112(a).

[(4)](3) For definitions of wholesale dealers, see section 5112.

[(5)](4) For definitions of retail dealers, see section 5122.

[(6)](5) For definitions of general application to this title, see chapter 79.

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SEC. 5005. PERSONS LIABLE FOR TAX.

* * * * *

(f) CROSS REFERENCES.—

* * * * *

(3) For liability for tax on denatured distilled spirits, articles, and volatile fruit-flavor concentrates, see section 5001[(a)(6) and (7)](a)(5) and (6).

(4) For liability for tax on distilled spirits withdrawn free of tax, see section 5001(a)[(5)](4).

* * * * *

SEC. 5007. COLLECTION OF TAX ON DISTILLED SPIRITS.

* * * * *

[(b) COLLECTION OF TAX ON IMPORTED DISTILLED SPIRITS AND PERFUMES CONTAINING DISTILLED SPIRITS.—

[(1) DISTILLED SPIRITS.—The internal revenue tax imposed by section 5001(a)(1) and (2) upon imported distilled spirits shall be collected by the Secretary and deposited as internal revenue collections, under such regulations as the Secretary may prescribe. Section 5688 shall be applicable to the disposition of imported spirits.

[(2) PERFUMES CONTAINING DISTILLED SPIRITS.—The internal revenue tax imposed by section 5001(a)(3) upon imported perfumes containing distilled spirits shall be collected by the Secretary and deposited as internal revenue collections, under such regulations as the Secretary may prescribe.]

(b) *COLLECTION OF TAX ON IMPORTED DISTILLED SPIRITS.—The internal revenue tax imposed by section 5001(a)(1) and (2) upon imported distilled spirits shall be collected by the Secretary and deposited as internal revenue collections, under such regulations as the Secretary may prescribe. Section 5688 shall be applicable to the disposition of imported spirits.*

* * * * *

(c) CROSS REFERENCES.—

* * * * *

(3) For provisions relating to payment of tax, under certain conditions, on distilled spirits withdrawn free of tax, denatured distilled spirits, articles, and volatile fruit-flavor concentrates, see section 5001[(a)(5), (6), and (7)](a)(4), (5), and (6).

* * * * *

SEC. 5061. METHOD OF COLLECTING TAX.

* * * * *

(b) EXCEPTIONS.—Notwithstanding the provisions of subsection (a), any taxes imposed on, or amounts to be paid or collected in respect of, distilled spirits, wines, rectified distilled spirits and wines, and beer under—

(1) Section 5001[(a)(5), (6), or (7)](a)(4), (5), or (6),

* * * * *

(d) TIME FOR COLLECTING TAX ON DISTILLED SPIRITS, WINES, AND BEER.—

* * * * *

(4) SPECIAL RULE FOR TAX DUE IN SEPTEMBER.—

(A) IN GENERAL.—Notwithstanding the preceding provisions of this subsection, the taxes on distilled spirits, wines, and beer for the period beginning on September 16 and ending on September 26 shall be paid not later than September 29.

(B) SAFE HARBOR.—The requirement of subparagraph (A) shall be treated as met if the amount paid not later than September 29 is not less than $\frac{11}{15}$ of the taxes on distilled spirits, wines, and beer for the period beginning on September 1 and ending on September 15.

(C) TAXPAYERS NOT REQUIRED TO USE ELECTRONIC FUNDS TRANSFER.—In the case of payments not required to be made by electronic funds transfer, subparagraphs (A) and (B) shall be applied by substituting “September 25” for “September 26”, “September 28” for “September 29”, and “ $\frac{2}{3}$ ” for “ $\frac{11}{15}$ ”.

[(4)](5) SPECIAL RULE WHERE [14TH DAY] DUE DATE FALLS ON SATURDAY, SUNDAY, OR HOLIDAY.—Notwithstanding section 7503, if, but for this paragraph, the due date under this subsection for payment of tax would fall on a Saturday, Sunday, or a legal holiday (within the meaning of section 7503), such due date shall be the immediately preceding day which is not a Saturday, Sunday, or such a holiday (or the immediately following day where the due date described in paragraph (4) falls on a Sunday).

* * * * *

SEC. 5131. ELIGIBILITY AND RATE OF TAX.

(a) ELIGIBILITY FOR DRAWBACK.—Any person using distilled spirits on which the tax has been determined, in the manufacture or production of medicines, medicinal preparations, food products, flavors, [or flavoring extracts] *flavoring extracts*, or *perfume*, which are unfit for beverage purposes, on payment of a special tax per annum, shall be eligible for drawback at the time when such distilled spirits are used in the manufacture of such products as provided for in this subpart.

* * * * *

SEC. 5132. REGISTRATION AND REGULATION.

Every person claiming drawback under this subpart shall register annually with the Secretary; keep such books and records as may be necessary to establish the fact that distilled spirits received by him and on which the tax has been determined were used in

the manufacture or production of medicines, medicinal preparations, food products, flavors, [or flavoring extracts] *flavoring extracts, or perfume*, which were unfit for use for beverage purposes; and be subject to such rules and regulations in relation thereto as the Secretary shall prescribe to secure the Treasury against frauds.

* * * * *

SEC. 5134. DRAWBACK.

* * * * *

(c) ALLOWANCE OF DRAWBACK EVEN WHERE CERTAIN REQUIREMENTS NOT MET.—

(1) IN GENERAL.—No claim for drawback under this section shall be denied in the case of a failure to comply with any requirement imposed under this subpart or any rule or regulation issued thereunder upon the claimant's establishing to the satisfaction of the Secretary that distilled spirits on which the tax has been paid or determined were in fact used in the manufacture or production of medicines, medicinal preparations, food products, flavors, [or flavoring extracts] *flavoring extracts, or perfume*, which were unfit for beverage purposes.

* * * * *

CHAPTER 52—CIGARS, CIGARETTES, SMOKELESS TOBACCO, PIPE TOBACCO, AND CIGARETTE PAPERS AND TUBES

* * * * *

SEC. 5703. LIABILITY FOR TAX AND METHOD OF PAYMENT.

* * * * *

(b) METHOD OF PAYMENT OF TAX.—

* * * * *

(2) TIME FOR PAYMENT OF TAXES.—

* * * * *

(D) SPECIAL RULE FOR TAX DUE IN SEPTEMBER.—

(i) IN GENERAL.—Notwithstanding the preceding provisions of this paragraph, the taxes on tobacco products and cigarette papers and tubes for the period beginning on September 16 and ending on September 26 shall be paid not later than September 29.

(ii) SAFE HARBOR.—The requirement of clause (i) shall be treated as met if the amount paid not later than September 29 is not less than $\frac{11}{15}$ of the taxes on tobacco products and cigarette papers and tubes for the period beginning on September 1 and ending on September 15.

(iii) TAXPAYERS NOT REQUIRED TO USE ELECTRONIC FUNDS TRANSFER.—In the case of payments not required to be made by electronic funds transfer, clauses (i) and (ii) shall be applied by substituting "September 25" for "September 26", "September 28" for "September 29", and " $\frac{2}{3}$ " for " $\frac{11}{15}$ ".

[(D)](E) SPECIAL RULE WHERE [14TH DAY] DUE DATE FALLS ON SATURDAY, SUNDAY, OR HOLIDAY.—Notwithstanding section 7503, if, but for this subparagraph, the due date under this paragraph would fall on a Saturday, Sunday, or a legal holiday (as defined in section 7503), such due date shall be the immediately preceding day which is not a Saturday, Sunday, or such a holiday (or the immediately following day where the due date described in subparagraph (D) falls on a Sunday).

* * * * *

CHAPTER 61—INFORMATION AND RETURNS

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SEC. 6051. RECEIPTS FOR EMPLOYEES.

(a) REQUIREMENT.—* * *

* * * * *

(8) the total amount of elective deferrals (within the meaning of section 402(g)(3)) and compensation deferred under section 457, [and]

(9) the total amount incurred for dependent care assistance with respect to such employee under a dependent care assistance program described in section 129(d)[.], and

(10) in the case of an employee who is a member of the Armed Forces of the United States, such employee's earned income as determined for purposes of section 32 (relating to earned income credit).

* * * * *

SEC. 6109. IDENTIFYING NUMBERS.

* * * * *

[(e) FURNISHING NUMBER FOR CERTAIN DEPENDENTS.—If—

[(1) any taxpayer claims an exemption under section 151 for any dependent on a return for any taxable year, and

[(2) such dependent has attained the age of 1 year before the close of such taxable year,

such taxpayer shall include on such return the identifying number (for purposes of this title) of such dependent.]

(e) FURNISHING NUMBER FOR DEPENDENTS.—Any taxpayer who claims an exemption under section 151 for any dependent on a return for any taxable year shall include on such return the identifying number (for purposes of this title) of such dependent.

* * * * *

CHAPTER 63—ASSESSMENT

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SEC. 6302. MODE OR TIME OF COLLECTION.

* * * * *

[(e) TIME FOR DEPOSIT OF TAXES ON COMMUNICATION SERVICES AND AIRLINE TICKETS.—If, under regulations prescribed by the Secretary, a person is required to make deposits of any tax imposed

by section 4251 or subsection (a) or (b) of section 4261 with respect to amounts considered collected by such person during any semi-monthly period, such deposit shall be made not later than the 3rd day (not including Saturdays, Sundays, or legal holidays) after the close of the 1st week of the 2nd semimonthly period following the period to which such amounts relate.]

(e) TIME FOR DEPOSIT OF TAXES ON COMMUNICATIONS SERVICES AND AIRLINE TICKETS.—

(1) *IN GENERAL.*—Except as provided in paragraph (2), if, under regulations prescribed by the Secretary, a person is required to make deposits of any tax imposed by section 4251 or subsection (a) or (b) of section 4261 with respect to amounts considered collected by such person during any semimonthly period, such deposit shall be made not later than the 3rd day (not including Saturdays, Sundays, or legal holidays) after the close of the 1st week of the 2nd semimonthly period following the period to which such amounts relate.

(2) SPECIAL RULE FOR TAX DUE IN SEPTEMBER.—

(A) AMOUNTS CONSIDERED COLLECTED.—In the case of a person required to make deposits of the tax imposed by—

(i) section 4251, or

(ii) effective on January 1, 1997, section 4261 or 4271,

with respect to amounts considered collected by such person during any semimonthly period, the amount of such tax included in bills rendered or tickets sold during the period beginning on September 1 and ending on September 11 shall be deposited not later than September 29.

(B) SPECIAL RULE WHERE SEPTEMBER 29 IS ON SATURDAY OR SUNDAY.—If September 29 falls on a Saturday or Sunday, the due date under subparagraph (A) shall be—

(i) in the case of Saturday, the preceding day, and

(ii) in the case of Sunday, the following day.

(C) TAXPAYERS NOT REQUIRED TO USE ELECTRONIC FUNDS TRANSFER.—In the case of deposits not required to be made by electronic funds transfer, subparagraphs (A) and (B) shall be applied by substituting “September 10” for “September 11” and “September 28” for “September 29”.

[(f) TIME FOR DEPOSIT OF TAXES ON GASOLINE AND DIESEL FUEL.—

[(1) GENERAL RULE.—Notwithstanding section 518 of the Highway Revenue Act of 1982, any person whose liability for tax under section 4081 is payable with respect to semimonthly periods shall, not later than September 27, make deposits of such tax for the period beginning on September 16 and ending on September 22.

[(2) SPECIAL RULE WHERE DUE DATE FALLS ON SATURDAY, SUNDAY, OR HOLIDAY.—If, but for this paragraph, the due date under paragraph (1) would fall on a Saturday, Sunday, or holiday in the District of Columbia, such due date shall be deemed to be the immediately preceding day which is not a Saturday, Sunday, or such a holiday.]

(f) TIME FOR DEPOSIT OF CERTAIN EXCISE TAXES.—

(1) *GENERAL RULE.*—Except as otherwise provided in this subsection and subsection (e), if any person is required under regulations to make deposits of taxes under subtitle D with respect to semimonthly periods, such person shall make deposits of such taxes for the period beginning on September 16 and ending on September 26 not later than September 29. In the case of taxes imposed by sections 4261 and 4271, this paragraph shall not apply to periods before January 1, 1997.

(2) *TAXES ON OZONE DEPLETING CHEMICALS.*—If any person is required under regulations to make deposits of taxes under subchapter D of chapter 38 with respect to semimonthly periods, in lieu of paragraph (1), such person shall make deposits of such taxes for—

(A) the second semimonthly period in August, and

(B) the period beginning on September 1 and ending on September 11, not later than September 29.

(3) *TAXPAYERS NOT REQUIRED TO USE ELECTRONIC FUNDS TRANSFER.*—In the case of deposits not required to be made by electronic funds transfer, paragraphs (1) and (2) shall be applied by substituting “September 25” for “September 26”, “September 10” for “September 11”, and “September 28” for “September 29”.

(4) *SPECIAL RULE WHERE DUE DATE ON SATURDAY OR SUNDAY.*—If, but for this paragraph, the due date under paragraph (1), (2), or (3) would fall on a Saturday or Sunday, such due date shall be deemed to be—

(A) in the case of Saturday, the preceding day, and

(B) in the case of Sunday, the following day.

* * * * *

CHAPTER 67—INTEREST

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SEC. 6621. DETERMINATION OF RATE OF INTEREST.

(a) *GENERAL RULE.*—

(1) *OVERPAYMENT RATE.*—The overpayment rate established under this section shall be the sum of—

* * * * *

To the extent that an overpayment of tax by a corporation for any taxable period (as defined in subsection (c)(3)) exceeds \$10,000, subparagraph (B) shall be applied by substituting “0.5 percentage point” for “2 percentage points”.

* * * * *

CHAPTER 68—ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

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SEC. 6654. FAILURE BY INDIVIDUAL TO PAY ESTIMATED INCOME TAX.

* * * * *

(d) AMOUNT OF REQUIRED INSTALLMENTS.—For purposes of this section—

* * * * *

(2) LOWER REQUIRED INSTALLMENT WHERE ANNUALIZED INCOME INSTALLMENT IS LESS THAN AMOUNT DETERMINED UNDER PARAGRAPH (1).—

* * * * *

(D) TREATMENT OF SUBPART F AND SECTION 936 INCOME.—

(i) IN GENERAL.—Any amounts required to be included in gross income under section 936(h) or 951(a) (and credits properly allocable thereto) shall be taken into account in computing any annualized income installment under subparagraph (B) in a manner similar to the manner under which partnership income inclusions (and credits properly allocable thereto) are taken into account.

(ii) PRIOR YEAR SAFE HARBOR.—If a taxpayer elects to have this clause apply to any taxable year—

(I) clause (i) shall not apply, and

(II) for purposes of computing any annualized income installment for such taxable year, the taxpayer shall be treated as having received ratably during such taxable year items of income and credit described in clause (i) in an amount equal to the amount of such items shown on the return of the taxpayer for the preceding taxable year (the second preceding taxable year in the case of the first and second required installments for such taxable year).

* * * * *

SEC. 6655. FAILURE BY CORPORATION TO PAY ESTIMATED INCOME TAX.

* * * * *

(e) LOWER REQUIRED INSTALLMENT WHERE ANNUALIZED INCOME INSTALLMENT OR ADJUSTED SEASONAL INSTALLMENT IS LESS THAN AMOUNT DETERMINED UNDER SUBSECTION (d).—

* * * * *

(4) TREATMENT OF SUBPART F AND SECTION 936 INCOME.—

(A) IN GENERAL.—Any amounts required to be included in gross income under section 936(h) or 951(a) (and credits properly allocable thereto) shall be taken into account in computing any annualized income installment under paragraph (2) in a manner similar to the manner under which partnership income inclusions (and credits properly allocable thereto) are taken into account.

(B) PRIOR YEAR SAFE HARBOR.—

(i) IN GENERAL.—If a taxpayer elects to have this subparagraph apply for any taxable year—

(I) subparagraph (A) shall not apply, and

(II) for purposes of computing any annualized income installment for such taxable year, the taxpayer shall be treated as having received ratably during such taxable year items of income and credit described in subparagraph (A) in an amount equal to 115 percent of the amount of such items shown on the return of the taxpayer for the preceding taxable year (the second preceding taxable year in the case of the first and second required installments for such taxable year).

(ii) SPECIAL RULE FOR NONCONTROLLING SHAREHOLDER.—

(I) IN GENERAL.—If a taxpayer making the election under clause (i) is a noncontrolling shareholder of a corporation, clause (i)(II) shall be applied with respect to items of such corporation by substituting “100 percent” for “115 percent”.

(II) NONCONTROLLING SHAREHOLDER.—For purposes of subclause (I), the term “noncontrolling shareholder” means, with respect to any corporation, a shareholder which (as of the beginning of the taxable year for which the installment is being made) does not own (within the meaning of section 958(a)), and is not treated as owning (within the meaning of section 958(b)), more than 50 percent (by vote or value) of the stock in the corporation.

* * * * *

SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY.

* * * * *

(d) SUBSTANTIAL UNDERSTATEMENT OF INCOME TAX.—

* * * * *

(2) UNDERSTATEMENT.—

* * * * *

(C) SPECIAL RULES IN CASES INVOLVING TAX SHELTERS.—

(i) IN GENERAL.—[In the case of any item] In the case of any item of a taxpayer other than a corporation which is attributable to a tax shelter—

(ii) SUBPARAGRAPH (B) NOT TO APPLY TO CORPORATIONS.—Subparagraph (B) shall not apply to any item of a corporation which is attributable to a tax shelter.

[(ii)](iii) TAX SHELTER.—For purposes of [clause (i)] this subparagraph, the term “tax shelter” means—

* * * * *

CHAPTER 78—DISCOVERY OF LIABILITY AND ENFORCEMENT OF TITLE

* * * * *

SEC. 7652. SHIPMENTS TO THE UNITED STATES.

* * * * *

(g) DRAWBACK FOR MEDICINAL ALCOHOL, ETC.—In the case of medicines, medicinal preparations, food products, flavors, [or flavoring extracts] *flavoring extracts, or perfume* containing distilled spirits, which are unfit for beverage purposes and which are brought into the United States from Puerto Rico or the Virgin Islands—

* * * * *

Title 28 Judiciary and Judicial Procedure

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CHAPTER 85—DISTRICT COURTS; JURISDICTION

Sec.

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1368. *Counterclaims in unfair practices in international trade.*

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§ 1368. *Counterclaims in unfair practices in international trade.*

The district courts shall have original jurisdiction of any civil action based on a counterclaim raised pursuant to section 337(c) of the Tariff Act of 1930, to the extent that it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim in the proceeding under section 337(a) of that Act.

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CHAPTER 89—DISTRICT COURTS; REMOVAL OF CASES FROM STATE COURTS

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§ 1446. **Procedure for removal**

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(f) With respect to any counterclaim removed to a district court pursuant to section 337(c) of the Tariff Act of 1930, the district court shall resolve such counterclaim in the same manner as an original complaint under the Federal Rules of Civil Procedure, except that the payment of a filing fee shall not be required in such cases and the counterclaim shall relate back to the date of the original complaint in the proceeding before the International Trade Commission under section 337 of that Act.

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CHAPTER 111—GENERAL PROVISIONS

Sec.

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1659. *Stay of certain actions pending disposition of related proceedings before the United States International Trade Commission.*

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§ 1659. *Stay of certain actions pending disposition of related proceedings before the United States International Trade Commission*

(a) *Stay*

In a civil action involving parties that are also parties to a proceeding before the United States International Trade Commission under section 337 of the Tariff Act of 1930, at the request of a party to the civil action that is also a respondent in the proceeding before the Commission, the district court shall stay, until the determination of the Commission becomes final, proceedings in the civil action with respect to any claim that involves the same issues involved in the proceeding before the Commission, but only if such request is made within—

(1) 30 days after the party is named as a respondent in the proceeding before the Commission, or

(2) 30 days after the district court action is filed, whichever is later.

(b) *Use of Commission Record*

Notwithstanding section 337(n)(1) of the Tariff Act of 1930, after dissolution of a stay under subsection (a), the record of the proceeding before the United States International Trade Commission shall be transmitted to the district court and shall be admissible in the civil action, subject to such protective order as the district court determines necessary, to the extent permitted under the Federal Rules of Evidence and the Federal Rules of Civil Procedure.

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**Title 31
Money and Finance**

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CHAPTER 31—PUBLIC DEBT

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§ 3105. *Savings bonds and savings certificates*

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[(b)(1)] With the approval of the President and except as provided in paragraph (2) of this subsection, the Secretary may—

[(A)] fix the investment yield for savings bonds; and

[(B)] change the investment yield on an outstanding savings bond, except that the yield on a bond for the period held may not be decreased below the minimum yield for the period guaranteed on the date of issue.

[(2)] The investment yield on a series E savings bond shall be at least 4 percent a year compounded semiannually beginning on the first day of the month beginning after the date of issue of the

bond and ending on the last day of the month before the date of redemption.

[(3) With the approval of the President, the Secretary may prescribe regulations providing that—

[(A) owners of series E and H savings bonds may keep the bonds after maturity or after a period beyond maturity during which the bonds have earned interest and continue to earn interest at rates consistent with paragraph (1) of this subsection; and

[(B) series E and H savings bonds earning a different rate of interest before the regulations are prescribed shall earn a rate of interest consistent with paragraph (1).]

(b)(1) *The Secretary may—*

(A) *fix the investment yield for savings bonds; and*

(B) *change the investment yield on an outstanding savings bond, except that the yield on a bond for the period held may not be decreased below the minimum yield for the period guaranteed on the date of issue.*

(2) *The Secretary may prescribe regulations providing that—*

(A) *owners of savings bonds may keep the bonds after maturity or after a period beyond maturity during which the bonds have earned interest and continue to earn interest at rates consistent with paragraph (1) of this subsection; and*

(B) *savings bonds earning a different rate of interest before the regulations are prescribed shall earn a rate of interest consistent with paragraph (1).*

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**Title 35
Patents**

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CHAPTER 4—PATENT FEES; FUNDING; SEARCH SYSTEMS

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§ 41. Patent fees; patent and trademark search systems

(a) The Commissioner shall charge the following fees:

(1)(A) On filing each application for an original patent, except in design or plant cases, \$500.

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(C) *On filing each provisional application for an original patent, \$150.*

* * * * *

(c)(1) The Commissioner may accept the payment of any maintenance fee required by subsection (b) of this section after the six-month grace period if the delay is shown to the satisfaction of the Commissioner to have been unavoidable. The Commissioner may require the payment of a surcharge as a condition of accepting payment of any maintenance fee after the six-month grace period. If the Commissioner accepts payment of a maintenance fee after the

six-month grace period, the patent shall be considered as not having expired at the end of the grace period.

[(2) No patent, the term of which has been maintained as a result of the acceptance of a payment of a maintenance fee under this subsection, shall abridge or affect the right of any person or his successors in business who made, purchased or used after the six-month grace period but prior to the acceptance of a maintenance fee under this subsection anything protected by the patent, to continue the use of, or to sell to others to be used or sold, the specific thing so made, purchased, or used. The court before which such matter is in question may provide for the continued manufacture, use or sale of the thing made, purchased, or used as specified, or for the manufacture, use or sale of which substantial preparation was made after the six-month grace period but before the acceptance of a maintenance fee under this subsection, and it may also provide for the continued practice of any process, practiced, or for the practice of which substantial preparation was made, after the six-month grace period but prior to the acceptance of a maintenance fee under this subsection, to the extent and under such terms as the court deems equitable for the protection of investments made or business commenced after the six-month grace period but before the acceptance of a maintenance fee under the subsection.]

(2) A patent, the term of which has been maintained as a result of the acceptance of a payment of a maintenance fee under this subsection, shall not abridge or affect the right of any person or that person's successors in business who made, purchased, offered to sell, or used anything protected by the patent within the United States, or imported anything protected by the patent into the United States after the 6-month grace period but prior to the acceptance of a maintenance fee under this subsection, to continue the use of, to offer for sale, or to sell to others to be used, offered for sale, or sold, the specific thing so made, purchased, offered for sale, used, or imported. The court before which such matter is in question may provide for the continued manufacture, use, offer for sale, or sale of the thing made, purchased, offered for sale, or used within the United States, or imported into the United States, as specified, or for the manufacture, use, offer for sale, or sale in the United States of which substantial preparation was made after the 6-month grace period but before the acceptance of a maintenance fee under this subsection, and the court may also provide for the continued practice of any process that is practiced, or for the practice of which substantial preparation was made, after the 6-month grace period but before the acceptance of a maintenance fee under this subsection, to the extent and under such terms as the court deems equitable for the protection of investments made or business commenced after the 6-month grace period but before the acceptance of a maintenance fee under this subsection.

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CHAPTER 10—PATENTABILITY OF INVENTIONS

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§ 104. Invention made abroad

[(a) In general.]—In proceedings in the Patent and Trademark Office, in the courts, and before any other competent authority, an applicant for a patent, or a patentee, may not establish a date of invention by reference to knowledge or use thereof, or other activity with respect thereto, in a foreign country other than a NAFTA country, except as provided in sections 119 and 365 of this title. Where an invention was made by a person, civil or military, while domiciled in the United States or a NAFTA country and serving in any other country in connection with operations by or on behalf of the United States or a NAFTA country, the person shall be entitled to the same rights of priority in the United States with respect to such invention as if such invention had been made in the United States or a NAFTA country. To the extent that any information in a NAFTA country concerning knowledge, use, or other activity relevant to proving or disproving a date of invention has not been made available for use in a proceeding in the Office, a court, or any other competent authority to the same extent as such information could be made available in the United States, the Commissioner, court, or such other authority shall draw appropriate inferences, or take other action permitted by statute, rule, or regulation, in favor of the party that requested the information in the proceeding.

[(b) Definition.]—As used in this section, the term “NAFTA country” has the meaning given that term in section 2(4) of the North American Free Trade Agreement Implementation Act.]

(a) In General.—

(1) Proceedings.—*In proceedings in the Patent and Trademark Office, in the courts, and before any other competent authority, an applicant for a patent, or a patentee, may not establish a date of invention by reference to knowledge or use thereof, or other activity with respect thereto, in a foreign country other than a NAFTA country or a WTO member country, except as provided in sections 119 and 365 of this title.*

(2) Rights.—*If an invention was made by a person, civil or military—*

(A) while domiciled in the United States, and serving in any other country in connection with operations by or on behalf of the United States,

(B) while domiciled in a NAFTA country and serving in another country in connection with operations by or on behalf of that NAFTA country, or

(C) while domiciled in a WTO member country and serving in another country in connection with operations by or on behalf of that WTO member country,

that person shall be entitled to the same rights of priority in the United States with respect to such invention as if such invention had been made in the United States, that NAFTA country, or that WTO member country, as the case may be.

(3) Use of information.—*To the extent that any information in a NAFTA country or a WTO member country concerning knowledge, use, or other activity relevant to proving or disproving a date of invention has not been made available for use in a proceeding in the Patent and Trademark Office, a court, or*

any other competent authority to the same extent as such information could be made available in the United States, the Commissioner, court, or such other authority shall draw appropriate inferences, or take other action permitted by statute, rule, or regulation, in favor of the party that requested the information in the proceeding.

(b) Definitions.—As used in this section—

(1) the term “NAFTA country” has the meaning given that term in section 2(4) of the North American Free Trade Agreement Implementation Act; and

(2) the term “WTO member country” has the meaning given that term in section 2(10) of the Uruguay Round Agreements Act.

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CHAPTER 11—APPLICATION FOR PATENT

Sec.

111. Application [for patent].

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119. Benefit of earlier filing date [in foreign country]; right of priority.

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§ 111. Application for patent¹

[Application for patent shall be made, or authorized to be made, by the inventor, except as otherwise provided in this title, in writing to the Commissioner. Such application shall include (1) a specification as prescribed by section 112 of this title; (2) a drawing as prescribed by section 113 of this title; and (3) an oath by the applicant as prescribed by section 115 of this title. The application must be accompanied by the fee required by law. The fee and oath may be submitted after the specification and any required drawing are submitted, within such period and under such conditions, including the payment of a surcharge, as may be prescribed by the Commissioner. Upon failure to submit the fee and oath within such prescribed period, the application shall be regarded as abandoned, unless it is shown to the satisfaction of the Commissioner that the delay in submitting the fee and oath was unavoidable. The filing date of an application shall be the date on which the specification and any required drawing are received in the Patent and Trademark Office.]

§ 111. Application

(a) In General.—

(1) Written application.—An application for patent shall be made, or authorized to be made, by the inventor, except as otherwise provided in this title, in writing to the Commissioner.

(2) Contents.—Such application shall include—

(A) a specification as prescribed by section 112 of this title;

[¹ Section catchline editorially supplied.]

(B) a drawing as prescribed by section 113 of this title;
and

“(C) an oath by the applicant as prescribed by section 115 of this title.

(3) Fee and oath.—The application must be accompanied by the fee required by law. The fee and oath may be submitted after the specification and any required drawing are submitted, within such period and under such conditions, including the payment of a surcharge, as may be prescribed by the Commissioner.

(4) Failure to submit.—Upon failure to submit the fee and oath within such prescribed period, the application shall be regarded as abandoned, unless it is shown to the satisfaction of the Commissioner that the delay in submitting the fee and oath was unavoidable or unintentional. The filing date of an application shall be the date on which the specification and any required drawing are received in the Patent and Trademark Office.

(b) Provisional Application.—

(1) Authorization.—A provisional application for patent shall be made or authorized to be made by the inventor, except as otherwise provided in this title, in writing to the Commissioner. Such application shall include—

(A) a specification as prescribed by the first paragraph of section 112 of this title; and

(B) a drawing as prescribed by section 113 of this title.

(2) Claim.—A claim, as required by the second through fifth paragraphs of section 112, shall not be required in a provisional application.

(3) Fee.—(A) The application must be accompanied by the fee required by law.

(B) The fee may be submitted after the specification and any required drawing are submitted, within such period and under such conditions, including the payment of a surcharge, as may be prescribed by the Commissioner.

(C) Upon failure to submit the fee within such prescribed period, the application shall be regarded as abandoned, unless it is shown to the satisfaction of the Commissioner that the delay in submitting the fee was unavoidable or unintentional.

(4) Filing date.—The filing date of a provisional application shall be the date on which the specification and any required drawing are received in the Patent and Trademark Office.

(5) Abandonment.—The provisional application shall be regarded as abandoned 12 months after the filing date of such application and shall not be subject to revival thereafter.

(6) Other basis for provisional application.—Subject to all the conditions in this subsection and section 119(e) of this title, and as prescribed by the Commissioner, an application for patent filed under subsection (a) may be treated as a provisional application for patent.

(7) No right of priority or benefit of earliest filing date.—A provisional application shall not be entitled to the right of priority of any other application under section 119 or

365(a) of this title or to the benefit of an earlier filing date in the United States under section 120, 121, or 365(c) of this title.

(8) Applicable provisions.—The provisions of this title relating to applications for patent shall apply to provisional applications for patent, except as otherwise provided, and except that provisional applications for patent shall not be subject to sections 115, 131, 135, and 157 of this title.

* * * * *

§ 119. Benefit of earlier filing date[in foreign country]; right of priority

(a) An application for patent for an invention filed in this country by any person who has, or whose legal representatives or assigns have, previously regularly filed an application for a patent for the same invention in a foreign country which affords similar privileges in the case of applications filed in the United States or to citizens of the United States, shall have the same effect as the same application would have if filed in this country on the date on which the application for patent for the same invention was first filed in such foreign country, if the application in this country is filed within twelve months from the earliest date on which such foreign application was filed; but no patent shall be granted on any application for patent for an invention which had been patented or described in a printed publication in any country more than one year before the date of the actual filing of the application in this country, or which had been in public use or on sale in this country more than one year prior to such filing.

(b) No application for patent shall be entitled to this right of priority unless a claim therefor and a certified copy of the original foreign application, specification and drawings upon which it is based are filed in the Patent and Trademark Office before the patent is granted, or at such time during the pendency of the application as required by the Commissioner not earlier than six months after the filing of the application in this country. Such certification shall be made by the patent office of the foreign country in which filed and show the date of the application and of the filing of the specification and other papers. The Commissioner may require a translation of the papers filed if not in the English language and such other information as he deems necessary.

(c) In like manner and subject to the same conditions and requirements, the right provided in this section may be based upon a subsequent regularly filed application in the same foreign country instead of the first filed foreign application, provided that any foreign application filed prior to such subsequent application has been withdrawn, abandoned, or otherwise disposed of, without having been laid open to public inspection and without leaving any rights outstanding, and has not served, nor thereafter shall serve, as a basis for claiming a right of priority.

(d) Applications for inventors' certificates filed in a foreign country in which applicants have a right to apply, at their discretion, either for a patent or for an inventor's certificate shall be treated in this country in the same manner and have the same effect for purpose of the right of priority under this section as appli-

cations for patents, subject to the same conditions and requirements of this section as apply to applications for patents, provided such applicants are entitled to the benefits of the Stockholm Revision of the Paris Convention at the time of such filing.

(e)(1) An application for patent filed under section 111(a) or section 363 of this title for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in a provisional application filed under section 111(b) of this title, by an inventor or inventors named in the provisional application, shall have the same effect, as to such invention, as though filed on the date of the provisional application filed under section 111(b) of this title, if the application for patent filed under section 111(a) or section 363 of this title is filed not later than 12 months after the date on which the provisional application was filed and if it contains or is amended to contain a specific reference to the provisional application.

(2) A provisional application filed under section 111(b) of this title may not be relied upon in any proceeding in the Patent and Trademark Office unless the fee set forth in subparagraph (A) or (C) of section 41(a)(1) of this title has been paid and the provisional application was pending on the filing date of the application for patent under section 111(a) or section 363 of this title.

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CHAPTER 14—ISSUE OF PATENT

* * * * *

§ 154. Contents and term of patent

[Every patent shall contain a short title of the invention and a grant to the patentee, his heirs or assigns, for the term of seventeen years, subject to the payment of fees as provided for in this title, of the right to exclude others from making, using, or selling the invention throughout the United States, and, if the invention is a process, of the right to exclude others from using or selling throughout the United States, or importing into the United States, products made by that process, referring to the specification for the particulars thereof. A copy of the specification and drawings shall be annexed to the patent and be a part thereof.]

(a) In General.—

(1) Contents.—Every patent shall contain a short title of the invention and a grant to the patentee, his heirs or assigns, of the right to exclude others from making, using, offering for sale, or selling the invention throughout the United States or importing the invention into the United States, and, if the invention is a process, of the right to exclude others from using, offering for sale or selling throughout the United States, or importing into the United States, products made by that process, referring to the specification for the particulars thereof.

(2) Term.—Subject to the payment of fees under this title, such grant shall be for a term beginning on the date on which the patent issues and ending 20 years from the date on which the application for the patent was filed in the United States or, if the application contains a specific reference to an earlier filed application or applications under section 120, 121, or 365(c) of

this title, from the date on which the earliest such application was filed.

(3) Priority.—Priority under section 119, 365(a), or 365(b) of this title shall not be taken into account in determining the term of a patent.

(4) Specification and drawing.—A copy of the specification and drawing shall be annexed to the patent and be a part of such patent.

(b) Term Extension.—

(1) Interference delay or secrecy orders.—If the issue of an original patent is delayed due to a proceeding under section 135(a) of this title, or because the application for patent is placed under an order pursuant to section 181 of this title, the term of the patent shall be extended for the period of delay, but in no case more than 5 years.

(2) Extension for appellate review.—If the issue of a patent is delayed due to appellate review by the Board of Patent Appeals and Interferences or by a Federal court and the patent is issued pursuant to a decision in the review reversing an adverse determination of patentability, the term of the patent shall be extended for a period of time but in no case more than 5 years. A patent shall not be eligible for extension under this paragraph if it is subject to a terminal disclaimer due to the issue of another patent claiming subject matter that is not patentably distinct from that under appellate review.

(3) Limitations.—The period of extension referred to in paragraph (2)—

(A) shall include any period beginning on the date on which an appeal is filed under section 134 or 141 of this title, or on which an action is commenced under section 145 of this title, and ending on the date of a final decision in favor of the applicant;

(B) shall be reduced by any time attributable to appellate review before the expiration of 3 years from the filing date of the application for patent; and

(C) shall be reduced for the period of time during which the applicant for patent did not act with due diligence, as determined by the Commissioner.

(4) Length of extension.—The total duration of all extensions of a patent under this subsection shall not exceed 5 years.

(c) Continuation.—

(1) Determination.—The term of a patent that is in force on or that results from an application filed before the date that is 6 months after the date of the enactment of the Uruguay Round Agreements Act shall be the greater of the 20-year term as provided in subsection (a), or 17 years from grant, subject to any terminal disclaimers.

(2) Remedies.—The remedies of sections 283, 284, and 285 of this title shall not apply to Acts which—

(A) were commenced or for which substantial investment was made before the date that is 6 months after the date of the enactment of the Uruguay Round Agreements Act; and

(B) became infringing by reason of paragraph (1).

(3) Remuneration.—*The acts referred to in paragraph (2) may be continued only upon the payment of an equitable remuneration to the patentee that is determined in an action brought under chapter 28 and chapter 29 (other than those provisions excluded by paragraph (2)) of this title.*

* * * * *

§ 156. Extension of patent term

(a) The term of a patent which claims a product, a method of using a product, or a method of manufacturing a product shall be extended in accordance with this section from the original expiration date of the patent if—

(1) the term of the patent has not expired before an application is submitted under subsection (d)(1) for its extension;

(2) the term of the patent has never been extended under subsection (e)(1) of this section;

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CHAPTER 16—DESIGNS

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§ 172. Right of priority

The right of priority provided for by [section 119] subsections (a) through (d) of section 119 of this title and the time specified in section 102(d) shall be six months in the case of designs. *The right of priority provided for by section 119(e) of this title shall not apply to designs.*

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§ 173. Term of design patent

Patents for designs shall be granted for the term of fourteen years *from the date of grant.*

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CHAPTER 25—AMENDMENT AND CORRECTION OF PATENTS

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§ 252. Effect of reissue

The surrender of the original patent shall take effect upon the issue of the reissued patent, and every reissued patent shall have the same effect and operation in law, on the trial of actions for causes thereafter arising, as if the same had been originally granted in such amended form, but in so far as the claims of the original and reissued patents are identical, such surrender shall not affect any action then pending nor abate any cause of action then existing, and the reissued patent, to the extent that its claims are identical with the original patent, shall constitute a continuation thereof and have effect continuously from the date of the original patent.

[No reissued patent shall abridge or affect the right of any person or his successors in business who made, purchased or used

prior to the grant of a reissue anything patented by the reissued patent, to continue the use of, or to sell to others to be used or sold, the specific thing so made, purchased or used, unless the making, using or selling of such thing infringes a valid claim of the reissued patent which was in the original patent. The court before which such matter is in question may provide for the continued manufacture, use or sale of the thing made, purchased or used as specified, or for the manufacture, use or sale of which substantial preparation was made before the grant of the reissue, and it may also provide for the continued practice of any process patented by the reissue, practiced, or for the practice of which substantial preparation was made, prior to the grant of the reissue, to the extent and under such terms as the court deems equitable for the protection of investments made or business commenced before the grant of the reissue.]

A reissued patent shall not abridge or affect the right of any person or that person's successors in business who, prior to the grant of a reissue, made, purchased, offered to sell, or used within the United States, or imported into the United States, anything patented by the reissued patent, to continue the use of, to offer to sell, or to sell to others to be used, offered for sale, or sold, the specific thing so made, purchased, offered for sale, used, or imported unless the making, using, offering for sale, or selling of such thing infringes a valid claim of the reissued patent which was in the original patent. The court before which such matter is in question may provide for the continued manufacture, use, offer for sale, or sale of the thing made, purchased, offered for sale, used, or imported as specified, or for the manufacture, use, offer for sale, or sale in the United States of which substantial preparation was made before the grant of the reissue, and the court may also provide for the continued practice of any process patented by the reissue that is practiced, or for the practice of which substantial preparation was made, before the grant of the reissue, to the extent and under such terms as the court deems equitable for the protection of investments made or business commenced before the grant of the reissue.

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CHAPTER 26—OWNERSHIP AND ASSIGNMENT

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§ 262. Joint owners

In the absence of any agreement to the contrary, each of the joint owners of a patent may make, [use or sell] *use, offer to sell, or sell the patented invention within the United States or import the patented invention into the United States* without the consent of and without accounting to the other owners.

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CHAPTER 28—INFRINGEMENT OF PATENTS PT. III

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§ 271. Infringement of patent

(a) Except as otherwise provided in this title, whoever without authority makes, uses, *offers to sell*, or sells any patented invention, within the United States or *imports into the United States any patented invention* during the term of the patent therefor, infringes the patent.

* * * * *

(c) Whoever [sells] *offers to sell*, or *sells within the United States or imports into the United States* a component of a patented machine, manufacture, combination or composition, or a material or apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial noninfringing use, shall be liable as a contributory infringer.

* * * * *

(e)(1) It shall not be an act of infringement to make, use, [or sell] *offer to sell*, or *sell within the United States or import into the United States* a patented invention (other than a new animal drug or veterinary biological product (as those terms are used in the Federal Food, Drug, and Cosmetic Act and the Act of March 4, 1913) which is primarily manufactured using recombinant DNA, recombinant RNA, hybridoma technology, or other processes involving site specific genetic manipulation techniques) solely for uses reasonably related to the development and submission of information under a Federal law which regulates the manufacture, use, or sale of drugs or veterinary biological products.

* * * * *

(3) In any action for patent infringement brought under this section, no injunctive or other relief may be granted which would prohibit the making, using, [or selling] *offering to sell*, or *selling within the United States or importing into the United States* of a patented invention under paragraph (1).

(4) For an act of infringement described in paragraph (2)—

(A) the court shall order the effective date of any approval of the drug or veterinary biological product involved in the infringement to be a date which is not earlier than the date of the expiration of the patent which has been infringed,

(B) injunctive relief may be granted against an infringer to prevent the commercial manufacture, use, [or sale] *offer to sell*, or *sale within the United States or importation into the United States* of an approved drug or veterinary biological product, and

(C) damages or other monetary relief may be awarded against an infringer only if there has been commercial manufacture, use, [or sale] *offer to sell*, or *sale within the United States or importation into the United States* of an approved drug or veterinary biological product.

The remedies prescribed by subparagraphs (A), (B), and (C) are the only remedies which may be granted by a court for an act of in-

fringement described in paragraph (2), except that a court may award attorney fees under section 285.

* * * * *

(g) Whoever without authority imports into the United States or [sells] *offers to sell, sells,* or uses within the United States a product which is made by a process patented in the United States shall be liable as an infringer, if the importation, [sale,] *offer to sell, sale,* or use of the product occurs during the term of such process patent. In an action for infringement of a process patent, no remedy may be granted for infringement on account of the non-commercial use or retail sale of a product unless there is no adequate remedy under this title for infringement on account of the importation or [other use or] *other use, offer to sell, or sale* of that product. A product which is made by a patented process will, for purposes of this title, not be considered to be so made after—

* * * * *

(i) *As used in this section, an "offer for sale" or an "offer to sell" by a person other than the patentee, or any designee of the patentee, is that in which the sale will occur before the expiration of the term of the patent.*

§ 272. Temporary presence in the United States

The use of any invention in any vessel, aircraft or vehicle of any country which affords similar privileges to vessels, aircraft or vehicles of the United States, entering the United States temporarily or accidentally, shall not constitute infringement of any patent, if the invention is used exclusively for the needs of the vessel, aircraft or vehicle and is [not sold] *not offered for sale or sold* in or used for the manufacture of anything to be sold in or exported from the United States.

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CHAPTER 29—REMEDIES FOR INFRINGEMENT OF PATENT, AND OTHER ACTIONS

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§ 287. Limitation on damages and other remedies; marking and notice

(a) Patentees, and persons [making or selling] *making, offering for sale, or selling within the United States* any patented article for or under them, or *importing any patented article into the United States,* may give notice to the public that the same is patented, either by fixing thereon the word "patent" or the abbreviation "pat.," together with the number of the patent, or when, from the character of the article, this can not be done, by fixing to it, or to the package wherein one or more of them is contained, a label containing a like notice. In the event of failure so to mark, no damages shall be recovered by the patentee in any action for infringement, except on proof that the infringer was notified of the infringement and continued to infringe thereafter, in which event damages may be recovered only for infringement occurring after such notice. Filing of an action for infringement shall constitute such notice.

(b)(1) An infringer under section 271(g) shall be subject to all the provisions of this title relating to damages and injunctions except to the extent those remedies are modified by this subsection or section 9006 of the Process Patent Amendments Act of 1988. The modifications of remedies provided in this subsection shall not be available to any person who—

* * * * *

(C) had knowledge before the infringement that a patented process was used to make the product the importation, [use, or sale] *use, offer for sale, or sale* of which constitutes the infringement.

* * * * *

(4)(A) For purposes of this subsection, a “request for disclosure” means a written request made to a person then engaged in the manufacture of a product to identify all process patents owned by or licensed to that person, as of the time of the request, that the person then reasonably believes could be asserted to be infringed under section 271(g) if that product were imported into, or [sold or] *sold, offered for sale, or used in*, the United States by an unauthorized person. A request for disclosure is further limited to a request—

(i) which is made by a person regularly engaged in the United States in the sale of the same type of products as those manufactured by the person to whom the request is directed, or which includes facts showing that the person making the request plans to engage in the sale of such products in the United States;

(ii) which is made by such person before the person’s first importation, [use, or sale] *use, offer for sale, or sale* of units of the product produced by an infringing process and before the person had notice of infringement with respect to the product; and

* * * * *

(C) A person who has marked, in the manner prescribed by subsection (a), the number of the process patent on all products made by the patented process which [have been sold] *have been offered for sale or sold* by that person in the [United States before] *United States, or imported by the person into the United States, before* a request for disclosure is received is not required to respond to the request for disclosure. For purposes of the preceding sentence, the term “all products” does not include products made before the effective date of the Process Patent Amendments Act of 1988.

* * * * *

§ 292. False marking

(a) Whoever, without the consent of the patentee, marks upon, or affixes to, or uses in advertising in connection with anything made, [used, or sold by him] *used, offered for sale, or sold by such person within the United States, or imported by the person into the United States*, the name or any imitation of the name of the patentee, the patent number, or the words “patent,” “patentee,” or the

like, with the intent of counterfeiting or imitating the mark of the patentee, or of deceiving the public and inducing them to believe that the thing was [made or sold] *made, offered for sale, sold, or imported into the United States* by or with the consent of the patentee; or

* * * * *

§ 295. Presumption: Product made by patented process

In actions alleging infringement of a process patent based on the importation, [sale, or use] *sale, offer for sale, or use* of a product which is made from a process patented in the United States, if the court finds—

* * * * *

**CHAPTER 30—PRIOR ART CITATIONS TO OFFICE
AND REEXAMINATION OF PATENTS**

* * * * *

§ 307. Certificate of patentability, unpatentability, and claim cancellation

* * * * *

(b) Any proposed amended or new claim determined to be patentable and incorporated into a patent following a reexamination proceeding will have the same effect as that specified in section 252 of this title for reissued patents on the right of any person who made, purchased, or [used anything] *used within the United States, or imported into the United States, anything* patented by such proposed amended or new claim, or who made substantial preparation for the same, prior to issuance of a certificate under the provisions of subsection (a) of this section.

* * * * *

CHAPTER 36—INTERNATIONAL STAGE

* * * * *

§ 365. Right of priority; benefit of the filing date of a prior application

(a) In accordance with the conditions and requirements of [section 119] *subsections (a) through (d) of section 119* of this title, a national application shall be entitled to the right of priority based on a prior filed international application which designated at least one country other than the United States.

(b) In accordance with the conditions and requirements of [the first paragraph of section 119] *section 119(a)* of this title and the treaty and the Regulations, an international application designating the United States shall be entitled to the right of priority based on a prior foreign application, or a prior international application designating at least one country other than the United States.

* * * * *

CHAPTER 37—NATIONAL STAGE

* * * * *

§ 373. Improper applicant

An international application designating the United States, shall not be accepted by the Patent and Trademark Office for the national stage if it was filed by anyone not qualified under chapter 11 of this title to be an applicant for the purpose of filing a national application in the United States. Such international applications shall not serve as the basis for the benefit of an earlier filing date under section 120 of this title in a subsequently filed application, but may serve as the basis for a claim of the right of priority under [section 119] *subsections (a) through (d) of section 119* of this title, if the United States was not the sole country designated in such international application.

* * * * *

Title 47
Telegraphs, Telephones,
and Radiotelegraphs

* * * * *

CHAPTER 5—WIRE OR RADIO COMMUNICATION

* * * * *

§ 309. Application for license

* * * * *

(j) Use of competitive bidding

* * * * *

(13) Recovery of value of public spectrum in connection with pioneer preferences**(A) In general**

Notwithstanding paragraph (6)(G), the Commission shall not award licenses pursuant to a preferential treatment accorded by the Commission to persons who make significant contributions to the development of a new telecommunications service or technology, except in accordance with the requirements of this paragraph.

(B) Recovery of value

The Commission shall recover for the public a portion of the value of the public spectrum resource made available to such person by requiring such person, as a condition for receipt of the license, to agree to pay a sum determined by—

(i) identifying the winning bids for the licenses that the Commission determines are most reasonably comparable in terms of bandwidth, scope of service area, usage restrictions, and other technical character-

istics to the license awarded to such person, and excluding licenses that the Commission determines are subject to bidding anomalies due to the award of preferential treatment;

(ii) dividing each such winning bid by the population of its service area (hereinafter referred to as the per capita bid amount);

(iii) computing the average of the per capita bid amounts for the licenses identified under clause (i);

(iv) reducing such average amount by 15 percent; and

(v) multiplying the amount determined under clause (iv) by the population of the service area of the license obtained by such person.

(C) Installments permitted

The Commission shall require such person to pay the sum required by subparagraph (B) in a lump sum or in guaranteed installment payments, with or without royalty payments, over a period of not more than 5 years.

(D) Rulemaking on pioneer preferences

Except with respect to pending applications described in clause (iv) of this subparagraph, the Commission shall prescribe regulations specifying the procedures and criteria by which the Commission will evaluate applications for preferential treatment in its licensing processes (by precluding the filing of mutually exclusive applications) for persons who make significant contributions to the development of a new service or to the development of new technologies that substantially enhance an existing service. Such regulations shall—

(i) specify the procedures and criteria by which the significance of such contributions will be determined, after an opportunity for review and verification by experts in the radio sciences drawn from among persons who are not employees of the Commission or by any applicant for such preferential treatment;

(ii) include such other procedures as may be necessary to prevent unjust enrichment by ensuring that the value of any such contribution justifies any reduction in the amounts paid for comparable licenses under this subsection;

(iii) be prescribed not later than 6 months after the date of enactment of this paragraph;

(iv) not apply to applications that have been accepted for filing on or before September 1, 1994; and

(v) cease to be effective on the date of the expiration of the Commission's authority under subparagraph (F).

(E) Implementation with respect to pending applications

In applying this paragraph to any broadband licenses in the personal communications service awarded pursuant to the preferential treatment accorded by the Federal Communications Commission in the Third Report and Order in General Docket 90-314 (FCC 93-550, released February 3, 1994)—

(i) the Commission shall not reconsider the award of preferences in such Third Report and Order, and the Commission shall not delay the grant of licenses based on such awards more than 15 days following the date of enactment of this paragraph, and the award of such preferences and licenses shall not be subject to administrative or judicial review;

(ii) the Commission shall not alter the bandwidth or service areas designated for such licenses in such Third Report and Order;

(iii) except as provided in clause (v), the Commission shall use, as the most reasonably comparable licenses for purposes of subparagraph (B)(i), the broadband licenses in the personal communications service for blocks A and B for the 20 largest markets (ranked by population) in which no applicant has obtained preferential treatment;

(iv) for purposes of subparagraph (C), the Commission shall permit guaranteed installment payments over a period of 5 years, subject to—

(I) the payment only of interest on unpaid balances during the first 2 years, commencing not later than 30 days after the award of the license (including any preferential treatment used in making such award) is final and no longer subject to administrative or judicial review, except that no such payment shall be required prior to the date of completion of the auction of the comparable licenses described in clause (iii); and

(II) payment of the unpaid balance and interest thereon after the end of such 2 years in accordance with the regulations prescribed by the Commission; and

(v) the Commission shall recover with respect to broadband licenses in the personal communications service an amount under this paragraph that is equal to not less than \$400,000,000, and if such amount is less than \$400,000,000, the Commission shall recover an amount equal to \$400,000,000 by allocating such amount among the holders of such licenses based on the population of the license areas held by each licensee.

The Commission shall not include in any amounts required to be collected under clause (v) the interest on unpaid balances required to be collected under clause (iv).

(F) Expiration

The authority of the Commission to provide preferential treatment in licensing procedures (by precluding the filing of mutually exclusive applications) to persons who make significant contributions to the development of a new service or to the development of new technologies that substantially enhance an existing service shall expire on September 30, 1998.

(G) Effective Date

This paragraph shall be effective on the date of its enactment and apply to any licenses issued on or after August 1, 1994, by the Federal Communications Commission pursuant to any licensing procedure that provides preferential treatment (by precluding the filing of mutually exclusive applications) to persons who make significant contributions to the development of a new service or to the development of new technologies that substantially enhance an existing service.

* * * * *

AGRICULTURAL ACT OF 1949

* * * * *

SEC. 103B. [7 U.S.C. 1444-2] LOANS, PAYMENTS, AND ACREAGE REDUCTION PROGRAMS FOR THE 1991 THROUGH 1995 CROPS OF UPLAND COTTON.**(a) LOANS.—**

(1) * * *

* * * * *

(5) MARKETING LOAN PROVISIONS.—

(A) * * *

* * * * *

(F) SPECIAL IMPORT QUOTA.—

(i) **ESTABLISHMENT.**—The President shall, within 180 days after the date of enactment of [this section] *the Uruguay Round Agreements Act*, establish an import quota program which shall provide that, during the period beginning August 1991 and ending July 31 1996, whenever the Secretary determines and announces that for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced United States growth, as quoted for Middling (M) one and three-thirty seconds inch cotton, delivered C.I.F. Northern Europe, adjusted for the value of any certificates issued under subparagraph (E), exceeds the Northern Europe price by more than 1.25 cents per pound, there shall immediately be in effect a special [limited global] import quota.

* * * * *

(iv) **OVERLAP.**—A special quota period may be established that overlaps any existing quota period if required by clause (i), except that a special quota period may not be established under this paragraph if a [special] quota period has been established under subsection (n).

(v) **PREFERENTIAL TARIFF TREATMENT.**—*The quantity under a special import quota shall be considered to be an in-quota quantity for purposes of section 213(d) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(d)), section 204 of the Andean Trade Preference Act (19 U.S.C. 3203), section 503(d) of the Trade Act of 1974 (19 U.S.C. 2463(d)), and General Note 3(a)(iv) to the HTS.*

(vi) **DEFINITION.**—*As used in this subparagraph, the term “special import quota” means a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota.*

* * * * *

(n) **[SPECIAL] LIMITED GLOBAL IMPORT QUOTA.**—

(1) **IN GENERAL.**—The President shall, within 180 days after the date of enactment of [this section] *the Uruguay Round Agreements Act*, establish an import quota program which shall provide that whenever the Secretary determines and announces that the average price of the base quality of upland cotton, as determined by the Secretary, in the designated spot markets for a month exceeded 130 percent of the average price of such quality of cotton in such markets for the preceding 36 months, notwithstanding any other provision of law, there shall immediately be in effect a [special] limited global import quota subject to the following conditions:

(A) **QUANTITY.**—The quantity of the [special] quota shall be equal to 21 days of domestic mill consumption of upland cotton at the seasonally adjusted average rate of the most recent 3 months for which data are available.

(B) **QUANTITY IF PRIOR QUOTA.**—If a [special] quota has been established under this subsection during the preceding 12 months, the quantity of the quota next established under this subsection shall be the smaller of 21 days of domestic mill consumption calculated as set forth in subparagraph (A) or the quantity required to increase the supply to 130 percent of the demand.

(C) **PREFERENTIAL TARIFF TREATMENT.**—*The quantity under a limited global import quota shall be considered to be an in-quota quantity for purposes of section 213(d) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(d)), section 204 of the Andean Trade Preference Act (19 U.S.C. 3203), section 503(d) of the Trade Act of 1974 (19 U.S.C. 2463(d)), and General Note 3(a)(iv) to the HTS.*

[(C)](D) DEFINITIONS.—As used in subparagraph (B):

(i) **SUPPLY.**—* * *

* * * * *

(iii) *LIMITED GLOBAL IMPORT QUOTA.*—As used in this subsection, the term “limited global import quota” means a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota.

(D)¹ *QUOTA ENTRY PERIOD.*—When a special quota is established under this subsection, cotton may be entered under the quota during the 90-day period beginning on the date the special quota is established by the Secretary.

(2) *NO OVERLAP.*—Notwithstanding paragraph (1), a [special] quota period may not be established that overlaps an existing quota period or a special quota period established under subsection (a)(5)(F).

* * * * *

Sec. 106. [7 U.S.C. 1445] TOBACCO PRICE SUPPORT LEVELS FOR 1960 AND SUBSEQUENT YEARS

* * * * *

(g) [(1) Effective only for each of the 1991 through 1995 crops of tobacco for which price support is made available under this Act, producers and purchasers of such tobacco shall each remit to the Commodity Credit Corporation a nonrefundable marketing assessment in an amount equal to .5 percent of the national price support level for each such crop as otherwise provided for in this section.] (1) *Effective only for each of the 1994 through 1998 crops of tobacco for which price support is made available under this Act, each producer and purchaser of such tobacco, and each importer of the same kind of tobacco, shall remit to the Commodity Credit Corporation a nonrefundable marketing assessment in an amount equal to—*

(A) *in the case of a producer or purchaser of domestic tobacco, .5 percent of the national price support level for each such crop; and*

(B) *in the case of an importer of tobacco, 1 percent of the national support price for the same kind of tobacco; as provided for in this section.*

(2) Such producer [assessments and purchaser], purchaser, and importer assessments shall be—

* * * * *

[(h)(1) Effective only for each of the 1994 through 1998 crops of tobacco, an importer of tobacco that is produced outside the United States shall remit to the Commodity Credit Corporation a nonrefundable marketing assessment in an amount equal to the product obtained by multiplying—

[(A) the number of pounds of tobacco that is imported by the importer; by

[(B) the sum of—

[(i) the per pound marketing assessment imposed on purchasers of domestic Burley tobacco pursuant to subsection (g); and

¹To be redesignated “(E)” by technical amendment.

[(ii) the per pound marketing assessment imposed on purchasers of domestic Flue-cured tobacco pursuant to subsection (g).

[(2) An assessment imposed under this subsection shall be paid by the importer.

[(3)(A) The importer shall remit the assessment at such time and in such manner as may be prescribed by the Secretary.

[(B) If the importer fails to comply with subparagraph (A), the importer shall be liable, in addition, for a marketing penalty at a rate equal to 37.5 percent of the sum of the average market price (calculated to the nearest whole cent) of Flue-cured and Burley tobacco for the immediately preceding year on the quantity of tobacco as to which the failure occurs.

[(C) This subsection shall be enforced in the same manner as subparagraphs (B) and (C) of paragraph (1), and paragraphs (2) and (3), of section 106A(h).

[(4) Any penalty collected by the Secretary under this subsection shall be deposited for use by the Commodity Credit Corporation.]

* * * * *

AGRICULTURAL TRADE ACT OF 1978

* * * * *

SEC. 203. [7 U.S.C. 5623] MARKET PROMOTION PROGRAM.

* * * * *

(c) REQUIREMENTS FOR *PARTICIPATION*.—*To* [PARTICIPATION.—

[(1) IN GENERAL.—*To*] be eligible for cost-share assistance under this section, an organization shall—

[(A)] (1) be an eligible trade organization;

[(B)] (2) prepare and submit a marketing plan to the Secretary that meets the guidelines governing such plans established by the Secretary; and

[(C)] (3) meet any other requirements established by the Secretary.

[(2) UNFAIR TRADE PRACTICES.—

[(A) REQUIREMENT.—Except as provided in subparagraph (B), the Secretary shall provide assistance under this section only to counter or offset the adverse effects of a subsidy, import quota, or other unfair trade practice of a foreign country.

[(B) EXCEPTION.—The Secretary shall waive the requirements of this paragraph in the case of activities conducted by small entities operating through the regional State-related organizations.]

* * * * *

(f) OTHER TERMS AND CONDITIONS.—

* * * * *

(2) **TERMINATION OF ASSISTANCE.**—The Secretary may terminate any assistance made, or to be made, available under this section if the Secretary determines that—

* * * * *

(C) the eligible trade organization is not a adequately contributing its own resources to the marketing promotion program; *or*

[(D) the unfair trade practice that was the basis of the provision of assistance has been discontinued and marketing assistance is no longer required to offset its effects; *or*]

[(E)] (D) the Secretary determines that termination of assistance in a particular instance is in the best interests of the program.

* * * * *

[TITLE III—RESPONSE TO UNFAIR TRADE PRACTICES]

TITLE III—EXPORT ENHANCEMENT PROGRAM

SEC. 301. [7 U.S.C. 5651] EXPORT ENHANCEMENT PROGRAM.

[(a) **IN GENERAL.**—The Commodity Credit Corporation shall carry out in accordance with this section a program to discourage unfair trade practices by making United States agricultural commodities, including processed agricultural products and high-value agricultural products, competitive.]

(a) IN GENERAL.—The Commodity Credit Corporation shall carry out an export enhancement program in accordance with this section to encourage the commercial sale of United States agricultural commodities in world markets at competitive prices. The program shall be carried out in a market sensitive manner. Activities under the program shall not be limited to responses to unfair trade practices.”

* * * * *

(e) FUNDING LEVELS.—

(1) **IN GENERAL.**—The Commodity Credit Corporation shall make available for each of the fiscal years 1991 through [1995] 2001 not less than \$500,000,000 of the funds or commodities of the Commodity Credit Corporation to carry out the program established under this section.

* * * * *

*(g) **CONSISTENCY WITH INTERNATIONAL OBLIGATIONS.**—Notwithstanding any other provision of this section, the Commodity Credit Corporation shall administer and carry out the program authorized by this section in a manner consistent, as determined by the President, with the obligations undertaken by the United States set forth in the Uruguay Round Agreements.*

* * * * *

ANDEAN TRADE PREFERENCE ACT

* * * * *

TITLE II—TRADE PREFERENCE FOR THE ANDEAN REGION

* * * * *

SEC. 203. BENEFICIARY COUNTRY.

* * * * *

(d) **FACTORS AFFECTING DESIGNATION.**—In determining whether to designate any country a beneficiary country under this title, the President shall take into account—

* * * * *

(4) the degree to which such country follows the accepted rules of international trade provided for under the [General Agreement on Tariffs and Trade, as well as applicable trade agreements approved under section 2(a) of the Trade Agreements Act of 1979] *WTO Agreement and the multilateral trade agreements (as such terms are defined in paragraphs (9) and (4), respectively, of section 2 of the Uruguay Round Agreements Act)*;

* * * * *

SEC. 204. ELIGIBLE ARTICLES.

* * * * *

(f) **SECTION 22 FEES.**—No proclamation issued pursuant to this title shall affect fees imposed pursuant to section 22 of the Agricultural Adjustment Act of 1933 (7 U.S.C. 624).

(g) **TARIFF-RATE QUOTAS.**—*No quantity of an agricultural product subject to a tariff-rate quota that exceeds the in-quota quantity shall be eligible for duty-free treatment under this Act.*

* * * * *

CARIBBEAN BASIN ECONOMIC RECOVERY ACT

TITLE II—CARIBBEAN BASIN INITIATIVE

* * * * *

SEC. 212. BENEFICIARY COUNTRY.

* * * * *

(c) In determining whether to designate any country a beneficiary country under this title, the President shall take into account—

* * * * *

(4) the degree to which such country follows the accepted rules of international trade provided for under the [General Agreement on Tariffs and Trade, as well as applicable trade

agreements approved under section 2(a) of the Trade Agreements Act of 1979] *WTO Agreement and the multilateral trade agreements (as such terms are defined in paragraphs (9) and (4), respectively, of section 2 of the Uruguay Round Agreements Act)*;

* * * * *

SEC. 213. ELIGIBLE ARTICLES.

* * * * *

[(d) For such period as there is in effect a proclamation issued by the President pursuant to the authority vested in him by section 22 of the Agricultural Adjustment Act (7 U.S.C. 624) to protect a price-support program for sugar beets and sugar cane, the importation and duty-free treatment of sugars, sirups, and molasses classified under 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 States²³ shall be governed in the following manner:

[(1)(A) For all beneficiary countries, except those subject to subparagraph (B) and paragraph (2), duty-free treatment shall be provided in the same manner as it is provided pursuant to title V of the Trade Act of 1974 (19 U.S.C. 2461 et seq.), at the time of the effective date of this title; except that the President upon the recommendation of the Secretary of Agriculture, may suspend or adjust upward the value limitation provided for in section 504(c)(1) of the Trade Act of 1974 on the duty-free treatment afforded to beneficiary countries under this section if he finds that such adjustment will not interfere with the price support program for sugar beets and sugar cane and is appropriate in light of market conditions.

[(B) As an alternative to subparagraph (A), the President may at the request of a beneficiary country not subject to paragraph (2) and upon the recommendation of the Secretary of Agriculture, elect to permit sugar, sirups, and molasses from that country to enter duty-free during a calendar year subject to quantitative limitations to be established by the President on the quantity of sugar, sirups, and molasses entered from that country.

[(2) For the following countries whose exports of sugar, sirups, and molasses in 1981 were not eligible for duty-free treatment because of the operation of section 504(c) of the Trade Act of 1974, the quantity of sugar, sirups, and molasses which may be entered in any calendar year shall be limited to no more than the quantity specified below:

[(Metric tons:

[(Dominican Republic	780,000
[(Guatemala	210,000
[(Panama	160,000

[(Such sugar, sirups, and molasses shall be admitted free of duty, except as provided for in paragraph (3).

²³The text to this point beginning with "subheadings 1701.11.00" was inserted in lieu of "items 155.20 and 155.30 of the TSUS" by sec. 1214(q)(2)(C) of Public Law 100-418 (102 Stat. 1159).

[(3) The President, upon the recommendation of the Secretary of Agriculture, may suspend or adjust upward the quantitative limitations imposed under paragraph (1)(B) or (2) if he determines such action will not interfere with the price support program for sugar beets and sugar cane and is appropriate in light of market conditions. The President, upon the recommendation of the Secretary of Agriculture, may suspend the duty-free treatment for all or part of the quantity of sugar, sirups, and molasses permitted to be entered by paragraphs (1)(B) and (2) if such action is necessary to protect the price-support program for sugar beets and sugar cane.

[(4) Any quantitative limitation imposed on a beneficiary country under paragraphs (1)(B) and (2) shall apply only to the extent that such limitation permits a lesser quantity of sugar, sirups, and molasses to be entered from that country than the quantity that would be permitted to be entered under any other provision of law.]

(d) *TARIFF-RATE QUOTAS.*—No quantity of an agricultural product subject to a tariff-rate quota that exceeds the in-quota quantity shall be eligible for duty-free treatment under this title.

* * * * *

CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985

CUSTOMS USER FEES

* * * * *
(a) *MERCHANDISE PROCESSING FEES.*—* * *

* * * * *

(9)(A) For the processing of merchandise that is formally entered or released during any fiscal year, a fee in an amount equal to [0.17] 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 0.19 percent nor less than 0.15 percent) that would] (but not to a rate of more than 0.21 percent nor less than 0.15 percent) and the amounts specified in subsection (b)(8)(A)(i) (but not to more than \$485 nor less than \$21) to rates and amounts which would, if charged, offset the salaries and expenses that will likely be incurred by the Customs Service in the processing of such entries and releases during the fiscal year in which such costs are incurred.

(ii) In determining the amount of any adjustment under clause (i), the Secretary of the Treasury shall take into account whether there is a surplus or deficit in the fund established under [section 613A of the Tariff Act of 1930] subsection (f) with respect to the provision of customs services for the processing of formal entries and releases of merchandise.

* * * * *

(10) * * *

* * * * *

(C) a small airport or other facility to which section 236 of the Trade and Tariff Act of 1984 applies, if more than 25,000 informal entries were cleared through such airport or facility during the fiscal year preceding such [entry or release.] *entry or release,*

* * * * *

(ii) **[\$5] \$6** if the entry or release is manual and not prepared by customs personnel; or

(iii) **[\$8] \$9** if the entry or release, whether automated or manual, is prepared by customs personnel.

* * * * *

(b) LIMITATIONS ON FEES—* * *

* * * * *

(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 **[\$400 or be less than \$21] \$485 or be less than \$25, unless adjusted pursuant to subsection (a)(9)(B).**

* * * * *

EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

* * * * *

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Employee Retirement Income Security Act of 1974".

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TITLE I—PROTECTION OF EMPLOYEE BENEFIT RIGHTS

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* * * * *

PART 2—PARTICIPATION AND VESTING

* * * * *

MINIMUM VESTING STANDARDS

SEC. 203. (a) Each pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age and in addition shall satisfy the requirements of paragraphs (1) and (2) of this subsection.

* * * * *

(e)(1) If the present value of any nonforfeitable benefit with respect to a participant in a plan exceeds \$3,500, the plan shall provide that such benefit may not be immediately distributed without the consent of the participant.

[(2)(A) For purposes of paragraph (1), the present value shall be calculated—

[(i) by using an interest rate no greater than the applicable interest rate if the vested accrued benefit (using such rate) is not in excess of \$25,000, and

[(ii) by using an interest rate no greater than 120 percent of the applicable interest rate if the vested accrued benefit exceeds \$25,000 (as determined under clause (i)).

[In no event shall the present value determined under subclause (II) be less than \$25,000.

[(B) For purposes of subparagraph (A), the term "applicable interest rate" means the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.]

(2) For purposes of paragraph (1), the present value shall be calculated in accordance with section 205(g)(3).

* * * * *

BENEFIT ACCRUAL REQUIREMENTS

SEC. 204. (a) Each pension plan shall satisfy the requirements of subsection (b)(3), and—

* * * * *

(i)(1) In the case of a plan described in paragraph (3) which is maintained by an employer that is a debtor in a case under title 11, United States Code, or similar Federal or State law, no amendment of the plan which increases the liabilities of the plan by reason of—

(A) any increase in benefits,

(B) any change in the accrual of benefits, or

(C) any change in the rate at which benefits become nonforfeitable under the plan,

with respect to employees of the debtor, shall be effective prior to the effective date of such employer's plan of reorganization.

(2) Paragraph (1) shall not apply to any plan amendment that—

(A) the Secretary of the Treasury determines to be reasonable and that provides for only de minimis increases in the liabilities of the plan with respect to employees of the debtor,

(B) only repeals an amendment described in section 302(c)(8),

(C) is required as a condition of qualification under part I of subchapter D of chapter 1 of the Internal Revenue Code of 1986, or

(D) was adopted prior to, or pursuant to a collective bargaining agreement entered into prior to, the date on which the employer became a debtor in a case under title 11, United States Code, or similar Federal or State law.

(3) This subsection shall apply only to plans (other than multi-employer plans) covered under section 4021 of this Act for which the funded current liability percentage (within the meaning of section 302(d)(8) of this Act) is less than 100 percent after taking into account the effect of the amendment.

(4) For purposes of this subsection, the term "employer" has the meaning set forth in section 302(c)(11)(A), without regard to section 302(c)(11)(B).

[(i)] (j) CROSS REFERENCE.—

* * * * *

REQUIREMENT OF JOINT AND SURVIVOR ANNUITY AND PRERETIREMENT SURVIVOR ANNUITY

SEC. 205. (a) Each pension plan to which this section applies shall provide that—

* * * * *

(g)(1) A plan may provide that the present value of a qualified joint and survivor annuity or a qualified preretirement survivor annuity will be immediately distributed if such value does not exceed \$3,500. No distribution may be made under the preceding sentence after the annuity starting date unless the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consent in writing to such distribution.

(2) If—

(A) the present value of the qualified joint and survivor annuity or the qualified preretirement survivor annuity exceeds \$3,500, and

(B) the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consent in writing to the distribution,
the plan may immediately distribute the present value of such annuity.

[(3)(A) For purposes of paragraphs (1) and (2), the present value shall be calculated—

[(i) by using an interest rate no greater than the applicable interest rate if the vested accrued benefit (using such rate) is not in excess of \$25,000, and

[(ii) by using an interest rate no greater than 120 percent of the applicable interest rate if the vested accrued benefit exceeds \$25,000 (as determined under clause (i)).

[In no event shall the present value determined under subclause (II) be less than \$25,000.

[(B) For purposes of subparagraph (A), the term "applicable interest rate" means the interest rate which would be used (as of the

date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.]

(3) *DETERMINATION OF PRESENT VALUE.*—

(A) *IN GENERAL.*—

(i) *PRESENT VALUE.*—*Except as provided in subparagraph (B), for purposes of paragraphs (1) and (2), the present value shall not be less than the present value calculated by using the applicable mortality table and the applicable interest rate.*

(ii) *DEFINITIONS.*—*For purposes of clause (i)—*

(I) *APPLICABLE MORTALITY TABLE.*—*The term “applicable mortality table” means the table prescribed by the Secretary of the Treasury. Such table shall be based on the prevailing commissioners’ standard table (described in section 807(d)(5)(A) of the Internal Revenue Code of 1986) used to determine reserves for group annuity contracts issued on the date as of which present value is being determined (without regard to any other subparagraph of section 807(d)(5) of such Code).*

(II) *APPLICABLE INTEREST RATE.*—*The term “applicable interest rate” means the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary of the Treasury may by regulations prescribe.*

(B) *EXCEPTION.*—*In the case of a distribution from a plan that was adopted and in effect prior to the date of the enactment of the Retirement Protection Act of 1994, the present value of any distribution made before the earlier of—*

(i) *the later of when a plan amendment applying subparagraph (A) is adopted or made effective, or*

(ii) *the first day of the first plan year beginning after December 31, 1999,*

shall be calculated, for purposes of paragraphs (1) and (2), using the interest rate determined under the regulations of the Pension Benefit Guaranty Corporation for determining the present value of a lump sum distribution on plan termination that were in effect on September 1, 1993, and using the provisions of the plan as in effect on the day before such date of enactment; but only if such provisions of the plan met the requirements of section 205(g)(3) as in effect on the day before such date of enactment.

* * * * *

OTHER PROVISIONS RELATING TO FORM AND PAYMENT OF BENEFITS

SEC. 206. (a) Each pension plan shall provide that unless the participant otherwise elects, the payment of benefits under the plan to the participant shall begin not later than the 60th day after the latest of the close of the plan year in which—

* * * * *

(e) LIMITATION ON DISTRIBUTIONS OTHER THAN LIFE ANNUITIES PAID BY THE PLAN.—

(1) IN GENERAL.—Notwithstanding any other provision of this part, the fiduciary of a pension plan that is subject to the additional funding requirements of section 302(d) shall not permit a prohibited payment to be made from a plan during a period in which such plan has a liquidity shortfall (as defined in section 302(e)(5)).

(2) PROHIBITED PAYMENT.—For purposes of paragraph (1), the term “prohibited payment” means—

(A) any payment, in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 204(b)(1)(G)), to a participant or beneficiary whose annuity starting date (as defined in section 205(h)(2)), that occurs during the period referred to in paragraph (1),

(B) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits, and

(C) any other payment specified by the Secretary of the Treasury by regulations.

(3) PERIOD OF SHORTFALL.—For purposes of this subsection, a plan has a liquidity shortfall during the period that there is an underpayment of an installment under section 302(e) by reason of paragraph (5)(A) thereof.

(4) COORDINATION WITH OTHER PROVISIONS.—Compliance with this subsection shall not constitute a violation of any other provision of this Act.

(f) MISSING PARTICIPANTS IN TERMINATED PLANS.—In the case of a plan covered by title IV, the plan shall provide that, upon termination of the plan, benefits of missing participants shall be treated in accordance with section 4050.

* * * * *

PART 3—FUNDING

* * * * *

MINIMUM FUNDING STANDARDS

SEC. 302. (a)(1) Every employee pension benefit plan subject to this part shall satisfy the minimum funding standard (or the alternative minimum funding standard under section 305) for any plan year to which this part applies. A plan to which this part applies shall have satisfied the minimum funding standard for such plan for a plan year if as of the end of such plan year the plan does not have an accumulated funding deficiency.

* * * * *

(c)(1) For purposes of this part, normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

* * * * *

(5) **[If the funding method]**(A) *IN GENERAL.—If the funding method for a plan is changed, the new funding method shall be*

come the funding method used to determine costs and liabilities under the plan only if the change is approved by the Secretary of the Treasury. If the plan year for a plan is changed, the new plan year shall become the plan year for the plan only if the change is approved by the Secretary of the Treasury.

(B) APPROVAL REQUIRED FOR CERTAIN CHANGES IN ASSUMPTIONS BY CERTAIN SINGLE-EMPLOYER PLANS SUBJECT TO ADDITIONAL FUNDING REQUIREMENT.—

(i) *IN GENERAL.*—No actuarial assumption (other than the assumptions described in subsection (d)(7)(C)) used to determine the current liability for a plan to which this subparagraph applies may be changed without the approval of the Secretary of the Treasury.

(ii) *PLANS TO WHICH SUBPARAGRAPH APPLIES.*—This subparagraph shall apply to a plan only if—

(I) the plan is a defined benefit plan (other than a multiemployer plan) to which title IV applies;

(II) the aggregate unfunded vested benefits as of the close of the preceding plan year (as determined under section 4006(a)(3)(E)(iii)) of such plan and all other plans maintained by the contributing sponsors (as defined in section 4001(a)(13)) and members of such sponsors' controlled groups (as defined in section 4001(a)(14)) which are covered by title IV (disregarding plans with no unfunded vested benefits) exceed \$50,000,000; and

(III) the change in assumptions (determined after taking into account any changes in interest rate and mortality table) results in a decrease in the unfunded current liability of the plan for the current plan year that exceeds \$50,000,000, or that exceeds \$5,000,000 and that is 5 percent or more of the current liability of the plan before such change.

* * * * *

(6) If, as of the close of a plan year, a plan would (without regard to this paragraph) have an accumulated funding deficiency (determined without regard to the alternative minimum funding standard account permitted under section 305) in excess of the full funding limitation—

(A) the funding standard account shall be credited with the amount of such excess, and

(B) all amounts described in paragraphs (2), (B), (C), and (D) and (3)(B) of subsection (b) which are required to be amortized shall be considered fully amortized for purposes of such paragraphs.

(7) FULL-FUNDING LIMITATION.—

(A) *IN GENERAL.*—For purposes of paragraph (6), the term “full-funding limitation” means the excess (if any) of—

(i) the lesser of (I) 150 percent of current liability (including the expected increase in current liability due to benefits accruing during the plan year), or (II) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such

accrued liability cannot be directly calculated under the funding method used for the plan), over

(ii) the lesser of—

(I) the fair market value of the plan's assets, or

(II) the value of such assets determined under paragraph (2).

[(B) **CURRENT LIABILITY.**—For purposes of subparagraphs (A) and (D), the term “current liability” has the meaning given such term by subsection (d)(7) (without regard to subparagraph (D) thereof).]

(B) **CURRENT LIABILITY.**—*For purposes of subparagraph (D) and subclause (I) of subparagraph (A)(i), the term “current liability” has the meaning given such term by subsection (d)(7) (without regard to subparagraphs (C) and (D) thereof) and using the rate of interest used under subsection (b)(5)(B).*

(C) **SPECIAL RULE FOR PARAGRAPH (6)(B).**—For purposes of paragraph (6)(B), subparagraph (A)(i) shall be applied without regard to subclause (I) thereof.

(D) **REGULATORY AUTHORITY.**—The Secretary of the Treasury may by regulations provide—

(i) for adjustments to the percentage contained in subparagraph (A)(i) to take into account the respective ages or lengths of service of the participants,

(ii) alternative methods based on factors other than current liability for the determination of the amount taken into account under subparagraph (A)(i), and

(iii) for the treatment under this section of contributions which would be required to be made under the plan but for the provisions of subparagraph (A)(i)(I).

(E) **MINIMUM AMOUNT.**—

(i) **IN GENERAL.**—*In no event shall the full-funding limitation determined under subparagraph (A) be less than the excess (if any) of—*

(I) 90 percent of the current liability of the plan (including the expected increase in current liability due to benefits accruing during the plan year), over

(II) the value of the plan's assets determined under paragraph (2).

(ii) **CURRENT LIABILITY; ASSETS.**—*For purposes of clause (i)—*

(I) the term “current liability” has the meaning given such term by subsection (d)(7) (without regard to subparagraph (D) thereof), and

(II) assets shall not be reduced by any credit balance in the funding standard account.

* * * * *

(12) **ANTICIPATION OF BENEFIT INCREASES EFFECTIVE IN THE FUTURE.**—*In determining projected benefits, the funding method of a collectively bargained plan described in section 413(a) (other than a multiemployer plan) shall anticipate benefit increases scheduled to take effect during the term of the collective bargaining agreement applicable to the plan.*

* * * * *

(d) ADDITIONAL FUNDING REQUIREMENTS FOR PLANS WHICH ARE NOT MULTIEMPLOYER PLANS.—

(1) **IN GENERAL.**—In the case of a defined benefit plan (other than a multiemployer plan) [which has an unfunded current liability] to which this subsection applies under paragraph (a) for any plan year, the amount charged to the funding standard account for such plan year shall be increased by the sum of—

(A) the excess (if any) of—

(i) the deficit reduction contribution determined under paragraph (2) for such plan year, over

[(ii) the sum of the charges for such plan year under subparagraphs (B) (other than clauses (iv) and (v) thereof), (C), and (D) of subsection (b)(2), reduced by the sum of the credits for such plan year under subparagraph (B)(i) of subsection (b)(3), plus]

(ii) the sum of the charges for such plan year under subsection (b)(2), reduced by the sum of the credits for such plan year under subparagraph (B) of subsection (b)(3), plus

(B) the unpredictable contingent event amount (if any) for such plan year.

[Such increase shall not exceed the amount necessary to increase the funded current liability percentage to 100 percent.] Such increase shall not exceed the amount which, after taking into account charges (other than the additional charge under this subsection) and credits under subsection (b), is necessary to increase the funded current liability percentage (taking into account the expected increase in current liability due to benefits accruing during the plan year) to 100 percent.

(2) **DEFICIT REDUCTION CONTRIBUTION.**—For purposes of paragraph (1), the deficit reduction contribution determined under this paragraph for any plan year is the sum of—

(A) the unfunded old liability amount, [plus]

(B) the unfunded new liability amount[.],

(C) the expected increase in current liability due to benefits accruing during the plan year, and

(D) the aggregate of the unfunded mortality increase amounts.

(3) **UNFUNDED OLD LIABILITY AMOUNT.**—For purposes of this subsection—

* * * * *

(D) **SPECIAL RULE FOR REQUIRED CHANGES IN ACTUARIAL ASSUMPTIONS.**—

(i) **IN GENERAL.**—The unfunded old liability amount with respect to any plan for any plan year shall be increased by the amount necessary to amortize the amount of additional unfunded old liability under the plan in equal annual installments over a period of 12 plan years (beginning with the first plan year beginning after December 31, 1994).

(ii) **ADDITIONAL UNFUNDED OLD LIABILITY.**—For purposes of clause (i), the term “additional unfunded old liability” means the amount (if any) by which—

(I) the current liability of the plan as of the beginning of the first plan year beginning after December 31, 1994, valued using the assumptions required by paragraph (7)(C) as in effect for plan years beginning after December 31, 1994, exceeds

(II) the current liability of the plan as of the beginning of such first plan year, valued using the same assumptions used under subclause (I) (other than the assumptions required by paragraph (7)(C)), using the prior interest rate, and using such mortality assumptions as were used to determine current liability for the first plan year beginning after December 31, 1992.

(iii) **PRIOR INTEREST RATE.**—For purposes of clause (ii), the term “prior interest rate” means the rate of interest that is the same percentage of the weighted average under subsection (b)(5)(B)(ii)(I) for the first plan year beginning after December 31, 1994, as the rate of interest used by the plan to determine current liability for the first plan year beginning after December 31, 1992, is of the weighted average under subsection (b)(5)(B)(ii)(I) for such first plan year beginning after December 31, 1992.

(E) **OPTIONAL RULE FOR ADDITIONAL UNFUNDED OLD LIABILITY.**—

(i) **IN GENERAL.**—If an employer makes an election under clause (ii), the additional unfunded old liability for purposes of subparagraph (D) shall be the amount (if any) by which—

(I) the unfunded current liability of the plan as of the beginning of the first plan year beginning after December 31, 1994, valued using the assumptions required by paragraph (7)(C) as in effect for plan years beginning after December 31, 1994, exceeds

(II) the unamortized portion of the unfunded old liability under the plan as of the beginning of the first plan year beginning after December 31, 1994.

(ii) **ELECTION.**—

(I) An employer may irrevocably elect to apply the provisions of this subparagraph as of the beginning of the first plan year beginning after December 31, 1994.

(II) If an election is made under this clause, the increase under paragraph (1) for any plan year beginning after December 31, 1994, and before January 1, 2002, to which this subsection applies (without regard to this subclause) shall not be less than the increase that would be required under paragraph (1) if the provisions of this title as in effect for the last plan year beginning before January 1, 1995, had remained in effect.

(4) UNFUNDED NEW LIABILITY AMOUNT.—For purposes of this subsection—

(A) IN GENERAL.—The unfunded new liability amount with respect to any plan for any plan year is the applicable percentage of the unfunded new liability.

(B) UNFUNDED NEW LIABILITY.—The term “unfunded new liability” means the unfunded current liability of the plan for the plan year determined without regard to—

(i) the unamortized portion of the unfunded old liability, *the unamortized portion of the additional unfunded old liability, the unamortized portion of each unfunded mortality increase*, and the unamortized portion of the unfunded existing benefit increase liability, and

(ii) the liability with respect to any unpredictable contingent event benefits (without regard to whether the event has occurred).

(C) APPLICABLE PERCENTAGE.—The term “applicable percentage” means, with respect to any plan year, 30 percent, reduced by the product of—

(i) [.25] .40 multiplied by

(ii) the number of percentage points (if any) by which the funded current liability percentage exceeds [35] 60 percent.

(5) UNPREDICTABLE CONTINGENT EVENT AMOUNT.—

(A) IN GENERAL.—The unpredictable contingent event amount with respect to a plan for any plan year is an amount equal to the [greater of] *greatest of*—

(i) the applicable percentage of the product of—

(I) 100 percent, reduced (but not below zero) by the funded current liability percentage for the plan year, multiplied by

(II) the amount of unpredictable contingent event benefits paid during the plan year, including (except as provided by the Secretary of the Treasury) any payment for the purchase of an annuity contract for a participant or beneficiary with respect to such benefits, [or]

(ii) the amount which would be determined for the plan year if the unpredictable contingent event benefit liabilities were amortized in equal annual installments over 7 plan years (beginning with the plan year in which such event occurs)[.], or

(iii) *the additional amount that would be determined under paragraph (4)(A) if the unpredictable contingent event benefit liabilities were included in unfunded new liability notwithstanding paragraph (4)(B)(ii).*

* * * * *

(E) LIMITATION.—*The present value of the amounts described in subparagraph (A) with respect to any one event*

shall not exceed the unpredictable contingent event benefit liabilities attributable to that event.

* * * * *
 (7) CURRENT LIABILITY.—For purposes of this subsection—

* * * * *
 [(C) INTEREST RATES USED.—The rate of interest used to determine current liability shall be the rate of interest used under subsection (b)(5).]

(C) INTEREST RATE AND MORTALITY ASSUMPTIONS USED.—Effective for plan years beginning after December 31, 1994—

(i) INTEREST RATE.—

(I) IN GENERAL.—The rate of interest used to determine current liability under this subsection shall be the rate of interest used under subsection (b)(5), except that the highest rate in the permissible range under subparagraph (B)(ii) thereof shall not exceed the specified percentage under subclause (II) of the weighted average referred to in such subparagraph.

(II) SPECIFIED PERCENTAGE.—For purposes of subclause (I), the specified percentage shall be determined as follows:

<i>In the case of plan years beginning in calendar year:</i>	<i>The specified percentage is:</i>
1995	109
1996	108
1997	107
1998	106
1999 and thereafter	105

(ii) MORTALITY TABLES.—

(I) COMMISSIONERS' STANDARD TABLE.—In the case of plan years beginning before the first plan year to which the first tables prescribed under subclause (II) apply, the mortality table used in determining current liability under this subsection shall be the table prescribed by the Secretary of the Treasury which is based on the prevailing commissioners' standard table (described in section 807(d)(5)(A) of the Internal Revenue Code of 1986) used to determine reserves for group annuity contracts issued on January 1, 1993.

(II) SECRETARIAL AUTHORITY.—The Secretary of the Treasury may by regulation prescribe for plan years beginning after December 31, 1999, mortality tables to be used in determining current liability under this subsection. Such tables shall be based upon the actual experience of pension plans and projected trends in such experience. In prescribing such tables, the Secretary of the Treasury shall take into account results of available independent studies of mortality of individuals covered by pension plans.

(III) PERIODIC REVIEW.—*The Secretary of the Treasury shall periodically (at least every 5 years) review any tables in effect under this subsection and shall, to the extent the Secretary determines necessary, by regulation update the tables to reflect the actual experience of pension plans and projected trends in such experience.*

(iii) SEPARATE MORTALITY TABLES FOR THE DISABLED.—*Notwithstanding clause (ii)—*

(I) IN GENERAL.—*In the case of plan years beginning after December 31, 1995, the Secretary of the Treasury shall establish mortality tables which may be used (in lieu of the tables under clause (ii)) to determine current liability under this subsection for individuals who are entitled to benefits under the plan on account of disability. Such Secretary shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after such date.*

(II) SPECIAL RULE FOR DISABILITIES OCCURRING AFTER 1994.—*In the case of disabilities occurring in plan years beginning after December 31, 1994, the tables under subclause (I) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.*

(III) PLAN YEARS BEGINNING IN 1995.—*In the case of any plan year beginning in 1995, a plan may use its own mortality assumptions for individuals who are entitled to benefits under the plan on account of disability.*

* * * * *

(9) APPLICABILITY OF SUBSECTION.—

(A) IN GENERAL.—*Except as provided in paragraph (6)(A), this subsection shall apply to a plan for any plan year if its funded current liability percentage for such year is less than 90 percent.*

(B) EXCEPTION FOR CERTAIN PLANS AT LEAST 80 PERCENT FUNDED.—*Subparagraph (A) shall not apply to a plan for a plan year if—*

(i) *the funded current liability percentage for the plan year is at least 80 percent, and*

(ii) *such percentage for each of the 2 immediately preceding plan years (or each of the 2d and 3d immediately preceding plan years) is at least 90 percent.*

(C) FUNDED CURRENT LIABILITY PERCENTAGE.—*For purposes of subparagraphs (A) and (B), the term “funded current liability percentage” has the meaning given such term by paragraph (8)(B), except that such percentage shall be determined for any plan year—*

(i) *without regard to paragraph (8)(E), and*

(ii) by using the rate of interest which is the highest rate allowable for the plan year under paragraph (7)(C).

(D) **TRANSITION RULES.**—For purposes of this paragraph—

(i) **FUNDED PERCENTAGE FOR YEARS BEFORE 1995.**—The funded current liability percentage for any plan year beginning before January 1, 1995, shall be treated as not less than 90 percent only if for such plan year the plan met one of the following requirements (as in effect for such year):

(I) The full-funding limitation under subsection (c)(7) for the plan was zero.

(II) The plan had no additional funding requirement under this subsection (or would have had no such requirement if its funded current liability percentage had been determined under subparagraph (C)).

(III) The plan's additional funding requirement under this subsection did not exceed the lesser of 0.5 percent of current liability or \$5,000,000.

(ii) **SPECIAL RULE FOR 1995 AND 1996.**—For purposes of determining whether subparagraph (B) applies to any plan year beginning in 1995 or 1996, a plan shall be treated as meeting the requirements of subparagraph (B)(ii) if the plan met the requirements of clause (i) of this subparagraph for any two of the plan years beginning in 1992, 1993, and 1994 (whether or not consecutive).

(10) **UNFUNDED MORTALITY INCREASE AMOUNT.**—

(A) **IN GENERAL.**—The unfunded mortality increase amount with respect to each unfunded mortality increase is the amount necessary to amortize such increase in equal annual installments over a period of 10 plan years (beginning with the first plan year for which a plan uses any new mortality table issued under paragraph (7)(C)(ii)(II) or (III)).

(B) **UNFUNDED MORTALITY INCREASE.**—For purposes of subparagraph (A), the term “unfunded mortality increase” means an amount equal to the excess of—

(i) the current liability of the plan for the first plan year for which a plan uses any new mortality table issued under paragraph (7)(C)(ii)(II) or (III), over

(ii) the current liability of the plan for such plan year which would have been determined if the mortality table in effect for the preceding plan year had been used.

(11) **PHASE-IN OF INCREASES IN FUNDING REQUIRED BY RETIREMENT PROTECTION ACT OF 1994.**—

(A) **IN GENERAL.**—For any applicable plan year, at the election of the employer, the increase under paragraph (1) shall not exceed the greater of—

(i) the increase that would be required under paragraph (1) if the provisions of this title as in effect for

plan years beginning before January 1, 1995, had remained in effect, or

(ii) the amount which, after taking into account charges (other than the additional charge under this subsection) and credits under subsection (b), is necessary to increase the funded current liability percentage (taking into account the expected increase in current liability due to benefits accruing during the plan year) for the applicable plan year to a percentage equal to the sum of the initial funded current liability percentage of the plan plus the applicable number of percentage points for such applicable plan year.

(B) APPLICABLE NUMBER OF PERCENTAGE POINTS.—

(i) INITIAL FUNDED CURRENT LIABILITY PERCENTAGE OF 75 PERCENT OR LESS.—Except as provided in clause (ii), for plans with an initial funded current liability percentage of 75 percent or less, the applicable number of percentage points for the applicable plan year is:

In the case of applicable plan years beginning in:	The applicable number of percentage points is:
1995	3
1996	6
1997	9
1998	12
1999	15
2000	19
2001	24

(ii) OTHER CASES.—In the case of a plan to which this clause applies, the applicable number of percentage points for any such applicable plan year is the sum of—

(I) 2 percentage points;

(II) the applicable number of percentage points (if any) under this clause for the preceding applicable plan year;

(III) the product of .10 multiplied by the excess (if any) of (a) 85 percentage points over (b) the sum of the initial funded current liability percentage and the number determined under subclause (II);

(IV) for applicable plan years beginning in 2000, 1 percentage point; and

(V) for applicable plan years beginning in 2001, 2 percentage points.

(iii) PLANS TO WHICH CLAUSE (ii) APPLIES.—

(I) IN GENERAL.—Clause (ii) shall apply to a plan for an applicable plan year if the initial funded current liability percentage of such plan is more than 75 percent.

(II) PLANS INITIALLY UNDER CLAUSE (i).—In the case of a plan which (but for this subclause) has an initial funded current liability percentage of 75 percent or less, clause (ii) (and not clause (i)) shall apply to such plan with respect to applicable

plan years beginning after the first applicable plan year for which the sum of the initial funded current liability percentage and the applicable number of percentage points (determined under clause (i)) exceeds 75 percent. For purposes of applying clause (ii) to such a plan, the initial funded current liability percentage of such plan shall be treated as being the sum referred to in the preceding sentence.

(C) **DEFINITIONS.**—*For purposes of this paragraph—*

(i) *The term “applicable plan year” means a plan year beginning after December 31, 1994, and before January 1, 2002.*

(ii) *The term “initial funded current liability percentage” means the funded current liability percentage as of the first day of the first plan year beginning after December 31, 1994.*

(e) **QUARTERLY CONTRIBUTIONS REQUIRED.**—

(1) **IN GENERAL.**—*If a defined benefit plan (other than a multiemployer plan) which has a funded current liability percentage (as defined in subsection (d)(8)) for the preceding plan year of less than 100 percent fails to pay the full amount of a required installment for [any plan year] the plan year, then the rate of interest charged to the funding standard account under subsection (b)(5) with respect to the amount of the underpayment for the period of the underpayment shall be equal to the greater of—*

* * * * *

(4) **AMOUNT OF REQUIRED INSTALLMENT.**—*For purposes of this subsection—*

* * * * *

(D) **SPECIAL RULES FOR UNPREDICTABLE CONTINGENT EVENT BENEFITS.**—*In the case of a plan to which subsection (d) applies for any calendar year and which has any unpredictable contingent event benefit liabilities—*

(i) **LIABILITIES NOT TAKEN INTO ACCOUNT.**—*Such liabilities shall not be taken into account in computing the required annual payment under subparagraph (B).*

(ii) **INCREASE IN INSTALLMENTS.**—*Each required installment shall be increased by the [greater of] greatest of—*

(I) *the unfunded percentage of the amount of benefits described in subsection (d)(5)(A)(i) paid during the 3-month period preceding the month in which the due date for such installment occurs, [or]*

(II) *25 percent of the amount determined under subsection (d)(5)(A)(ii) for the plan year[.], or*

(III) *25 percent of the amount determined under subsection (d)(5)(A)(iii) for the plan year.*

(iii) **UNFUNDED PERCENTAGE.**—*For purposes of clause (ii)(I), the term “unfunded percentage” means*

the percentage determined under subsection (d)(5)(A)(i)(I) for the plan year.

(iv) **LIMITATION ON INCREASE.**—In no event shall the increases under clause (ii) exceed the amount necessary to increase the funded current liability percentage (within the meaning of subsection (d)(8)(B)) for the plan year to 100 percent.

(5) **LIQUIDITY REQUIREMENT.**—

(A) **IN GENERAL.**—A plan to which this paragraph applies shall be treated as failing to pay the full amount of any required installment to the extent that the value of the liquid assets paid in such installment is less than the liquidity shortfall (whether or not such liquidity shortfall exceeds the amount of such installment required to be paid but for this paragraph).

(B) **PLANS TO WHICH PARAGRAPH APPLIES.**—This paragraph shall apply to a defined benefit plan (other than a multiemployer plan or a plan described in subsection (d)(6)(A)) which—

(i) is required to pay installments under this subsection for a plan year, and

(ii) has a liquidity shortfall for any quarter during such plan year.

(C) **PERIOD OF UNDERPAYMENT.**—For purposes of paragraph (1), any portion of an installment that is treated as not paid under subparagraph (A) shall continue to be treated as unpaid until the close of the quarter in which the due date for such installment occurs.

(D) **LIMITATION ON INCREASE.**—If the amount of any required installment is increased by reason of subparagraph (A), in no event shall such increase exceed the amount which, when added to prior installments for the plan year, is necessary to increase the funded current liability percentage (taking into account the expected increase in current liability due to benefits accruing during the plan year) to 100 percent.

(E) **DEFINITIONS.**—For purposes of this paragraph—

(i) **LIQUIDITY SHORTFALL.**—The term “liquidity shortfall” means, with respect to any required installment, an amount equal to the excess (as of the last day of the quarter for which such installment is made) of the base amount with respect to such quarter over the value (as of such last day) of the plan’s liquid assets.

(ii) **BASE AMOUNT.**—

(I) **IN GENERAL.**—The term “base amount” means, with respect to any quarter, an amount equal to 3 times the sum of the adjusted disbursements from the plan for the 12 months ending on the last day of such quarter.

(II) **SPECIAL RULE.**—If the amount determined under clause (i) exceeds an amount equal to 2 times the sum of the adjusted disbursements from the plan for the 36 months ending on the last day of the quarter and an enrolled actuary certifies to

the satisfaction of the Secretary of the Treasury that such excess is the result of nonrecurring circumstances, the base amount with respect to such quarter shall be determined without regard to amounts related to those nonrecurring circumstances.

(iii) **DISBURSEMENTS FROM THE PLAN.**—*The term “disbursements from the plan” means all disbursements from the trust, including purchases of annuities, payments of single sums and other benefits, and administrative expenses.*

(iv) **ADJUSTED DISBURSEMENTS.**—*The term “adjusted disbursements” means disbursements from the plan reduced by the product of—*

(I) *the plan’s funded current liability percentage (as defined in subsection (d)(8)) for the plan year, and*

(II) *the sum of the purchases of annuities, payments of single sums, and such other disbursements as the Secretary of the Treasury shall provide in regulations.*

(v) **LIQUID ASSETS.**—*The term “liquid assets” means cash, marketable securities and such other assets as specified by the Secretary of the Treasury in regulations.*

(vi) **QUARTER.**—*The term “quarter” means, with respect to any required installment, the 3-month period preceding the month in which the due date for such installment occurs.*

(F) **REGULATIONS.**—*The Secretary of the Treasury may prescribe such regulations as are necessary to carry out this paragraph.*

[(5)] (6) FISCAL YEARS AND SHORT YEARS.—

(A) **FISCAL YEARS.**—*In applying this subsection to a plan year beginning on any date other than January 1, there shall be substituted for the months specified in this subsection, the months which correspond thereto.*

(B) **SHORT PLAN YEAR.**—*This section shall be applied to plan years of less than 12 months in accordance with regulations prescribed by the Secretary of the Treasury.*

(f) **IMPOSITION OF LIEN WHERE FAILURE TO MAKE REQUIRED CONTRIBUTIONS.**—

(1) **IN GENERAL.**—*In the case of a plan [to which this section applies,] if—*

(A) *any person fails to make a required installment under subsection (e) or any other payment required under this section before the due date for such installment or other payment, and*

(B) *the unpaid balance of such installment or other payment (including interest), when added to the aggregate unpaid balance of all preceding such installments or other payments for which payment was not made before the due date (including interest), exceeds \$1,000,000,*

then there shall be a lien in favor of the plan in the amount determined under paragraph (3) upon all property and rights to property, whether real or personal, belonging to such person and any other person who is a member of the same controlled group of which such person is a member.

(2) **PLANS TO WHICH SUBSECTION APPLIES.**—This subsection shall apply to a defined benefit plan (other than a multiemployer plan) for any plan year for which the funded current liability percentage (within the meaning of subsection (d)(8)(B)) of such plan is less than 100 percent.

[(3) **AMOUNT OF LIEN.**—For purposes of paragraph (1), the amount of the lien shall be equal to the lesser of—

[(A) the amount by which the unpaid balances described in paragraph (1)(B) (including interest) exceed \$1,000,000, or

[(B) the aggregate unpaid balance of required installments and other payments required under this section (including interest)—

[(i) for plan years beginning after 1987, and

[(ii) for which payment has not been made before the due date.]

(3) **AMOUNT OF LIEN.**—For purposes of paragraph (1), the amount of the lien shall be equal to the aggregate unpaid balance of required installments and other payments required under this section (including interest)—

(A) for plan years beginning after 1987, and

(B) for which payment has not been made before the due date.

(4) **NOTICE OF FAILURE; LIEN.**—

(A) **NOTICE OF FAILURE.**—A person committing a failure described in paragraph (1) shall notify the Pension Benefit Guaranty Corporation of such failure within 10 days of the due date for the required installment or other payment.

(B) **PERIOD OF LIEN.**—The lien imposed by paragraph (1) shall arise on the [60th day following the] due date for the required installment or other payment and shall continue until the last day of the first plan year in which the plan ceases to be described in paragraph (1)(B). Such lien shall continue to run without regard to whether such plan continues to be described in paragraph (2) during the period referred to in the preceding sentence.

* * * * *

PART 5—ADMINISTRATION AND ENFORCEMENT

* * * * *

CIVIL ENFORCEMENT

SEC. 502. (a) A civil action may be brought—

* * * * *

(1)(1) In the case of—

* * * * *

(m) In the case of a distribution to a pension plan participant or beneficiary in violation of section 206(e) by a plan fiduciary, the Secretary shall assess a penalty against such fiduciary in an amount equal to the value of the distribution. Such penalty shall not exceed \$10,000 for each such distribution.

* * * * *

TITLE IV—PLAN TERMINATION INSURANCE

SUBTITLE A—PENSION BENEFIT GUARANTY CORPORATION

DEFINITIONS

SEC. 4001. (a) For purposes of this title, the term—

* * * * *

(13) “contributing sponsor”, of a single-employer plan, [means a person—]

[(A) who is responsible, in connection with such plan, for meeting the funding requirements under section 302 of this Act or section 412 of the Internal Revenue Code of 1986, or

[(B) who is a member of the controlled group of a person described in subparagraph (A), has been responsible for meeting such funding requirements, and has employed a significant number (as may be defined in regulations of the corporation) of participants under such plan while such person was so responsible;] *means a person described in section 302(c)(11)(A) of this Act (without regard to section 302(c)(11)(B) of this Act) or section 412(c)(11)(A) of the Internal Revenue Code of 1986 (without regard to section 412(c)(11)(B) of such Code).*

* * * * *

INVESTIGATORY AUTHORITY; COOPERATION WITH OTHER AGENCIES; CIVIL ACTIONS

SEC. 4003. (a) The corporation may make such investigations as it deems necessary to enforce any provision of this title or any rule or regulation thereunder, and may require or permit any person to file with it a statement in writing, under oath or otherwise as the corporation shall determine, as to all the facts and circumstances concerning the matter to be investigated. The corporation shall annually audit a statistically significant number of plans terminating under section 4041(b) to determine whether participants and beneficiaries have received their benefit commitments and whether section 4050(a) has been satisfied. Each audit shall include a statistically significant number of participants and beneficiaries.

* * * * *

(e)(1) Civil actions may be brought by the corporation for appropriate relief, legal or equitable or both, to enforce (A) the provisions of this title[.], and (B) in the case of a plan which is covered under this title (other than a multiemployer plan) and for which the conditions for imposition of a lien described in section 302(f)(1)(A)

and (B) of this Act or section 412(n)(1)(A) and (B) of the Internal Revenue Code of 1986 have been met, section 302 of this Act and section 412 of such Code.

* * * * *

ESTABLISHMENT OF PENSION BENEFIT GUARANTY FUNDS

SEC. 4005. (a) There are established on the books of the Treasury of the United States four revolving funds to be used by the corporation in carrying out its duties under this title. One of the funds shall be used with respect to basic benefits guaranteed under section 4022, one of the funds shall be used with respect to basic benefits guaranteed under section 4022A, one of the funds shall be used with respect to nonbasic benefits guaranteed under section 4022 (if any), and the remaining fund shall be used with respect to nonbasic benefits guaranteed under section 4022A (if any), other than subsection (g)(2) thereof (if any). Whenever in this title reference is made to the term "fund" the reference shall be considered to refer to the appropriate fund established under this subsection.

(b)(1) Each fund established under this section shall be credited with the appropriate portion of—

* * * * *

(2) Subject to the provisions of subsection (a), each fund shall be available—

(A) for making such payments as the corporation determines are necessary to pay benefits guaranteed under section 4022 or 4022A or benefits payable under section 4050,

* * * * *

PREMIUM RATES

SEC. 4006. (a)(1) * * *

* * * * *

(3)(A) Except as provided in subparagraph (C), the annual premium rate payable to the corporation by all plans for basic benefits guaranteed under this title is—

* * * * *

(E)(i) The additional premium determined under this subparagraph with respect to any plan for any plan year shall be an amount equal to the amount determined under clause (ii) divided by the number of participants in such plan as of the close of the preceding plan year.

(ii) The amount determined under this clause for any plan year shall be an amount equal to \$9.00 for each \$1,000 (or fraction thereof) of unfunded vested benefits under the plan as of the close of the preceding plan year.

(iii) For purposes of clause (ii)—

(I) Except as provided in subclause (II) or (III), the term "unfunded vested benefits" means the amount which would be the unfunded current liability (within the meaning of section 302(d)(8)(A)) if only vested benefits were taken into account.

(II) The interest rate used in valuing vested benefits for purposes of subclause (I) shall be equal to [80 percent] the ap-

applicable percentage of the annual yield on 30-year Treasury securities for the month preceding the month in which the plan year begins. For purposes of this subclause, the applicable percentage is 80 percent for plan years beginning before July 1, 1997, 85 percent for plan years beginning after June 30, 1997, and before the 1st plan year to which the first tables prescribed under section 302(d)(7)(C)(ii)(II) apply, and 100 percent for such 1st plan year and subsequent plan years.

(III) In the case of any plan year for which the applicable percentage under subclause (II) is 100 percent, the value of the plan's assets used in determining unfunded current liability under subclause (I) shall be their fair market value.

[(iv)(I)] Except as provided in this clause, the aggregate increase in the premium payable with respect to any participant by reason of this subparagraph shall not exceed \$53.

[(II)] If an employer made contributions to a plan during 1 or more of the 5 plan years preceding the 1st plan year to which this subparagraph applies in an amount not less than the maximum amount allowable as a deduction with respect to such contributions under section 404 of such Code, the dollar amount in effect under subclause (I) for the 1st 5 plan years to which this subparagraph applies shall be reduced by \$3 for each plan year for which such contributions were made in such amount.]

[(v)] *(iv)* No premium shall be determined under this subparagraph for any plan year if, as of the close of the preceding plan year, contributions to the plan for the preceding plan year were not less than the full funding limitation for the preceding plan year under section 412(c)(7) of the Internal Revenue Code of 1986.

* * * * *

AUTHORITY TO REQUIRE CERTAIN INFORMATION

SEC. 4010. (a) INFORMATION REQUIRED.—*Each person described in subsection (b) shall provide the corporation annually, on or before a date specified by the corporation in regulations, with—*

(1) such records, documents, or other information that the corporation specifies in regulations as necessary to determine the liabilities and assets of plans covered by this title; and

(2) copies of such person's audited (or, if unavailable, unaudited) financial statements, and such other financial information as the corporation may prescribe in regulations.

(b) PERSONS REQUIRED TO PROVIDE INFORMATION.—*The persons covered by subsection (a) are each contributing sponsor, and each member of a contributing sponsor's controlled group, of a single-employer plan covered by this title, if—*

(1) the aggregate unfunded vested benefits at the end of the preceding plan year (as determined under section 4006(a)(3)(E)(iii)) of plans maintained by the contributing sponsor and the members of its controlled group exceed \$50,000,000 (disregarding plans with no unfunded vested benefits);

(2) the conditions for imposition of a lien described in section 302(f)(1)(A) and (B) of this Act or section 412(n)(1)(A) and (B) of the Internal Revenue Code of 1986 have been met with

respect to any plan maintained by the contributing sponsor or any member of its controlled group; or

(3) minimum funding waivers in excess of \$1,000,000 have been granted with respect to any plan maintained by the contributing sponsor or any member of its controlled group, and any portion thereof is still outstanding.

(c) **INFORMATION EXEMPT FROM DISCLOSURE REQUIREMENTS.**—Any information or documentary material submitted to the corporation pursuant to this section shall be exempt from disclosure under section 552 of title 5, United States Code, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this section is intended to prevent disclosure to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

NOTICE TO PARTICIPANTS

SEC. 4011. (a) IN GENERAL.—The plan administrator of a plan subject to the additional premium under section 4006(a)(3)(E) shall provide, in a form and manner and at such time as prescribed in regulations of the corporation, notice to plan participants and beneficiaries of the plan's funding status and the limits on the corporation's guaranty should the plan terminate while underfunded. Such notice shall be written in a manner so as to be understood by the average plan participant.

(b) **EXCEPTION.**—Subsection (a) shall not apply to any plan to which section 302(d) does not apply for the plan year by reason of paragraph (9) thereof.

Subtitle B—Coverage

PLANS COVERED

* * * * *

SINGLE-EMPLOYER PLAN BENEFITS GUARANTEED

SEC. 4022. (a) Subject to the limitations contained in subsection (b), the corporation shall guarantee, in accordance with this section, the payment of all nonforfeitable benefits (other than benefits becoming nonforfeitable solely on account of the termination of a plan) under a single-employer plan which terminates at a time when this title applies to it.

(b)(1) Except to the extent provided in paragraph (7)—

* * * * *

(3) The amount of monthly benefits described in subsection (a) provided by a plan, which are guaranteed under this section with respect to a participant, shall not have an actuarial value which exceeds the actuarial value of a monthly benefit in the form of a life annuity commencing at age 65 equal to the lesser of—

(A) his average monthly gross income from his employer during the 5 consecutive calendar year period (or, if less, during the number of calendar years in such period in which he actively participates in the plan) during which his gross income

from that employer was greater than during any other such period with that employer determined by dividing $\frac{1}{12}$ of the sum of all such gross income by the number of such calendar years in which he had such gross income, or

(B) \$750 multiplied by a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act [(42 U.S.C. 430)]) in effect at the time the plan terminates and the denominator of which is such contribution and benefit base in effect in the calendar year 1974.

The provisions of this paragraph do not apply to non-basic benefits. *The maximum guaranteed monthly benefit shall not be reduced solely on account of the age of a participant in the case of a benefit payable by reason of disability that occurred on or before the termination date, if the participant demonstrates to the satisfaction of the corporation that the Social Security Administration has determined that the participant satisfies the definition of disability under title II or XVI of the Social Security Act, and the regulations thereunder. If a benefit payable by reason of disability is converted to an early or normal retirement benefit for reasons other than a change in the health of the participant, such early or normal retirement benefit shall be treated as a continuation of the benefit payable by reason of disability and this subparagraph shall continue to apply.*

* * * * *

(f) For purposes of this section, the effective date of a plan amendment described in section 204(i)(1) shall be the effective date of the plan of reorganization of the employer described in section 204(i)(1) or, if later, the effective date stated in such amendment.

* * * * *

Subtitle C—Terminations

TERMINATION OF SINGLE-EMPLOYER PLANS

SEC. 4041. (a) GENERAL RULES GOVERNING SINGLE-EMPLOYER PLAN TERMINATIONS.—

* * * * *

(b) STANDARD TERMINATION OF SINGLE-EMPLOYER PLANS.—

* * * * *

(2) TERMINATION PROCEDURE.—

* * * * *

(C) NOTICE FROM THE CORPORATION OF NONCOMPLIANCE.—

(i) IN GENERAL.—Within 60 days after receipt of the notice under subparagraph (A), the corporation shall issue a notice of noncompliance to the plan administrator if—

[(I) it has reason to believe that any requirement of subsection (a)(2) or subparagraph (A) or (B) has not been met, or]

(I) it determines, based on the notice sent under paragraph (2)(A) of subsection (b), that there is reason to believe that the plan is not sufficient for benefit liabilities,

(II) it otherwise determines, on the basis of information provided by affected parties or otherwise obtained by the corporation, that there is reason to believe that the plan is not sufficient for benefit liabilities[.], or

(III) it determines that any other requirement of subparagraph (A) or (B) of this paragraph or of subsection (a)(2) has not been met, unless it further determines that the issuance of such notice would be inconsistent with the interests of participants and beneficiaries.

* * * * *

(3) METHODS OF FINAL DISTRIBUTION OF ASSETS.—

(A) IN GENERAL.—In connection with any final distribution of assets pursuant to the standard termination of the plan under this subsection, the plan administrator shall distribute the assets in accordance with section 4044. In distributing such assets, the plan administrator shall—

(i) purchase irrevocable commitments from an insurer to provide all benefit liabilities under the plan, or

(ii) in accordance with the provisions of the plan and any applicable regulations, otherwise fully provide all benefit liabilities under the plan. A transfer of assets to the corporation in accordance with section 4050 on behalf of a missing participant shall satisfy this subparagraph with respect to such participant.

* * * * *

(c) DISTRESS TERMINATION OF SINGLE-EMPLOYER PLANS.—

(1) IN GENERAL.—A single-employer plan may terminate under a distress termination only if—

(A) the plan administrator provides the 60-day advance notice of intent to terminate to affected parties required under subsection (a)(2),

(B) the requirements of subparagraph (A) of paragraph (2) are met, and

(C) the corporation determines that the requirements of subparagraph (B) of paragraph (2) are met.

(2) TERMINATION REQUIREMENTS.—

* * * * *

(B) DETERMINATION BY THE CORPORATION OF NECESSARY DISTRESS CRITERIA.—Upon receipt of the notice of intent to terminate required under subsection (a)(2) and the information required under subparagraph (A), the corporation shall determine whether the requirements of this subparagraph are met as provided in clause (i), (ii), or (iii). The requirements of this subparagraph are met if each person who is (as of the proposed termination date) a con-

tributing sponsor of such plan or a member of such sponsor's controlled group meets the requirements of any of the following clauses:

(i) LIQUIDATION IN BANKRUPTCY OR INSOLVENCY PROCEEDINGS.—The requirements of this clause are met by a person if—

(I) such person has filed or has had filed against such person, as of the proposed termination date, a petition seeking liquidation in a case under title 11, United States Code, or under any similar *Federal law* or law of a State or political subdivision of a State (or a case described in clause (ii) filed by or against such person has been converted, as of such date, to a case in which liquidation is sought), and

* * * * *

REPORTABLE EVENTS

SEC. 4043. (a) Within 30 days after the plan administrator or the contributing sponsor knows or has reason to know that a reportable event described in subsection [(b)] (c) has occurred, he shall notify the corporation that such event has occurred, unless a notice otherwise required under this subsection has already been provided with respect to such event. The corporation is authorized to waive the requirement of the preceding sentence with respect to any or all reportable events with respect to any plan, and to require the notification to be made by including the event in the annual report made by the plan. [Whenever an employer making contributions under a plan to which section 4021 applies knows or has reason to know that a reportable event has occurred he shall notify the plan administrator immediately.]

(b)(1) The requirements of this subsection shall be applicable to a contributing sponsor if, as of the close of the preceding plan year—

(A) the aggregate unfunded vested benefits (as determined under section 4006(a)(3)(E)(iii)) of plans subject to this title which are maintained by such sponsor and members of such sponsor's controlled groups (disregarding plans with no unfunded vested benefits) exceed \$50,000,000, and

(B) the funded vested benefit percentage for such plans is less than 90 percent.

For purposes of subparagraph (B), the funded vested benefit percentage means the percentage which the aggregate value of the assets of such plans bears to the aggregate vested benefits of such plans (determined in accordance with section 4006(a)(3)(E)(iii)).

(2) This subsection shall not apply to an event if the contributing sponsor, or the member of the contributing sponsor's controlled group to which the event relates, is—

(A) a person subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, or

(B) a subsidiary (as defined for purposes of such Act) of a person subject to such reporting requirements.

(3) *No later than 30 days prior to the effective date of an event described in paragraph (9), (10), (11), (12), or (13) of subsection (c), a contributing sponsor to which the requirements of this subsection apply shall notify the corporation that the event is about to occur.*

(4) *The corporation may waive the requirement of this subsection with respect to any or all reportable events with respect to any contributing sponsor.*

[(b)] (c) For purposes of this section a reportable event occurs—

(1) when the Secretary of the Treasury issues notice that a plan has ceased to be a plan described in section 4021(a)(2), or when the Secretary of Labor determines the plan is not in compliance with title I of this Act;

* * * * *

(8) when a plan merges, consolidates, or transfers its assets under section 208 of this Act, or when an alternative method of compliance is prescribed by the Secretary of Labor under section 110 of this Act; [or]

[(9) when any other event occurs which the corporation determines may be indicative of a need to terminate the plan.]

(9) *when, as a result of an event, a person ceases to be a member of the controlled group;*

(10) *when a contributing sponsor or a member of a contributing sponsor's controlled group liquidates in a case under title 11, United States Code, or under any similar Federal law or law of a State or political subdivision of a State;*

(11) *when a contributing sponsor or a member of a contributing sponsor's controlled group declares an extraordinary dividend (as defined in section 1059(c) of the Internal Revenue Code of 1986) or redeems, in any 12-month period, an aggregate of 10 percent or more of the total combined voting power of all classes of stock entitled to vote, or an aggregate of 10 percent or more of the total value of shares of all classes of stock, of a contributing sponsor and all members of its controlled group;*

(12) *when, in any 12-month period, an aggregate of 3 percent or more of the benefit liabilities of a plan covered by this title and maintained by a contributing sponsor or a member of its controlled group are transferred to a person that is not a member of the controlled group or to a plan or plans maintained by a person or persons that are not such a contributing sponsor or a member of its controlled group; or*

(13) *when any other event occurs that may be indicative of a need to terminate the plan and that is prescribed by the corporation in regulations.*

For purposes of paragraph (7), all distributions to a participant within any 24-month period are treated as a single distribution.

[(c)] (d) The Secretary of the Treasury shall notify the corporation—

(1) whenever a reportable event described in paragraph (1), (4), or (5) of subsection [(b)] (c) occurs, or

(2) whenever any other event occurs which the Secretary of the Treasury believes indicates that the plan may not be sound.

[(d)] (e) The Secretary of Labor shall notify the corporation—

(1) whenever a reportable event described in paragraph (1), (5), or (8) of subsection [(b)] (c) occurs, or

(2) whenever any other event occurs which the Secretary of Labor believes indicates that the plan may not be sound.

(f) Any information or documentary material submitted to the corporation pursuant to this section shall be exempt from disclosure under section 552 of title 5, United States Code, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this section is intended to prevent disclosure to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

* * * * *

MISSING PARTICIPANTS

SEC. 4050. (a) GENERAL RULE.—

(1) **PAYMENT TO THE CORPORATION.**—A plan administrator satisfies section 4041(b)(3)(A) in the case of a missing participant only if the plan administrator—

(A) transfers the participant's designated benefit to the corporation or purchases an irrevocable commitment from an insurer in accordance with clause (i) of section 4041(b)(3)(A), and

(B) provides the corporation such information and certifications with respect to such designated benefits or irrevocable commitments as the corporation shall specify.

(2) **TREATMENT OF TRANSFERRED ASSETS.**—A transfer to the corporation under this section shall be treated as a transfer of assets from a terminated plan to the corporation as trustee, and shall be held with assets of terminated plans for which the corporation is trustee under section 4042, subject to the rules set forth in that section.

(3) **PAYMENT BY THE CORPORATION.**—After a missing participant whose designated benefit was transferred to the corporation is located—

(A) in any case in which the plan could have distributed the benefit of the missing participant in a single sum without participant or spousal consent under section 205(g), the corporation shall pay the participant or beneficiary a single sum benefit equal to the designated benefit paid the corporation plus interest as specified by the corporation, and

(B) in any other case, the corporation shall pay a benefit based on the designated benefit and the assumptions prescribed by the corporation at the time that the corporation received the designated benefit.

The corporation shall make payments under subparagraph (B) available in the same forms and at the same times as a guaranteed benefit under section 4022 would be available to be paid, except that the corporation may make a benefit available in the form of a single sum if the plan provided a single sum benefit (other than a single sum described in subsection (b)(2)(A)).

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

(1) **MISSING PARTICIPANT.**—The term “missing participant” means a participant or beneficiary under a terminating plan whom the plan administrator cannot locate after a diligent search.

(2) **DESIGNATED BENEFIT.**—The term “designated benefit” means the single sum benefit the participant would receive—

(A) under the plan’s assumptions, in the case of a distribution that can be made without participant or spousal consent under section 205(g);

(B) under the assumptions of the corporation in effect on the date that the designated benefit is transferred to the corporation, in the case of a plan that does not pay any single sums other than those described in subparagraph (A); or

(C) under the assumptions of the corporation or of the plan, whichever provides the higher single sum, in the case of a plan that pays a single sum other than those described in subparagraph (A).

(c) **REGULATORY AUTHORITY.**—The corporation shall prescribe such regulations as are necessary to carry out the purposes of this section, including rules relating to what will be considered a diligent search, the amount payable to the corporation, and the amount to be paid by the corporation.

* * * * *

HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES (1994)

* * * * *

Supplement 1

* * * * *

CHAPTER 51—WOOL, FINE OR COARSE ANIMAL HAIR; HOREHAIR YARN AND WOVEN FABRIC

* * * * *

[5101.21.60	[Other	[kg	[7.7¢/kg + 6.25%	[Free (MX) 0.8¢/kg + 0.6% (IL) 3¢/kg + 2.5% (CA)	[81.6¢/kg + 20%]
5101.21.65	<i>Other: Unimproved wool; other wool, not finer than 46s</i>		<i>Free</i>		<i>81.6¢/ kg+20%</i>
5101.21.70	<i>Other</i>		<i>7.7¢/ kg+6.25%</i>	<i>Free (MX) 0.8¢/kg+0.6% (IL) 3¢/ kg+2.5% (CA)</i>	<i>81.6¢/ kg+20%</i>

* * * * *

[5101.29.60	[Other	[kg	[7.7¢/kg + 6.25%	[0.8¢/kg + 0.6% (IL) 3¢/kg + 2.5% (CA) 6.11¢/kg + 5% (MX)	[81.6¢/kg + 20%]
5101.29.65	<i>Other: Unimproved wool; other wool, not finer than 46s</i>		<i>Free</i>		<i>81.6¢/ kg+20%</i>
5101.29.70	<i>Other</i>		<i>7.7¢/ kg+6.25%</i>	<i>0.8¢/kg+0.6% (IL) 3¢/ kg+2.5% (CA) 6.1¢/kg+5% (MX)</i>	<i>81.6¢/ kg+20%</i>
*	*	*	*	*	*
[5101.30.60	[Other	[kg	[7.7¢/kg + 6.25%	[Free (MX) 0.8¢/kg + 0.6% (IL) 3¢/kg + 2.5% (CA)	[81.6¢/kg + 20%]
5101.30.65	<i>Other: Unimproved wool; other wool, not finer than 46s</i>		<i>Free</i>		<i>81.6¢/ kg+20%</i>
5101.30.70	<i>Other</i>		<i>7.7¢/ kg+6.25%</i>	<i>Free (MX) 0.8¢/kg+0.6% (IL) 3¢/ kg+2.5% (CA)</i>	<i>81.6¢/ kg+20%</i>
*	*	*	*	*	*

CHAPTER 91—CLOCKS AND WATCHES AND PARTS THEREOF

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Additional U.S. Notes

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5. Products of Insular Possessions

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(h) (i) In the case of each calendar year beginning after December 31, 1982, [and before January 1, 1995,] and before January 1, 2007, the Secretaries, acting jointly, shall:

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Supplement 2

GENERAL NOTES

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3. Rates of Duty. The rates of duty in the "Rates of Duty" columns designated 1 ("General" and "Special") and 2 of the tariff schedule apply to goods imported into the customs territory of the United States as hereinafter provided in this note:

(a) Rate of Duty Column 1.

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(iv) Products of Insular Possessions.

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(E) *Subject to the provisions in section 204 of the Andean Trade Preference Act, goods which are imported from insular possessions of the United States shall receive duty treatment no less favorable than the treatment afforded such goods when they are imported from a beneficiary country under such Act.*

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OMNIBUS BUDGET RECONCILIATION ACT OF 1987

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TITLE X—REVENUE PROVISIONS

SEC. 10000. SHORT TITLE; AMENDMENT OF THE 1986 CODE.

(a) **SHORT TITLE.**—This title may be cited the “Revenue Act of 1987”.

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PART II—TAX-RELATED USER FEES

SEC. 10511. FEES FOR REQUESTS FOR RULING, DETERMINATION, AND SIMILAR LETTERS.

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(c) **APPLICATION OF SECTION.**—Subsection (a) shall apply with respect to requests made on or after the 1st day of the second calendar month beginning after the date of the enactment of this Act and before September 30, [1990] 2000.

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OMNIBUS TRADE AND COMPETITIVENESS ACT OF 1988

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SUBTITLE A—UNITED STATES TRADE AGREEMENTS

PART 1—NEGOTIATION AND IMPLEMENTATION OF TRADE AGREEMENTS

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

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

* * * * *

(b) **EFFECTS OF AFFIRMATIVE DETERMINATION.**—If both of the determinations made under paragraphs (1) and (2) of subsection (a) with respect to a major foreign country are affirmative—

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

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

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

(i) will—

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

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

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

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

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

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

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

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

(2) The term “*WTO Agreement*” means the *Agreement Establishing the World Trade Organization entered into on April 15, 1994 and the multilateral trade agreements (as such term is defined in section 2(4) of the Uruguay Round Agreements Act)*.

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SEC. 1107. DEFINITIONS AND CONFORMING AMENDMENTS.

(a) **DEFINITIONS.**—*For purposes of this part:*

(1) The term “distortion” includes, but is not limited to, a subsidy.

(2) The term “foreign country” includes any foreign instrumentality. Any territory or possession of a foreign country that is administered separately for customs purposes, shall be treated as a separate foreign country.

(3) The term "GATT" means [the General Agreement on Tariffs and Trade] *the GATT 1947 (as defined in section 2(1)(A) of the Uruguay Round Agreements Act).*

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SEC. 1317. THIRD-COUNTRY DUMPING.

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

(1)(A) The term "Agreement" means the Agreement on Implementation of Article VI of the [General Agreement on Tariffs and Trade] *GATT 1994 (relating to antidumping measures).*

(B) *The term "GATT 1994" has the meaning given that term in section 2(1)(B) of the Uruguay Round Agreements Act.*

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SEC. 1378. COMPENSATION AUTHORITY.

If—

(1) the President has taken action under section 1376(a) with respect to any foreign country, and

(2) such action is found to be inconsistent with the international obligations of the United States, including [the General Agreement on Tariffs and Trade] *the WTO Agreement and the multilateral trade agreements (as such terms are defined in paragraphs (8) and (4), respectively, of section 2 of the Uruguay Round Agreements Act),*

the President may enter into trade agreements with such foreign country for the purposes of granting new concessions as compensation for such action in order to maintain the general level of reciprocal and mutually advantageous concessions.

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SEC. 1382. INTERNATIONAL OBLIGATIONS.

Nothing in this part may be construed to require actions inconsistent with the international obligations of the United States, including [the General Agreement on Tariffs and Trade] *the WTO Agreement and the multilateral trade agreements (as such terms are defined in paragraphs (9) and (4), respectively, of section 2 of the Uruguay Round Agreements Act).*

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PUBLIC LAW 98-332

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GENERAL PROVISIONS

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COMMODITY CREDIT CORPORATION EXPORT CREDIT GUARANTEES

[SEC. 106. (a) The Secretary of Agriculture shall utilize the authorities provided in the Charter of the Commodity Credit Corporation to expand the export of United States agricultural commodities through competitive sales, including shipping costs and credit terms, and donations as authorized by law. In carrying out the au-

thorities and responsibilities imposed by the Charter, the Secretary shall assist in the financing of export sales of United States agricultural products, either through direct or guaranteed loans. The Secretary shall use the Commodity Credit Corporation, a revolving fund capitalized at \$25,000,000,000, to make available under the export credit program carried out by the Corporation short-term credit to finance export sales of United States agricultural commodities, and shall also use such other authorities as necessary to regain the rightful share of world markets for United States agricultural commodities.

[(b) For the fiscal year ending September 30, 1985, the Secretary of Agriculture shall make available under the Export Credit Guarantee Program (GSM-102) carried out by the Commodity Credit Corporation credit guarantees for not less than \$5,000,000,000 in short-term credit extended to finance export sales of United States agricultural commodities.

[(c) The Secretary shall ensure that any guarantee authority made available, in the fiscal years ending September 30, 1984, and September 30, 1985, for credit guarantees under the Export Credit Guarantee Program (GSM-102) carried out by the Commodity Credit Corporation in excess of—

[(1) the \$4,000,000,000 of guarantee authority available for fiscal year ending September 30, 1984, and

[(2) the level of guarantee authority contained in the President's budget for the fiscal year ending September 30, 1985.

is used to further assist in the development, maintenance, and expansion of international markets for United States agricultural commodities and products, including natural fiber textiles and yarns. Priority in the allocation of such guarantee authority shall be given to credit guarantees that facilitate the financing of (i) export sales to countries that have demonstrated the greatest repayment capability under the export credit programs carried out by the Commodity Credit Corporation or (ii) export sales of commodities for which no blended credit (under which a combination of export credit guarantees under the GSM-102 program and direct export credits under the GSM-5 program is provided) will be made available.]

SEC. 106. [Repealed.]

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SOCIAL SECURITY ACT

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TITLE III—GRANTS TO STATES FOR UNEMPLOYMENT COMPENSATION ADMINISTRATION

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PROVISIONS OF STATE LAWS

SEC. 303. [42 U.S.C. 503] (a) The Secretary of Labor shall make no certification for payment to any State unless he finds that the

law of such State, approved by the Secretary of Labor under the Federal Unemployment Tax Act, includes provision for—

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(5) Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305(b) of the Federal Unemployment Tax Act: *Provided*, That an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration: *Provided further*, That the amounts specified by section 903(c)(2) may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices: *Provided further*, That nothing in this paragraph shall be construed to prohibit deducting an amount from unemployment compensation otherwise payable to an individual and using the amount so deducted to pay for health insurance, or the withholding of Federal, State, or local individual income tax, if the individual elected to have such deduction made and such deduction was made under a program approved by the Secretary of Labor: *Provided further*, That amounts may be deducted from unemployment benefits and used to repay overpayments as provided in subsection (g): *Provided further*, That amounts may be withdrawn for the payment of short-time compensation under a plan approved by the Secretary of Labor; and

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