

108TH CONGRESS
1ST SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

_____ introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To implement the United States-Singapore Free Trade Agreement.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “United States-Singapore Free Trade Agreement Imple-
6 mentation Act”.

7 (b) TABLE OF CONTENTS.—The table of contents for
8 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Purposes.
- Sec. 3. Definitions.

TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE AGREEMENT

2

- Sec. 101. Approval and entry into force of the agreement.
- Sec. 102. Relationship of the agreement to United States and State law.
- Sec. 103. Consultation and layover provisions for, and effective date of, proclaimed actions.
- Sec. 104. Implementing actions in anticipation of entry into force and initial regulations.
- Sec. 105. Administration of dispute settlement proceedings.
- Sec. 106. Arbitration of certain claims.
- Sec. 107. Effective dates; effect of termination.

TITLE II—CUSTOMS PROVISIONS

- Sec. 201. Tariff modifications.
- Sec. 202. Rules of origin.
- Sec. 203. Customs user fees.
- Sec. 204. Disclosure of incorrect information.
- Sec. 205. Enforcement relating to trade in textile and apparel goods.
- Sec. 206. Regulations.

TITLE III—RELIEF FROM IMPORTS

- Sec. 301. Definitions.

Subtitle A—Relief From Imports Benefiting From the Agreement

- Sec. 311. Commencing of action for relief.
- Sec. 312. Commission action on petition.
- Sec. 313. Provision of relief.
- Sec. 314. Termination of relief authority.
- Sec. 315. Compensation authority.
- Sec. 316. Confidential business information.

Subtitle B—Textile and Apparel Safeguard Measures

- Sec. 321. Commencement of action for relief.
- Sec. 322. Determination and provision of relief.
- Sec. 323. Period of relief.
- Sec. 324. Articles exempt from relief.
- Sec. 325. Rate after termination of import relief.
- Sec. 326. Termination of relief authority.
- Sec. 327. Compensation authority.
- Sec. 328. Business confidential information.

Subtitle C—Cases Under Title II of the Trade Act of 1974

- Sec. 331. Findings and action on goods from Singapore.

TITLE IV—TEMPORARY ENTRY OF BUSINESS PERSONS

- Sec. 401. Nonimmigrant traders and investors.
- Sec. 402. Nonimmigrant professionals; labor attestation.
- Sec. 403. Labor disputes.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are—

1 (1) to approve and implement the Free Trade
2 Agreement between the United States and the Re-
3 public of Singapore entered into under the authority
4 of section 2103(b) of the Bipartisan Trade Pro-
5 motion Authority Act of 2002;

6 (2) to strengthen and develop economic rela-
7 tions between the United States and Singapore for
8 their mutual benefit;

9 (3) to establish free trade between the 2 nations
10 through the reduction and elimination of barriers to
11 trade in goods in services and to investment; and

12 (4) to lay the foundation for further coopera-
13 tion to expand and enhance the benefits of such
14 Agreement.

15 **SEC. 3. DEFINITIONS.**

16 In this Act:

17 (1) AGREEMENT.—The term “Agreement”
18 means the United States-Singapore Free Trade
19 Agreement approved by Congress under section
20 101(a).

21 (2) HTS.—The term “HTS” means the Har-
22 monized Tariff Schedule of the United States.

1 **TITLE I—APPROVAL OF, AND**
2 **GENERAL PROVISIONS RE-**
3 **LATING TO, THE AGREEMENT**

4 **SEC. 101. APPROVAL AND ENTRY INTO FORCE OF THE**
5 **AGREEMENT.**

6 (a) APPROVAL OF AGREEMENT AND STATEMENT OF
7 ADMINISTRATIVE ACTION.—Pursuant to section 2105 of
8 the Bipartisan Trade Promotion Authority Act of 2002
9 (19 U.S.C. 3805) and section 151 of the Trade Act of
10 1974 (19 U.S.C. 2191), Congress approves—

11 (1) the United States-Singapore Free Trade
12 Agreement entered into on May 6, 2003, with the
13 Government of Singapore and submitted to Congress
14 on **【_____】**, 2003]; and

15 (2) the statement of administrative action pro-
16 posed to implement the Agreement that was sub-
17 mitted to Congress on **【_____】**, 2003].

18 (b) CONDITIONS FOR ENTRY INTO FORCE OF THE
19 AGREEMENT.—At such time as the President determines
20 that Singapore has taken measures necessary to bring it
21 into compliance with those provisions of the Agreement
22 that take effect on the date on which the Agreement enters
23 into force, the President is authorized to exchange notes
24 with the Government of Singapore providing for the entry

1 into force, on or after January 1, 2004, of the Agreement
2 for the United States.

3 **SEC. 102. RELATIONSHIP OF THE AGREEMENT TO UNITED**
4 **STATES AND STATE LAW.**

5 (a) RELATIONSHIP OF AGREEMENT TO UNITED
6 STATES LAW.—

7 (1) UNITED STATES LAW TO PREVAIL IN CON-
8 FFLICT.—No provision of the Agreement, nor the ap-
9 plication of any such provision to any person or cir-
10 cumstance, which is inconsistent with any law of the
11 United States shall have effect.

12 (2) CONSTRUCTION.—Nothing in this Act shall
13 be construed—

14 (A) to amend or modify any law of the
15 United States, or

16 (B) to limit any authority conferred under
17 any law of the United States,
18 unless specifically provided for in this Act.

19 (b) RELATIONSHIP OF AGREEMENT TO STATE
20 LAW.—

21 (1) LEGAL CHALLENGE.—No State law, or the
22 application thereof, may be declared invalid as to
23 any person or circumstance on the ground that the
24 provision or application is inconsistent with the
25 Agreement, except in an action brought by the

1 United States for the purpose of declaring such law
2 or application invalid.

3 (2) DEFINITION OF STATE LAW.—For purposes
4 of this subsection, the term “State law” includes—

5 (A) any law of a political subdivision of a
6 State; and

7 (B) any State law regulating or taxing the
8 business of insurance.

9 (c) EFFECT OF AGREEMENT WITH RESPECT TO PRI-
10 VATE REMEDIES.—No person other than the United
11 States—

12 (1) shall have any cause of action or defense
13 under the Agreement or by virtue of congressional
14 approval thereof; or

15 (2) may challenge, in any action brought under
16 any provision of law, any action or inaction by any
17 department, agency, or other instrumentality of the
18 United States, any State, or any political subdivision
19 of a State on the ground that such action or inaction
20 is inconsistent with the Agreement.

21 **SEC. 103. CONSULTATION AND LAYOVER PROVISIONS FOR,**
22 **AND EFFECTIVE DATE OF, PROCLAIMED AC-**
23 **TIONS.**

24 (a) CONSULTATION AND LAYOVER REQUIRE-
25 MENTS.—If a provision of this Act provides that the imple-

1 mentation of an action by the President by proclamation
2 is subject to the consultation and layover requirements of
3 this section, such action may be proclaimed only if—

4 (1) the President has obtained advice regarding
5 the proposed action from—

6 (A) the appropriate advisory committees
7 established under section 135 of the Trade Act
8 of 1974; and

9 (B) the United States International Trade
10 Commission;

11 (2) the President has submitted a report to the
12 Committee on Finance of the Senate and the Com-
13 mittee on Ways and Means of the House of Rep-
14 resentatives that sets forth—

15 (A) the action proposed to be proclaimed
16 and the reasons therefor; and

17 (B) the advice obtained under paragraph
18 (1);

19 (3) a period of 60 calendar days beginning on
20 the first day on which the requirements of para-
21 graphs (1) and (2) have been met has expired; and

22 (4) the President has consulted with such Com-
23 mittees regarding the proposed action during the pe-
24 riod referred to in paragraph (3).

1 (b) EFFECTIVE DATE OF CERTAIN PROCLAIMED AC-
2 TIONS.—Any action proclaimed by the President under the
3 authority of this Act that is not subject to the consultation
4 and layover provisions under subsection (a) may not take
5 effect before the 15th day after the date on which the text
6 of the proclamation is published in the Federal Register.

7 **SEC. 104. IMPLEMENTING ACTIONS IN ANTICIPATION OF**
8 **ENTRY INTO FORCE AND INITIAL REGULA-**
9 **TIONS.**

10 (a) IMPLEMENTING ACTIONS.—

11 (1) PROCLAMATION AUTHORITY.—After the
12 date of enactment of this Act—

13 (A) the President may proclaim such ac-
14 tions, and

15 (B) other appropriate officers of the
16 United States Government may issue such reg-
17 ulations,

18 as may be necessary to ensure that any provision of
19 this Act, or amendment made by this Act, that takes
20 effect on the date the Agreement enters into force
21 is appropriately implemented on such date, but no
22 such proclamation or regulation may have an effec-
23 tive date earlier than the date of entry into force.

24 (2) WAIVER OF 15-DAY RESTRICTION.—The 15-
25 day restriction in section 103(b) on the taking effect

1 of proclaimed actions is waived to the extent that
2 the application of such restriction would prevent the
3 taking effect on the date the Agreement enters into
4 force of any action proclaimed under this section.

5 (b) INITIAL REGULATIONS.—Initial regulations nec-
6 essary or appropriate to carry out the actions required by
7 or authorized under this Act or proposed in the statement
8 of administrative action submitted under section
9 101(a)(2) to implement the Agreement shall, to the max-
10 imum extent feasible, be issued within 1 year after the
11 date of entry into force of the Agreement. In the case of
12 any implementing action that takes effect on a date after
13 the date of entry into force of the Agreement, initial regu-
14 lations to carry out that action shall, to the maximum ex-
15 tent feasible, be issued within 1 year after such effective
16 date.

17 **SEC. 105. ADMINISTRATION OF DISPUTE SETTLEMENT PRO-**
18 **CEEDINGS.**

19 (a) ESTABLISHMENT OR DESIGNATION OF OFFICE.—
20 The President is authorized to establish or designate with-
21 in the Department of Commerce an office that shall be
22 responsible for providing administrative assistance to pan-
23 els established under chapter 20 of the Agreement. Such
24 office may not be considered to be an agency for purposes
25 of section 552 of title 5, United States Code.

1 (b) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated for each fiscal year after
3 fiscal year 2003 to the Department of Commerce such
4 sums as may be necessary for the establishment and oper-
5 ations of the office under subsection (a) and for the pay-
6 ment of the United States share of the expenses of panels
7 established under chapter 20 of the Agreement.

8 **SEC. 106. ARBITRATION OF CERTAIN CLAIMS.**

9 (a) SUBMISSION OF CERTAIN CLAIMS.—The United
10 States is authorized to resolve any claim against the
11 United States covered by article 15.15.1(a)(i)(C) or article
12 15.15.1(b)(i)(C) of the Agreement, pursuant to the Inves-
13 tor-State Dispute Settlement procedures set forth in sec-
14 tion C of chapter 15 of the Agreement.

15 (b) CONTRACT CLAUSES.—All contracts executed by
16 any agency of the United States on or after the date of
17 entry into force of the Agreement shall contain a clause
18 specifying the law that will apply to resolve any breach
19 of contract claim.

20 **SEC. 107. EFFECTIVE DATES; EFFECT OF TERMINATION.**

21 (a) EFFECTIVE DATES.—Except as provided in sub-
22 section (b), the provisions of this Act and the amendments
23 made by this Act take effect on the date the Agreement
24 enters into force.

25 (b) EXCEPTIONS.—

1 (1) Sections 1 through 3 and this title take ef-
2 fect on the date of enactment of this Act.

3 (2) Section 205 takes effect on the date on
4 which the textile and apparel provisions of the
5 Agreement take effect pursuant to article 5.10 of
6 the Agreement.

7 (c) **TERMINATION OF THE AGREEMENT.**—On the
8 date on which the Agreement ceases to be in force, the
9 provisions of this Act (other than this subsection) and the
10 amendments made by this Act shall cease to be effective.

11 **TITLE II—CUSTOMS PROVISIONS**

12 **SEC. 201. TARIFF MODIFICATIONS.**

13 (a) **TARIFF MODIFICATIONS PROVIDED FOR IN THE**
14 **AGREEMENT.**—The President may proclaim—

15 (1) such modifications or continuation of any
16 duty,

17 (2) such continuation of duty-free or excise
18 treatment, or

19 (3) such additional duties,

20 as the President determines to be necessary or appropriate
21 to carry out or apply articles 2.2, 2.5, 2.6, and 2.12 and
22 Annex 2B of the Agreement.

23 (b) **OTHER TARIFF MODIFICATIONS.**—Subject to the
24 consultation and layover provisions of section 103(a), the
25 President may proclaim—

1 (1) such modifications or continuation of any
2 duty,

3 (2) such modifications as the United States
4 may agree to with Singapore regarding the staging
5 of any duty treatment set forth in Annex 2B of the
6 Agreement,

7 (3) such continuation of duty-free or excise
8 treatment, or

9 (4) such additional duties,

10 as the President determines to be necessary or appropriate
11 to maintain the general level of reciprocal and mutually
12 advantageous concessions with respect to Singapore pro-
13 vided for by the Agreement.

14 (c) **CONVERSION TO AD VALOREM RATES.**—For pur-
15 poses of subsections (a) and (b), with respect to any good
16 for which the base rate in the Schedule of the United
17 States set forth in Annex 2B of the Agreement is a spe-
18 cific or compound rate of duty, the President may sub-
19 stitute for the base rate an ad valorem rate that the Presi-
20 dent determines to be equivalent to the base rate.

21 **SEC. 202. RULES OF ORIGIN.**

22 (a) **ORIGINATING GOODS.**—For purposes of this Act
23 and for purposes of implementing the tariff treatment pro-
24 vided for under the Agreement, except as otherwise pro-
25 vided in this section, a good is an originating good if—

1 (1) the good is wholly obtained or produced en-
2 tirely in the territory of Singapore, the United
3 States, or both;

4 (2) each nonoriginating material used in the
5 production of the good—

6 (A) undergoes an applicable change in tar-
7 riff classification set out in Annex 3A of the
8 Agreement as a result of production occurring
9 entirely in the territory of Singapore, the
10 United States, or both; or

11 (B) if no change in tariff classification is
12 required, the good otherwise satisfies the appli-
13 cable requirements of such Annex; or

14 (3) the good itself, as imported, is listed in
15 Annex 3B of the Agreement and is imported into the
16 territory of the United States from the territory of
17 Singapore.

18 (b) DE MINIMIS AMOUNTS OF NONORIGINATING MA-
19 TERIALS.—

20 (1) IN GENERAL.—Except as provided for in
21 paragraphs (2) and (3), a good shall be considered
22 to be an originating good if—

23 (A) the value of all nonoriginating mate-
24 rials used in the production of the good that do
25 not undergo the required change in tariff classi-

1 fication under Annex 3A of the Agreement does
2 not exceed 10 percent of the adjusted value of
3 the good;

4 (B) if the good is subject to a regional
5 value-content requirement, the value of such
6 nonoriginating materials is taken into account
7 in calculating the regional value-content of the
8 good; and

9 (C) the good satisfies all other applicable
10 requirements of this section.

11 (2) EXCEPTIONS.—Paragraph (1) does not
12 apply to the following:

13 (A) A nonoriginating material provided for
14 in chapter 4 of the HTS or in subheading
15 1901.90 of the HTS that is used in the produc-
16 tion of a good provided for in chapter 4 of the
17 HTS.

18 (B) A nonoriginating material provided for
19 in chapter 4 of the HTS or in subheading
20 1901.90 of the HTS that is used in the produc-
21 tion of a good provided for in heading 2105 or
22 in any of subheadings 1901.10, 1901.20,
23 1901.90, 2106.90, 2202.90, and 2309.90 of the
24 HTS.

1 (C) A nonoriginating material provided for
2 in heading 0805, or any of subheadings
3 2009.11.00 through 2009.39, of the HTS, that
4 is used in the production of a good provided for
5 in any of subheadings 2009.11.00 through
6 2009.39 or in subheading 2106.90 or 2202.90
7 of the HTS.

8 (D) A nonoriginating material provided for
9 in chapter 15 of the HTS that is used in the
10 production of a good provided for in any of
11 headings 1501.00.00 through 1508, 1512,
12 1514, and 1515 of the HTS.

13 (E) A nonoriginating material provided for
14 in heading 1701 of the HTS that is used in the
15 production of a good provided for in any of
16 headings 1701 through 1703 of the HTS.

17 (F) A nonoriginating material provided for
18 in chapter 17 of the HTS or heading
19 1805.00.00 of the HTS that is used in the pro-
20 duction of a good provided for in subheading
21 1806.10 of the HTS.

22 (G) A nonoriginating material provided for
23 in any of headings 2203 through 2208 of the
24 HTS that is used in the production of a good

1 provided for in heading 2207 or 2208 of the
2 HTS.

3 (H) A nonoriginating material used in the
4 production of a good provided for in any of
5 chapters 1 through 21 of the HTS, unless the
6 nonoriginating material is provided for in a dif-
7 ferent subheading than the good for which ori-
8 gin is being determined under this section.

9 (3) GOODS PROVIDED FOR IN CHAPTERS 50
10 THROUGH 63 OF THE HTS.—

11 (A) IN GENERAL.—Except as provided in
12 subparagraph (B), a good provided for in any
13 of chapters 50 through 63 of the HTS that is
14 not an originating good because certain fibers
15 or yarns used in the production of the compo-
16 nent of the good that determines the tariff clas-
17 sification of the good do not undergo an appli-
18 cable change in tariff classification set out in
19 Annex 3A of the Agreement shall be considered
20 to be an originating good if the total weight of
21 all such fibers or yarns in that component is
22 not more than 7 percent of the total weight of
23 that component.

24 (B) CERTAIN TEXTILE OR APPAREL
25 GOODS.—

1 (i) TREATMENT AS ORIGINATING
2 GOOD.—A textile or apparel good con-
3 taining elastomeric yarns in the component
4 of the good that determines the tariff clas-
5 sification of the good shall be considered to
6 be an originating good only if such yarns
7 are wholly formed in the territory of Singa-
8 pore or the United States.

9 (ii) DEFINITION OF TEXTILE OR AP-
10 PAREL GOOD.—For purposes of this sub-
11 paragraph, the term “textile or apparel
12 good” means a product listed in the Annex
13 to the Agreement on Textiles and Clothing
14 referred to in section 101(d)(4) of the
15 Uruguay Round Agreements Act (19
16 U.S.C. 3511(d)(4)).

17 (c) ACCUMULATION.—

18 (1) ORIGINATING GOODS INCORPORATED IN
19 GOODS OF OTHER COUNTRY.—Originating materials
20 from the territory of either Singapore or the United
21 States that are used in the production of a good in
22 the territory of the other country shall be considered
23 to originate in the territory of the other country.

24 (2) MULTIPLE PROCEDURES.—A good that is
25 produced in the territory of Singapore, the United

1 States, or both, by 1 or more producers is an origi-
2 nating good if the good satisfies the requirements of
3 subsection (a) and all other applicable requirements
4 of this section.

5 (d) REGIONAL VALUE-CONTENT.—

6 (1) IN GENERAL.—For purposes of subsection
7 (a)(2), the regional value-content of a good referred
8 to in Annex 3A of the Agreement shall be calculated,
9 at the choice of the person claiming preferential tar-
10 iff treatment for the good, on the basis of the build-
11 down method described in paragraph (2) or the
12 build-up method described in paragraph (3), unless
13 otherwise provided in Annex 3A of the Agreement.

14 (2) BUILD-DOWN METHOD.—

15 (A) IN GENERAL.—The regional value-con-
16 tent of a good may be calculated on the basis
17 of the following build-down method:

$$\text{RVC} = \frac{\text{AV}-\text{VNM}}{\text{AV}} \times 100$$

18 (B) DEFINITIONS.—For purposes of sub-
19 paragraph (A):

20 (i) The term “RVC” means the re-
21 gional value-content, expressed as a per-
22 centage.

1 (ii) The term “AV” means the ad-
2 justed value.

3 (iii) The term “VNM” means the
4 value of nonoriginating materials that are
5 acquired and used by the producer in the
6 production of the good.

7 (3) BUILD-UP METHOD.—

8 (A) IN GENERAL.—The regional value-con-
9 tent of a good may be calculated on the basis
10 of the following build-up method:

$$\text{RVC} = \frac{\text{VOM}}{\text{AV}} \times 100$$

11 (B) DEFINITIONS.—For purposes of sub-
12 paragraph (A):

13 (i) The term “RVC” means the re-
14 gional value-content, expressed as a per-
15 centage.

16 (ii) The term “AV” means the ad-
17 justed value.

18 (iii) The term “VOM” means the
19 value of originating materials that are ac-
20 quired or self-produced and are used by
21 the producer in the production of the good.

22 (e) VALUE OF MATERIALS.—

1 (1) IN GENERAL.—For purposes of calculating
2 the regional value-content of a good under sub-
3 section (d), and for purposes of applying the de-
4 minimis rules under subsection (b), the value of a
5 material is—

6 (A) in the case of a material imported by
7 the producer of the good, the adjusted value of
8 the material;

9 (B) in the case of a material acquired in
10 the territory in which the good is produced, ex-
11 cept for a material to which subparagraph (C)
12 applies, the adjusted value of the material; or

13 (C) in the case of a material that is self-
14 produced, or in a case in which the relationship
15 between the producer of the good and the seller
16 of the material influenced the price actually
17 paid or payable for the material, including a
18 material obtained without charge, the sum of—

19 (i) all expenses incurred in the pro-
20 duction of the material, including general
21 expenses; and

22 (ii) an amount for profit.

23 (2) FURTHER ADJUSTMENTS TO THE VALUE OF
24 MATERIALS.—

1 (A) ORIGINATING MATERIALS.—The fol-
2 lowing expenses, if not included in the value of
3 an originating material calculated under para-
4 graph (1), may be added to the value of the
5 originating material:

6 (i) The costs of freight, insurance,
7 packing, and all other costs incurred in
8 transporting the material to the location of
9 the producer.

10 (ii) Duties, taxes, and customs broker-
11 age fees on the material paid in the terri-
12 tory of Singapore, the United States, or
13 both, other than duties and taxes that are
14 waived, refunded, refundable, or otherwise
15 recoverable, including credit against duty
16 or tax paid or payable.

17 (iii) The cost of waste and spoilage re-
18 sulting from the use of the material in the
19 production of the good, less the value of
20 renewable scrap or by-product.

21 (B) NONORIGINATING MATERIALS.—The
22 following expenses, if included in the value of a
23 nonoriginating material calculated under para-
24 graph (1), may be deducted from the value of
25 the nonoriginating material:

1 (i) The costs of freight, insurance,
2 packing, and all other costs incurred in
3 transporting the material to the location of
4 the producer.

5 (ii) Duties, taxes, and customs broker-
6 age fees on the material paid in the terri-
7 tory of Singapore, the United States, or
8 both, other than duties and taxes that are
9 waived, refunded, refundable, or otherwise
10 recoverable, including credit against duty
11 or tax paid or payable.

12 (iii) The cost of waste and spoilage re-
13 sulting from the use of the material in the
14 production of the good, less the value of
15 renewable scrap or by-product.

16 (iv) The cost of processing incurred in
17 the territory of Singapore or the United
18 States in the production of the nonorigi-
19 nating material.

20 (v) The cost of originating materials
21 used in the production of the nonorigi-
22 nating material in the territory of Singa-
23 pore or the United States.

24 (f) ACCESSORIES, SPARE PARTS, OR TOOLS.—

1 (1) IN GENERAL.—Subject to paragraph (2),
2 accessories, spare parts, or tools delivered with the
3 good that form part of the good’s standard acces-
4 sories, spare parts, or tools shall—

5 (A) be treated as originating goods if the
6 good is an originating good; and

7 (B) be disregarded in determining whether
8 all the nonoriginating materials used in the pro-
9 duction of the good undergo an applicable
10 change in tariff classification set out in Annex
11 3A of the Agreement.

12 (2) CONDITIONS.—Paragraph (1) shall apply
13 only if—

14 (A) the accessories, spare parts, or tools
15 are not invoiced separately from the good;

16 (B) the quantities and value of the acces-
17 sories, spare parts, or tools are customary for
18 the good; and

19 (C) if the good is subject to a regional
20 value-content requirement, the value of the ac-
21 cessories, spare parts, or tools is taken into ac-
22 count as originating or nonoriginating mate-
23 rials, as the case may be, in calculating the re-
24 gional value-content of the good.

25 (g) FUNGIBLE GOODS AND MATERIALS.—

1 (1) IN GENERAL.—

2 (A) CLAIM FOR PREFERENTIAL TREAT-
3 MENT.—A person claiming preferential tariff
4 treatment for a good may claim that a fungible
5 good or material is originating either based on
6 the physical segregation of each fungible good
7 or material or by using an inventory manage-
8 ment method.

9 (B) INVENTORY MANAGEMENT METHOD.—

10 In this subsection, the term “inventory manage-
11 ment method” means—

- 12 (i) averaging;
13 (ii) “last-in, first-out”;
14 (iii) “first-in, first-out”; or
15 (iv) any other method—

16 (I) recognized in the generally
17 accepted accounting principles of the
18 country in which the production is
19 performed (whether Singapore or the
20 United States); or

21 (II) otherwise accepted by that
22 country.

23 (2) ELECTION OF INVENTORY METHOD.—A
24 person selecting an inventory management method
25 under paragraph (1) for particular fungible goods or

1 materials shall continue to use that method for those
2 fungible goods or materials throughout the fiscal
3 year of that person.

4 (h) PACKAGING MATERIALS AND CONTAINERS FOR
5 RETAIL SALE.—Packaging materials and containers in
6 which a good is packaged for retail sale, if classified with
7 the good, shall be disregarded in determining whether all
8 the nonoriginating materials used in the production of the
9 good undergo the applicable change in tariff classification
10 set out in Annex 3A of the Agreement and, if the good
11 is subject to a regional value-content requirement, the
12 value of such packaging materials and containers shall be
13 taken into account as originating or nonoriginating mate-
14 rials, as the case may be, in calculating the regional value-
15 content of the good.

16 (i) PACKING MATERIALS AND CONTAINERS FOR
17 SHIPMENT.—Packing materials and containers in which
18 a good is packed for shipment shall be disregarded in de-
19 termining whether—

20 (1) the nonoriginating materials used in the
21 production of a good undergo an applicable change
22 in tariff classification set out in Annex 3A of the
23 Agreement; and

24 (2) the good satisfies a regional value-content
25 requirement.

1 (j) INDIRECT MATERIALS.—An indirect material
2 shall be considered to be an originating material without
3 regard to where it is produced, and its value shall be the
4 cost registered in the accounting records of the producer
5 of the good.

6 (k) THIRD COUNTRY OPERATIONS.—A good shall not
7 be considered to be an originating good by reason of hav-
8 ing undergone production that satisfies the requirements
9 of subsection (a) if, subsequent to that production, the
10 good undergoes further production or any other operation
11 outside the territories of Singapore and the United States,
12 other than unloading, reloading, or any other operation
13 necessary to preserve it in good condition or to transport
14 the good to the territory of Singapore or the United
15 States.

16 (l) SPECIAL RULE FOR APPAREL GOODS LISTED IN
17 CHAPTER 61 OR 62 OF THE HTS.—

18 (1) IN GENERAL.—An apparel good listed in
19 chapter 61 or 62 of the HTS shall be considered to
20 be an originating good if it is both cut (or knit to
21 shape) and sewn or otherwise assembled in the terri-
22 tory of Singapore, the United States, or both, from
23 fabric or yarn, regardless of origin, designated in the
24 manner described in paragraph (2) as fabric or yarn

1 not available in commercial quantities in a timely
2 manner in the United States.

3 (2) DESIGNATION OF CERTAIN FABRIC AND
4 YARN.—The designation referred to in paragraph
5 (1) means a designation made in a notice published
6 in the Federal Register on or before November 15,
7 2002, identifying apparel goods made from fabric or
8 yarn eligible for entry into the United States under
9 subheading 9819.11.24 or 9820.11.27 of the HTS.
10 For purposes of this subsection, a reference in the
11 notice to fabric or yarn formed in the United States
12 is deemed to include fabric or yarn formed in Singa-
13 pore.

14 (m) APPLICATION AND INTERPRETATION.—In this
15 section:

16 (1) The basis for any tariff classification is the
17 HTS.

18 (2) Any cost or value referred to in this section
19 shall be recorded and maintained in accordance with
20 the generally accepted accounting principles applica-
21 ble in the territory of the country in which the good
22 is produced (whether Singapore or the United
23 States).

24 (n) DEFINITIONS.—In this section:

1 (1) ADJUSTED VALUE.—The term “adjusted
2 value” means the value of a good determined under
3 articles 1 through 8, article 15, and the cor-
4 responding interpretative notes of the Agreement on
5 Implementation of Article VII of the General Agree-
6 ment on Tariffs and Trade 1994 referred to in sec-
7 tion 101(d)(8) of the Uruguay Round Agreements
8 Act, except that such value may be adjusted to ex-
9 clude any costs, charges, or expenses incurred for
10 transportation, insurance, and related services inci-
11 dent to the international shipment of the good from
12 the country of exportation to the place of importa-
13 tion.

14 (2) FUNGIBLE GOODS AND FUNGIBLE MATE-
15 RIALS.—The terms “fungible goods” and “fungible
16 materials” mean goods or materials, as the case may
17 be, that are interchangeable for commercial purposes
18 and the properties of which are essentially identical.

19 (3) GENERALLY ACCEPTED ACCOUNTING PRIN-
20 CIPLES.—The term “generally accepted accounting
21 principles” means the recognized consensus or sub-
22 stantial authoritative support in the territory of
23 Singapore or the United States, as the case may be,
24 with respect to the recording of revenues, expenses,
25 costs, and assets and liabilities, the disclosure of in-

1 formation, and the preparation of financial state-
2 ments. The standards may encompass broad guide-
3 lines of general application as well as detailed stand-
4 ards, practices, and procedures.

5 (4) GOODS WHOLLY OBTAINED OR PRODUCED
6 ENTIRELY IN THE TERRITORY OF SINGAPORE, THE
7 UNITED STATES, OR BOTH.—The term “goods whol-
8 ly obtained or produced entirely in the territory of
9 Singapore, the United States, or both” means—

10 (A) mineral goods extracted in the terri-
11 tory of Singapore, the United States, or both;

12 (B) vegetable goods, as such goods are de-
13 fined in the Harmonized System, harvested in
14 the territory of Singapore, the United States, or
15 both;

16 (C) live animals born and raised in the ter-
17 ritory of Singapore, the United States, or both;

18 (D) goods obtained from hunting, trap-
19 ping, fishing, or aquaculture conducted in the
20 territory of Singapore, the United States, or
21 both;

22 (E) goods (fish, shellfish, and other marine
23 life) taken from the sea by vessels registered or
24 recorded with Singapore or the United States
25 and flying the flag of that country;

1 (F) goods produced exclusively from prod-
2 ucts referred to in subparagraph (E) on board
3 factory ships registered or recorded with Singa-
4 pore or the United States and flying the flag of
5 that country;

6 (G) goods taken by Singapore or the
7 United States, or a person of Singapore or the
8 United States, from the seabed or beneath the
9 seabed outside territorial waters, if Singapore
10 or the United States has rights to exploit such
11 seabed;

12 (H) goods taken from outer space, if the
13 goods are obtained by Singapore or the United
14 States or a person of Singapore or the United
15 States and not processed in the territory of a
16 country other than Singapore or the United
17 States;

18 (I) waste and scrap derived from—

19 (i) production in the territory of
20 Singapore, the United States, or both; or

21 (ii) used goods collected in the terri-
22 tory of Singapore, the United States, or
23 both, if such goods are fit only for the re-
24 covery of raw materials;

1 (J) recovered goods derived in the territory
2 of Singapore, the United States, or both, from
3 used goods; or

4 (K) goods produced in the territory of
5 Singapore, the United States, or both,
6 exclusively—

7 (i) from goods referred to in any of
8 subparagraphs (A) through (I); or

9 (ii) from the derivatives of goods re-
10 ferred to in clause (i).

11 (5) HARMONIZED SYSTEM.—The term “Har-
12 monized System” means the Harmonized Com-
13 modity Description and Coding System.

14 (6) INDIRECT MATERIAL.—The term “indirect
15 material” means a good used in the production, test-
16 ing, or inspection of a good but not physically incor-
17 porated into the good, or a good used in the mainte-
18 nance of buildings or the operation of equipment as-
19 sociated with the production of a good, including—

20 (A) fuel and energy;

21 (B) tools, dies, and molds;

22 (C) spare parts and materials used in the
23 maintenance of equipment or buildings;

1 (D) lubricants, greases, compounding ma-
2 terials, and other materials used in production
3 or used to operate equipment or buildings;

4 (E) gloves, glasses, footwear, clothing,
5 safety equipment, and supplies;

6 (F) equipment, devices, and supplies used
7 for testing or inspecting the good;

8 (G) catalysts and solvents; and

9 (H) any other goods that are not incor-
10 porated into the good but the use of which in
11 the production of the good can reasonably be
12 demonstrated to be a part of that production.

13 (7) MATERIAL.—The term “material” means a
14 good that is used in the production of another good.

15 (8) MATERIAL THAT IS SELF-PRODUCED.—The
16 term “material that is self-produced” means a mate-
17 rial, such as a part or ingredient, produced by a pro-
18 ducer of a good and used by the producer in the pro-
19 duction of another good.

20 (9) NONORIGINATING MATERIAL.—The term
21 “nonoriginating material” means a material that
22 does not qualify as an originating good under the
23 rules set out in this section.

24 (10) PREFERENTIAL TARIFF TREATMENT.—
25 The term “preferential tariff treatment” means the

1 customs duty rate that is applicable to an origi-
2 nating good pursuant to chapter 2 of the Agree-
3 ment.

4 (11) PRODUCER.—The term “producer” means
5 a person who grows, raises, mines, harvests, fishes,
6 traps, hunts, manufactures, processes, assembles, or
7 disassembles a good.

8 (12) PRODUCTION.—The term “production”
9 means growing, mining, harvesting, fishing, raising,
10 trapping, hunting, manufacturing, processing, as-
11 sembling, or disassembling a good.

12 (13) RECOVERED GOODS.—

13 (A) IN GENERAL.—The term “recovered
14 goods” means materials in the form of indi-
15 vidual parts that are the result of—

16 (i) the complete disassembly of used
17 goods into individual parts; and

18 (ii) the cleaning, inspecting, testing,
19 or other processing of those parts as nec-
20 essary for improvement to sound working
21 condition by one or more of the processes
22 described in subparagraph (B), in order
23 for such parts to be assembled with other
24 parts, including other parts that have un-
25 dergone the processes described in this

1 paragraph, in the production of a remanu-
2 factured good described in Annex 3C of
3 the Agreement.

4 (B) PROCESSES.—The processes referred
5 to in subparagraph (A)(ii) are welding, flame
6 spraying, surface machining, knurling, plating,
7 sleeving, and rewinding.

8 (14) REMANUFACTURED GOOD.—The term “re-
9 manufactured good” means an industrial good as-
10 sembled in the territory of Singapore or the United
11 States, that is listed in Annex 3C of the Agreement,
12 and—

13 (A) is entirely or partially comprised of re-
14 covered goods;

15 (B) has the same life expectancy and
16 meets the same performance standards as a
17 new good; and

18 (C) enjoys the same factory warranty as
19 such a new good.

20 (15) TERRITORY.—The term “territory” has
21 the meaning given that term in Annex 1A of the
22 Agreement.

23 (16) USED.—The term “used” means used or
24 consumed in the production of goods.

25 (o) PRESIDENTIAL PROCLAMATION AUTHORITY.—

1 (1) IN GENERAL.—The President is authorized
2 to proclaim, as part of the HTS—

3 (A) the provisions set out in Annexes 3A,
4 3B, and 3C of the Agreement; and

5 (B) any additional subordinate category
6 necessary to carry out this title consistent with
7 the Agreement.

8 (2) MODIFICATIONS.—

9 (A) IN GENERAL.—Subject to the consulta-
10 tion and layover provisions of section 103(a),
11 the President may proclaim modifications to the
12 provisions proclaimed under the authority of
13 paragraph (1)(A), other than—

14 (i) the provisions of Annex 3B of the
15 Agreement; and

16 (ii) provisions of chapters 50 through
17 63 of the HTS, as included in Annex 3A
18 of the Agreement.

19 (B) ADDITIONAL PROCLAMATIONS.—Not-
20 withstanding subparagraph (A), and subject to
21 the consultation and layover provisions of sec-
22 tion 103(a), the President may proclaim—

23 (i) modifications to the provisions pro-
24 claimed under the authority of paragraph
25 (1)(A) that are necessary to implement an

1 agreement with Singapore pursuant to ar-
2 ticle 3.18.4(c) of the Agreement; and

3 (ii) before the 1st anniversary of the
4 date of enactment of this Act, modifica-
5 tions to correct any typographical, clerical,
6 or other nonsubstantive technical error re-
7 garding the provisions of chapters 50
8 through 63 of the HTS, as included in
9 Annex 3A of the Agreement.

10 **SEC. 203. CUSTOMS USER FEES.**

11 Section 13031(b) of the Consolidated Omnibus Budg-
12 et Reconciliation Act of 1985 (19 U.S.C. 58c(b)) is
13 amended by inserting after paragraph (12) the following:

14 “(13) No fee may be charged under subsection
15 (a) (9) or (10) with respect to goods that qualify as
16 originating goods under section 202 of the United
17 States-Singapore Free Trade Agreement Implemen-
18 tation Act. Any service for which an exemption from
19 such fee is provided by reason of this paragraph may
20 not be funded with money contained in the Customs
21 User Fee Account.”.

22 **SEC. 204. DISCLOSURE OF INCORRECT INFORMATION.**

23 Section 592(c) of the Tariff Act of 1930 (19 U.S.C.
24 1592(c)) is amended—

1 (1) by redesignating paragraph (7) as para-
2 graph (8); and

3 (2) by inserting after paragraph (6) the fol-
4 lowing new paragraph:

5 “(7) PRIOR DISCLOSURE REGARDING CLAIMS
6 UNDER THE UNITED STATES-SINGAPORE FREE
7 TRADE AGREEMENT.—

8 “(A) An importer shall not be subject to
9 penalties under subsection (a) for making an
10 incorrect claim that a good qualifies as an origi-
11 nating good under section 202 of the United
12 States-Singapore Free Trade Agreement Imple-
13 mentation Act if the importer, in accordance
14 with regulations issued by the Secretary of the
15 Treasury, voluntarily and promptly makes a
16 corrected declaration and pays any duties
17 owing.

18 “(B) In the regulations referred to in sub-
19 paragraph (A), the Secretary of the Treasury is
20 authorized to prescribe time periods for making
21 a corrected declaration and paying duties owing
22 under subparagraph (A), if such periods are not
23 shorter than 1 year following the date on which
24 the importer makes the incorrect claim that a
25 good qualifies as an originating good.”.

1 **SEC. 205. ENFORCEMENT RELATING TO TRADE IN TEXTILE**
2 **AND APPAREL GOODS.**

3 (a) DENIAL OF PERMISSION TO CONDUCT SITE VIS-
4 ITS.—

5 (1) IN GENERAL.—Subject to paragraph (2), if
6 the Secretary of the Treasury proposes to conduct a
7 site visit at an enterprise registered under article 5.3
8 of the Agreement, and responsible officials of the en-
9 terprise do not consent to the proposed visit, the
10 President may exclude from the customs territory of
11 the United States textile and apparel goods pro-
12 duced or exported by that enterprise.

13 (2) TERMINATION OF EXCLUSION.—An exclu-
14 sion of textile and apparel goods produced or ex-
15 ported by an enterprise under paragraph (1) shall
16 terminate when the President determines that the
17 enterprise's production of, and capability to produce,
18 the goods are consistent with statements by the en-
19 terprise that textile or apparel goods the enterprise
20 produces or has produced are originating goods or
21 products of Singapore, as the case may be.

22 (b) KNOWING OR WILLFUL CIRCUMVENTION.—

23 (1) IN GENERAL.—If the President finds that
24 an enterprise of Singapore has knowingly or willfully
25 engaged in circumvention, the President may exclude
26 from the customs territory of the United States tex-

1 tile and apparel goods produced or exported by the
2 enterprise. An exclusion under this paragraph may
3 be imposed on the date beginning on the date a find-
4 ing of knowing or willful circumvention is made and
5 shall be in effect for a period not longer than the ap-
6 plicable period described in paragraph (2).

7 (2) TIME PERIODS.—

8 (A) FIRST FINDING.—With respect to a
9 first finding under paragraph (1), the applica-
10 ble period is 6 months.

11 (B) SECOND FINDING.—With respect to a
12 second finding under paragraph (1), the appli-
13 cable period is 2 years.

14 (C) THIRD AND SUBSEQUENT FINDING.—
15 With respect to a third or subsequent finding
16 under paragraph (1), the applicable period is 2
17 years. If, at the time of a third or subsequent
18 finding, an exclusion is in effect as a result of
19 a previous finding, the 2-year period applicable
20 to the third or subsequent finding shall begin
21 on the day after the day on which the previous
22 exclusion terminates.

23 (c) CERTAIN OTHER INSTANCES OF CIRCUMVEN-
24 TION.—If the President consults with Singapore pursuant
25 to article 5.8 of the Agreement, the consultations fail to

1 result in a mutually satisfactory solution to the matters
2 at issue, and the President presents to Singapore clear
3 evidence of circumvention under the Agreement, the Presi-
4 dent may—

5 (1) deny preferential tariff treatment to the
6 goods involved in the circumvention; and

7 (2) deny preferential tariff treatment, for a pe-
8 riod not to exceed 4 years from the date on which
9 consultations pursuant to article 5.8 of the Agree-
10 ment conclude, to—

11 (A) textile and apparel goods produced by
12 the enterprise found to have engaged in the cir-
13 cumvention, including any successor of such en-
14 terprise; and

15 (B) textile and apparel goods produced by
16 any other entity owned or operated by a prin-
17 cipal of the enterprise, if the principal also is a
18 principal of the other entity.

19 (d) DEFINITIONS.—In this section:

20 (1) GENERAL DEFINITIONS.—The terms “cir-
21 cumvention”, “preferential tariff treatment”, “prin-
22 cipal”, and “textile and apparel goods” have the
23 meanings given such terms in chapter 5 of the
24 Agreement.

1 (2) ENTERPRISE.—The term “enterprise” has
2 the meaning given that term in article 1.2.3 of the
3 Agreement.

4 **SEC. 206. REGULATIONS.**

5 The Secretary of the Treasury shall prescribe such
6 regulations as may be necessary to carry out—

7 (1) subsections (a) through (n) of section 202,
8 and section 203;

9 (2) amendments made by the sections referred
10 to in paragraph (1); and

11 (3) proclamations issued under section 202(o).

12 **TITLE III—RELIEF FROM**
13 **IMPORTS**

14 **SEC. 301. DEFINITIONS.**

15 In this title:

16 (1) COMMISSION.—The term “Commission”
17 means the United States International Trade Com-
18 mission.

19 (2) SINGAPOREAN ARTICLE.—The term “Singa-
20 porean article” means an article that qualifies as an
21 originating good under section 202(a) of this Act.

22 (3) SINGAPOREAN TEXTILE OR APPAREL ARTI-
23 CLE.—The term “Singaporean textile or apparel ar-
24 ticle” means an article—

1 (A) that is listed in the Annex to the
2 Agreement on Textiles and Clothing referred to
3 in section 101(d)(4) of the Uruguay Round
4 Agreements Act (19 U.S.C. 3511(d)(4)); and
5 (B) that is a Singaporean article.

6 **Subtitle A—Relief From Imports**
7 **Benefiting From the Agreement**

8 **SEC. 311. COMMENCING OF ACTION FOR RELIEF.**

9 (a) FILING OF PETITION.—

10 (1) IN GENERAL.—A petition requesting action
11 under this subtitle for the purpose of adjusting to
12 the obligations of the United States under the
13 Agreement may be filed with the Commission by an
14 entity, including a trade association, firm, certified
15 or recognized union, or group of workers, that is
16 representative of an industry. The Commission shall
17 transmit a copy of any petition filed under this sub-
18 section to the United States Trade Representative.

19 (2) PROVISIONAL RELIEF.—An entity filing a
20 petition under this subsection may request that pro-
21 visional relief be provided as if the petition had been
22 filed under section 202(a) of the Trade Act of 1974
23 (19 U.S.C. 2252(a)).

1 (3) CRITICAL CIRCUMSTANCES.—Any allegation
2 that critical circumstances exist shall be included in
3 the petition.

4 (b) INVESTIGATION AND DETERMINATION.—Upon
5 the filing of a petition under subsection (a), the Commis-
6 sion, unless subsection (d) applies, shall promptly initiate
7 an investigation to determine whether, as a result of the
8 reduction or elimination of a duty provided for under the
9 Agreement, a Singaporean article is being imported into
10 the United States in such increased quantities, in absolute
11 terms or relative to domestic production, and under such
12 conditions that imports of the Singaporean article con-
13 stitute a substantial cause of serious injury or threat
14 thereof to the domestic industry producing an article that
15 is like, or directly competitive with, the imported article.

16 (c) APPLICABLE PROVISIONS.—The following provi-
17 sions of section 202 of the Trade Act of 1974 (19 U.S.C.
18 2252) apply with respect to any investigation initiated
19 under subsection (b):

20 (1) Paragraphs (1)(B) and (3) of subsection
21 (b).

22 (2) Subsection (c).

23 (3) Subsection (d).

24 (4) Subsection (i).

1 (d) ARTICLES EXEMPT FROM INVESTIGATION.—No
2 investigation may be initiated under this section with re-
3 spect to any Singaporean article if, after the date that the
4 Agreement enters into force, import relief has been pro-
5 vided with respect to that Singaporean article under—

6 (1) this subtitle;

7 (2) subtitle B;

8 (3) chapter 1 of title II of the Trade Act of
9 1974;

10 (4) article 6 of the Agreement on Textiles and
11 Clothing referred to in section 101(d)(4) of the Uru-
12 guay Round Agreements Act (19 U.S.C.
13 3511(d)(4)); or

14 (5) article 5 of the Agreement on Agriculture
15 referred to in section 101(d)(2) of the Uruguay
16 Round Agreements Act (19 U.S.C. 3511(d)(2)).

17 **SEC. 312. COMMISSION ACTION ON PETITION.**

18 (a) DETERMINATION.—Not later than 120 days (180
19 days if critical circumstances have been alleged) after the
20 date on which an investigation is initiated under section
21 311(b) with respect to a petition, the Commission shall
22 make the determination required under that section.

23 (b) APPLICABLE PROVISIONS.—For purposes of this
24 subtitle, the provisions of paragraphs (1), (2), and (3) of
25 section 330(d) of the Tariff Act of 1930 (19 U.S.C.

1 1330(d) (1), (2), and (3)) shall be applied with respect
2 to determinations and findings made under this section
3 as if such determinations and findings were made under
4 section 202 of the Trade Act of 1974 (19 U.S.C. 2252).

5 (c) ADDITIONAL FINDING AND RECOMMENDATION IF
6 DETERMINATION AFFIRMATIVE.—If the determination
7 made by the Commission under subsection (a) with respect
8 to imports of an article is affirmative, or if the President
9 may consider a determination of the Commission to be an
10 affirmative determination as provided for under paragraph
11 (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C.
12 1330(d)), the Commission shall find, and recommend to
13 the President in the report required under subsection (d),
14 the amount of import relief that is necessary to remedy
15 or prevent the injury found by the Commission in the de-
16 termination and to facilitate the efforts of the domestic
17 industry to make a positive adjustment to import competi-
18 tion. The import relief recommended by the Commission
19 under this subsection shall be limited to the relief de-
20 scribed in section 313(c). Only those members of the Com-
21 mission who voted in the affirmative under subsection (a)
22 are eligible to vote on the proposed action to remedy or
23 prevent the injury found by the Commission. Members of
24 the Commission who did not vote in the affirmative may
25 submit, in the report required under subsection (d), sepa-

1 rate views regarding what action, if any, should be taken
2 to remedy or prevent the injury.

3 (d) REPORT TO PRESIDENT.—Not later than the
4 date that is 30 days after the date on which a determina-
5 tion is made under subsection (a) with respect to an inves-
6 tigation, the Commission shall submit to the President a
7 report that includes—

8 (1) the determination made under subsection
9 (a) and an explanation of the basis for the deter-
10 mination;

11 (2) if the determination under subsection (a) is
12 affirmative, any findings and recommendations for
13 import relief made under subsection (c) and an ex-
14 planation of the basis for each recommendation; and

15 (3) any dissenting or separate views by mem-
16 bers of the Commission regarding the determination
17 and recommendation referred to in paragraphs (1)
18 and (2).

19 (e) PUBLIC NOTICE.—Upon submitting a report to
20 the President under subsection (d), the Commission shall
21 promptly make public such report (with the exception of
22 information which the Commission determines to be con-
23 fidential) and shall cause a summary thereof to be pub-
24 lished in the Federal Register.

1 **SEC. 313. PROVISION OF RELIEF.**

2 (a) IN GENERAL.—Not later than the date that is
3 30 days after the date on which the President receives the
4 report of the Commission in which the Commission's de-
5 termination under section 312(a) is affirmative, or which
6 contains a determination under section 312(a) that the
7 President considers to be affirmative under paragraph (1)
8 of section 330(d) of the Tariff Act of 1930 (19 U.S.C.
9 1330(d)(1)), the President, subject to subsection (b), shall
10 provide relief from imports of the article that is the subject
11 of such determination to the extent that the President de-
12 termines necessary to remedy or prevent the injury found
13 by the Commission and to facilitate the efforts of the do-
14 mestic industry to make a positive adjustment to import
15 competition.

16 (b) EXCEPTION.—The President is not required to
17 provide import relief under this section if the President
18 determines that the provision of the import relief will not
19 provide greater economic and social benefits than costs.

20 (c) NATURE OF RELIEF.—

21 (1) IN GENERAL.—The import relief (including
22 provisional relief) that the President is authorized to
23 provide under this section with respect to imports of
24 an article is as follows:

1 (A) The suspension of any further reduc-
2 tion provided for under Annex 2B of the Agree-
3 ment in the duty imposed on such article.

4 (B) An increase in the rate of duty im-
5 posed on such article to a level that does not
6 exceed the lesser of—

7 (i) the column 1 general rate of duty
8 imposed under the HTS on like articles at
9 the time the import relief is provided; or

10 (ii) the column 1 general rate of duty
11 imposed under the HTS on like articles on
12 the day before the date on which the
13 Agreement enters into force.

14 (C) In the case of a duty applied on a sea-
15 sonal basis to such article, an increase in the
16 rate of duty imposed on the article to a level
17 that does not exceed the lesser of—

18 (i) the column 1 general rate of duty
19 imposed under the HTS on like articles for
20 the immediately preceding corresponding
21 season; or

22 (ii) the column 1 general rate of duty
23 imposed under the HTS on like articles on
24 the day before the date on which the
25 Agreement enters into force.

1 (2) PROGRESSIVE LIBERALIZATION.—If the pe-
2 riod for which import relief is provided under this
3 section is greater than 1 year, the President shall
4 provide for the progressive liberalization (described
5 in article 7.28 of the Agreement) of such relief at
6 regular intervals during the period of its application.

7 (d) PERIOD OF RELIEF.—

8 (1) IN GENERAL.—Subject to paragraph (2),
9 the import relief that the President is authorized to
10 provide under this section may not exceed 2 years.

11 (2) EXTENSION.—

12 (A) IN GENERAL.—Subject to subpara-
13 graph (C), the President, after receiving an af-
14 firmative determination from the Commission
15 under subparagraph (B), may extend the effec-
16 tive period of any import relief provided under
17 this section if the President determines that—

18 (i) the import relief continues to be
19 necessary to prevent or remedy serious in-
20 jury and to facilitate adjustment; and

21 (ii) there is evidence that the industry
22 is making a positive adjustment to import
23 competition.

24 (B) ACTION BY COMMISSION.—

1 (i) Upon a petition on behalf of the
2 industry concerned, filed with the Commis-
3 sion not earlier than the date which is 9
4 months, and not later than the date which
5 is 6 months, before the date on which any
6 action taken under subsection (a) is to ter-
7minate, the Commission shall conduct an
8 investigation to determine whether action
9 under this section continues to be nec-
10 essary to remedy or prevent serious injury
11 and whether there is evidence that the in-
12 dustry is making a positive adjustment to
13 import competition.

14 (ii) The Commission shall publish no-
15 tice of the commencement of any pro-
16 ceeding under this subparagraph in the
17 Federal Register and shall, within a rea-
18 sonable time thereafter, hold a public hear-
19 ing at which the Commission shall afford
20 interested parties and consumers an oppor-
21 tunity to be present, to present evidence,
22 and to respond to the presentations of
23 other parties and consumers, and other-
24 wise to be heard.

1 (iii) The Commission shall transmit to
2 the President a report on its investigation
3 and determination under this subpara-
4 graph not later than 60 days before the ac-
5 tion under subsection (a) is to terminate,
6 unless the President specifies a different
7 date.

8 (C) PERIOD OF IMPORT RELIEF.—The ef-
9 fective period of any import relief imposed
10 under this section, including any extensions
11 thereof, may not, in the aggregate, exceed 4
12 years.

13 (e) RATE AFTER TERMINATION OF IMPORT RE-
14 LIEF.—When import relief under this section is termi-
15 nated with respect to an article, the rate of duty on that
16 article shall be the rate that would have been in effect,
17 but for the provision of such relief, on the date the relief
18 terminates.

19 (f) ARTICLES EXEMPT FROM RELIEF.—No import
20 relief may be provided under this section on any article
21 that has been subject to import relief, after the entry into
22 force of the Agreement, under—

- 23 (1) this subtitle;
24 (2) subtitle B;

1 (3) chapter 1 of title II of the Trade Act of
2 1974;

3 (4) article 6 of the Agreement on Textiles and
4 Clothing referred to in section 101(d)(4) of the Uru-
5 guay Round Agreements Act (19 U.S.C.
6 3511(d)(4)); or

7 (5) article 5 of the Agreement on Agriculture
8 referred to in section 101(d)(2) of the Uruguay
9 Round Agreements Act (19 U.S.C. 3511(d)(2)).

10 **SEC. 314. TERMINATION OF RELIEF AUTHORITY.**

11 (a) GENERAL RULE.—No import relief may be pro-
12 vided under this subtitle after the date that is 10 years
13 after the date on which the Agreement enters into force.

14 (b) EXCEPTION.—Import relief may be provided
15 under this subtitle in the case of a Singaporean article
16 after the date on which such relief would, but for this sub-
17 section, terminate under subsection (a), if the President
18 determines that Singapore has consented to such relief.

19 **SEC. 315. COMPENSATION AUTHORITY.**

20 For purposes of section 123 of the Trade Act of 1974
21 (19 U.S.C. 2133), any import relief provided by the Presi-
22 dent under section 313 shall be treated as action taken
23 under chapter 1 of title II of such Act.

1 **SEC. 316. CONFIDENTIAL BUSINESS INFORMATION.**

2 Section 202(a)(8) of the Trade Act of 1974 (19
3 U.S.C. 2252(a)(8)) is amended in the first sentence—

4 (1) by striking “and”; and

5 (2) by inserting before the period at the end “,
6 and title III of the United States-Singapore Free
7 Trade Agreement Implementation Act”.

8 **Subtitle B—Textile and Apparel**
9 **Safeguard Measures**

10 **SEC. 321. COMMENCEMENT OF ACTION FOR RELIEF.**

11 (a) IN GENERAL.—A request under this subtitle for
12 the purpose of adjusting to the obligations of the United
13 States under the Agreement may be filed with the Presi-
14 dent by an interested party. Upon the filing of a request,
15 the President shall review the request to determine, from
16 information presented in the request, whether to com-
17 mence consideration of the request.

18 (b) PUBLICATION OF REQUEST.—If the President de-
19 termines that the request under subsection (a) provides
20 the information necessary for the request to be considered,
21 the President shall cause to be published in the Federal
22 Register a notice of commencement of consideration of the
23 request, and notice seeking public comments regarding the
24 request. The notice shall include the request and the dates
25 by which comments and rebuttals must be received.

1 **SEC. 322. DETERMINATION AND PROVISION OF RELIEF.**

2 (a) DETERMINATION.—

3 (1) IN GENERAL.—Pursuant to a request made
4 by an interested party, the President shall determine
5 whether, as a result of the reduction or elimination
6 of a duty under the Agreement, a Singaporean tex-
7 tile or apparel article is being imported into the
8 United States in such increased quantities, in abso-
9 lute terms or relative to the domestic market for
10 that article, and under such conditions that imports
11 of the article constitute a substantial cause of seri-
12 ous damage, or actual threat thereof, to a domestic
13 industry producing an article that is like, or directly
14 competitive with, the imported article.

15 (2) SERIOUS DAMAGE.—In making a deter-
16 mination under paragraph (1), the President—

17 (A) shall examine the effect of increased
18 imports on the domestic industry, as reflected
19 in changes in such relevant economic factors as
20 output, productivity, utilization of capacity, in-
21 ventories, market share, exports, wages, em-
22 ployment, domestic prices, profits, and invest-
23 ment, none of which is necessarily decisive; and

24 (B) shall not consider changes in tech-
25 nology or consumer preference as factors sup-

1 porting a determination of serious damage or
2 actual threat thereof.

3 (3) SUBSTANTIAL CAUSE.—For purposes of this
4 subsection, the term “substantial cause” means a
5 cause that is important and not less than any other
6 cause.

7 (b) PROVISION OF RELIEF.—

8 (1) IN GENERAL.—If a determination under
9 subsection (a) is affirmative, the President may pro-
10 vide relief from imports of the article that is the
11 subject of such determination, as described in para-
12 graph (2), to the extent that the President deter-
13 mines necessary to remedy or prevent the serious
14 damage and to facilitate adjustment by the domestic
15 industry.

16 (2) NATURE OF RELIEF.—The relief that the
17 President is authorized to provide under this sub-
18 section with respect to imports of an article is—

19 (A) the suspension of any further reduc-
20 tion provided for under Annex 2B of the Agree-
21 ment in the duty imposed on the article; or

22 (B) an increase in the rate of duty im-
23 posed on the article to a level that does not ex-
24 ceed the lesser of—

1 (i) the column 1 general rate of duty
2 imposed under the HTS on like articles at
3 the time the import relief is provided; or

4 (ii) the column 1 general rate of duty
5 imposed under the HTS on like articles on
6 the day before the date on which the
7 Agreement enters into force.

8 **SEC. 323. PERIOD OF RELIEF.**

9 (a) IN GENERAL.—Subject to subsection (b), the im-
10 port relief that the President is authorized to provide
11 under section 322 may not exceed 2 years.

12 (b) EXTENSION.—

13 (1) IN GENERAL.—Subject to paragraph (2),
14 the President may extend the effective period of any
15 import relief provided under this subtitle if the
16 President determines that—

17 (A) the import relief continues to be nec-
18 essary to remedy or prevent serious damage
19 and to facilitate adjustment; and

20 (B) there is evidence that the industry is
21 making a positive adjustment to import com-
22 petition.

23 (2) LIMITATION.—The effective period of any
24 action under this subtitle, including any extensions
25 thereof, may not, in the aggregate, exceed 4 years.

1 **SEC. 324. ARTICLES EXEMPT FROM RELIEF.**

2 The President may not provide import relief under
3 this subtitle with respect to any article if import relief pre-
4 viously has been provided under this subtitle with respect
5 to that article.

6 **SEC. 325. RATE AFTER TERMINATION OF IMPORT RELIEF.**

7 When import relief under this subtitle is terminated
8 with respect to an article, the rate of duty on that article
9 shall be the rate that would have been in effect, but for
10 the provision of such relief, on the date the relief termi-
11 nates.

12 **SEC. 326. TERMINATION OF RELIEF AUTHORITY.**

13 No import relief may be provided under this subtitle
14 with respect to an article after the date that is 10 years
15 after the date on which the provisions of the Agreement
16 relating to trade in textile and apparel goods take effect
17 pursuant to article 5.10 of the Agreement.

18 **SEC. 327. COMPENSATION AUTHORITY.**

19 For purposes of section 123 of the Trade Act of 1974
20 (19 U.S.C. 2133), any import relief provided by the Presi-
21 dent under this subtitle shall be treated as action taken
22 under chapter 1 of title II of such Act.

23 **SEC. 328. BUSINESS CONFIDENTIAL INFORMATION.**

24 The President may not release information which the
25 President considers to be confidential business informa-
26 tion unless the party submitting the confidential business

1 information had notice, at the time of submission, that
2 such information would be released by the President, or
3 such party subsequently consents to the release of the in-
4 formation. To the extent business confidential information
5 is provided, a nonconfidential version of the information
6 shall also be provided, in which the business confidential
7 information is summarized or, if necessary, deleted.

8 **Subtitle C—Cases Under Title II of**
9 **the Trade Act of 1974**

10 **SEC. 331. FINDINGS AND ACTION ON GOODS FROM SINGA-**
11 **PORE.**

12 (a) EFFECT OF IMPORTS.—If, in any investigation
13 initiated under chapter 1 of title II of the Trade Act of
14 1974, the Commission makes an affirmative determination
15 (or a determination which the President may treat as an
16 affirmative determination under such chapter by reason
17 of section 330(d) of the Tariff Act of 1930), the Commis-
18 sion shall also find (and report to the President at the
19 time such injury determination is submitted to the Presi-
20 dent) whether imports of the article from Singapore are
21 a substantial cause of serious injury or threat thereof.

22 (b) PRESIDENTIAL DETERMINATION REGARDING
23 SINGAPOREAN IMPORTS.—In determining the nature and
24 extent of action to be taken under chapter 1 of title II
25 of the Trade Act of 1974, the President shall determine

1 whether imports from Singapore are a substantial cause
2 of the serious injury or threat thereof found by the Com-
3 mission and, if such determination is in the negative, may
4 exclude from such action imports from Singapore.

5 **TITLE IV—TEMPORARY ENTRY**
6 **OF BUSINESS PERSONS**

7 **SEC. 401. NONIMMIGRANT TRADERS AND INVESTORS.**

8 Upon the basis of reciprocity secured by the Agree-
9 ment, an alien who is a national of Singapore (and any
10 spouse or child (as defined in section 101(b)(1) of the Im-
11 migration and Nationality Act (8 U.S.C. 1101(b)(1)) of
12 the alien, if accompanying or following to join the alien)
13 shall be considered as entitled to enter the United States
14 under and in pursuance of the provisions of the Agreement
15 as a nonimmigrant described in section 101(a)(15)(E) of
16 the Immigration and Nationality Act (8 U.S.C.
17 1101(a)(15)(E)), if the entry is solely for a purpose de-
18 scribed in clause (i) or (ii) of such section and the alien
19 is otherwise admissible to the United States as such a non-
20 immigrant.

21 **SEC. 402. NONIMMIGRANT PROFESSIONALS; LABOR ATTES-**
22 **TATION.**

23 (a) NONIMMIGRANT PROFESSIONALS.—

1 (1) Section 101(a)(15) of the Immigration and
2 Nationality Act (8 U.S.C. 1101(a)(15)) is amended
3 by—

4 (A) deleting “or” at the end of subpara-
5 graph (U);

6 (B) deleting the period at the end of sub-
7 paragraph (V) and inserting “; or”; and

8 (C) adding at the end the following new
9 subparagraph:

10 “(W) subject to section 212(s), an alien
11 who is entitled to enter the United States under
12 and in pursuance of the provisions of an agree-
13 ment listed in section 214(g)(8) (and any
14 spouse or child (as defined in subsection (b)(1))
15 of the alien, if accompanying or following to
16 join the alien) and who is engaged in a specialty
17 occupation requiring—

18 “(i) theoretical and practical applica-
19 tion of a body of specialized knowledge;
20 and

21 “(ii) attainment of a bachelor’s or
22 higher degree in the specific specialty (or
23 the equivalent of such a degree) as a min-
24 imum for entry into the occupation in the
25 United States.”.

1 (2) Section 214(g) of the Immigration and Na-
2 tionality Act (8 U.S.C. 1184(g)) is amended by add-
3 ing at the end the following new paragraph:

4 “(8)(A) The agreement referred to in section
5 101(a)(15)(W) is the United States-Singapore Free
6 Trade Agreement.

7 “(B) The Secretary of Homeland Security shall
8 establish annual numerical limits on approvals of ini-
9 tial applications by aliens to qualify under section
10 101(a)(15)(W), which shall not exceed 5,400 for citi-
11 zens of Singapore.

12 “(C) An application to qualify under section
13 101(a)(15)(W) shall be valid for 1 year at a time
14 and shall be renewable.”.

15 (b) LABOR ATTESTATIONS.—Section 212 of the Im-
16 migration and Nationality Act (8 U.S.C. 1182) is amend-
17 ed by adding at the end the following new subsection (s):

18 “(s) ATTESTATION OF COMPLIANCE FOR PROFES-
19 SIONALS UNDER THE UNITED STATES-SINGAPORE FREE
20 TRADE AGREEMENT.—

21 “(1) No alien may be admitted or provided sta-
22 tus as a nonimmigrant under section 101(a)(15)(W)
23 in an occupational classification unless the employer
24 has filed with the Secretary of Labor an attestation
25 stating the following:

1 “(A) The employer—

2 “(i) is offering and will offer during
3 the period of authorized employment to
4 aliens admitted or provided status under
5 section 101(a)(15)(W) wages that are at
6 least—

7 “(I) the actual wage level paid by
8 the employer to all other individuals
9 with similar experience and qualifica-
10 tions for the specific employment in
11 question; or

12 “(II) the prevailing wage level for
13 the occupational classification in the
14 area of employment,
15 whichever is greater, based on the best in-
16 formation available as of the time of filing
17 the attestation; and

18 “(ii) will provide working conditions
19 for such a nonimmigrant that will not ad-
20 versely affect the working conditions of
21 workers similarly employed.

22 “(B) There is not a strike or lockout in the
23 course of a labor dispute in the occupational
24 classification at the place of employment.

1 “(C) The employer, at the time of filing
2 the attestation—

3 “(i) has provided notice of the filing
4 under this paragraph to the bargaining
5 representative (if any) of the employer’s
6 employees in the occupational classification
7 and area for which aliens are sought; or

8 “(ii) if there is no such bargaining
9 representative, has provided notice of filing
10 in the occupational classification through
11 such methods as physical posting in con-
12 spicuous locations at the place of employ-
13 ment or electronic notification to employ-
14 ees in the occupational classification for
15 which nonimmigrants under section
16 101(a)(15)(W) are sought.

17 “(D) The attestation shall contain a speci-
18 fication of the number of workers sought, the
19 occupational classification in which the workers
20 will be employed, and wage rate and conditions
21 under which they will be employed.

22 “(2)(A) The employer shall make available for
23 public examination, within 1 working day after the
24 date on which an attestation under this subsection
25 is filed, at the employer’s principal place of business

1 or worksite, a copy of each such attestation (and
2 such accompanying documents as are necessary).

3 “(B)(i) The Secretary of Labor shall compile,
4 on a current basis, a list (by employer and by occu-
5 pational classification) of the attestations filed under
6 this subsection. Such list shall include, with respect
7 to each attestation, the wage rate, number of aliens
8 sought, period of intended employment, and date of
9 need.

10 “(ii) The Secretary of Labor shall make such
11 list available for public examination in Washington,
12 D.C.

13 “(C) The Secretary of Labor shall review
14 an attestation filed under this subsection only
15 for completeness and obvious inaccuracies. Un-
16 less the Secretary of Labor finds that an attes-
17 tation is incomplete or obviously inaccurate, the
18 Secretary of Labor shall provide the certifi-
19 cation described in section 101(a)(15)(W) with-
20 in 7 days of the date of the filing of the attesta-
21 tion.

22 “(3)(A) The Secretary of Labor shall establish
23 a process for the receipt, investigation, and disposi-
24 tion of complaints respecting the failure of an em-
25 ployer to meet a condition specified in an attestation

1 submitted under this subsection or misrepresentation
2 by the employer of material facts in such an attesta-
3 tion. Complaints may be filed by any aggrieved per-
4 son or organization (including bargaining represent-
5 atives). No investigation or hearing shall be con-
6 ducted on a complaint concerning such a failure or
7 misrepresentation unless the complaint was filed not
8 later than 12 months after the date of the failure or
9 misrepresentation, respectively. The Secretary of
10 Labor shall conduct an investigation under this
11 paragraph if there is reasonable cause to believe that
12 such a failure or misrepresentation has occurred.

13 “(B) Under the process described in subpara-
14 graph (A), the Secretary of Labor shall provide,
15 within 30 days after the date a complaint is filed,
16 for a determination as to whether or not a reason-
17 able basis exists to make a finding described in sub-
18 paragraph (C). If the Secretary of Labor determines
19 that such a reasonable basis exists, the Secretary of
20 Labor shall provide for notice of such determination
21 to the interested parties and an opportunity for a
22 hearing on the complaint, in accordance with section
23 556 of title 5, United States Code, within 60 days
24 after the date of the determination. If such a hear-
25 ing is requested, the Secretary of Labor shall make

1 a finding concerning the matter by not later than 60
2 days after the date of the hearing. In the case of
3 similar complaints respecting the same applicant,
4 the Secretary of Labor may consolidate the hearings
5 under this subparagraph on such complaints.

6 “(C)(i) If the Secretary of Labor finds, after
7 notice and opportunity for a hearing, a failure to
8 meet a condition of paragraph (1)(B) or a substan-
9 tial failure to meet a condition of paragraph (1) (C)
10 or (D), or a misrepresentation of material fact in an
11 attestation—

12 “(I) the Secretary of Labor shall notify the
13 Secretary of State and the Secretary of Home-
14 land Security of such finding and may, in addi-
15 tion, impose such other administrative remedies
16 (including civil monetary penalties in an
17 amount not to exceed \$1,000 per violation) as
18 the Secretary of Labor determines to be appro-
19 priate; and

20 “(II) the Secretary of State or the Sec-
21 retary of Homeland Security as appropriate
22 shall not approve applications filed with respect
23 to that employer under section 204, 214(c), or
24 101(a)(15)(W) during a period of at least 1
25 year for aliens to be employed by the employer.

1 “(ii) If the Secretary of Labor finds, after no-
2 tice and opportunity for a hearing, a willful failure
3 to meet a condition of paragraph (1), a willful mis-
4 representation of material fact in an attestation, or
5 a violation of clause (iv)—

6 “(I) the Secretary of Labor shall notify
7 Secretary of State and the Secretary of Home-
8 land Security of such finding and may, in addi-
9 tion, impose such other administrative remedies
10 (including civil monetary penalties in an
11 amount not to exceed \$5,000 per violation) as
12 the Secretary of Labor determines to be appro-
13 priate; and

14 “(II) the Secretary of State or the Sec-
15 retary of Homeland Security, as appropriate,
16 shall not approve applications filed with respect
17 to that employer under section 204, 214(c), or
18 101(a)(15)(W) during a period of at least 2
19 years for aliens to be employed by the employer.

20 “(iii) If the Secretary of Labor finds, after no-
21 tice and opportunity for a hearing, a willful failure
22 to meet a condition of paragraph (1) or a willful
23 misrepresentation of material fact in an attestation,
24 in the course of which failure or misrepresentation
25 the employer displaced a United States worker em-

1 employed by the employer within the period beginning
2 90 days before and ending 90 days after the date of
3 filing of any visa application supported by the
4 attestation—

5 “(I) the Secretary of Labor shall notify
6 Secretary of State and the Secretary of Home-
7 land Security of such finding and may, in addi-
8 tion, impose such other administrative remedies
9 (including civil monetary penalties in an
10 amount not to exceed \$35,000 per violation) as
11 the Secretary of Labor determines to be appro-
12 priate; and

13 “(II) the Secretary of State or the Sec-
14 retary of Homeland Security as appropriate
15 shall not approve applications filed with respect
16 to that employer under section 204, 214(c), or
17 101(a)(15)(W) during a period of at least 3
18 years for aliens to be employed by the employer.

19 “(iv) It is a violation of this clause for an em-
20 ployer who has filed an attestation under this sub-
21 section to intimidate, threaten, restrain, coerce,
22 blacklist, discharge, or in any other manner discrimi-
23 nate against an employee (which term, for purposes
24 of this clause, includes a former employee and an
25 applicant for employment) because the employee has

1 disclosed information to the employer, or to any
2 other person, that the employee reasonably believes
3 evidences a violation of this subsection, or any rule
4 or regulation pertaining to this subsection, or be-
5 cause the employee cooperates or seeks to cooperate
6 in an investigation or other proceeding concerning
7 the employer's compliance with the requirements of
8 this subsection or any rule or regulation pertaining
9 to this subsection.

10 “(v) The Secretary of Labor and the Secretary
11 of Homeland Security shall devise a process under
12 which a nonimmigrant under section 101(a)(15)(W)
13 who files a complaint regarding a violation of clause
14 (iv) and is otherwise eligible to remain and work in
15 the United States may be allowed to seek other ap-
16 propriate employment in the United States for a pe-
17 riod not to exceed the maximum period of stay au-
18 thorized for such nonimmigrant classification.

19 “(vi)(I) It is a violation of this clause for an
20 employer who has filed an attestation under this
21 subsection to require a nonimmigrant under section
22 101(a)(15)(W) to pay a penalty for ceasing employ-
23 ment with the employer prior to a date agreed to by
24 the nonimmigrant and the employer. The Secretary
25 of Labor shall determine whether a required pay-

1 ment is a penalty (and not liquidated damages) pur-
2 suant to relevant State law.

3 “(II) If the Secretary of Labor finds, after no-
4 tice and opportunity for a hearing, that an employer
5 has committed a violation of this clause, the Sec-
6 retary of Labor may impose a civil monetary penalty
7 of \$1,000 for each such violation and issue an ad-
8 ministrative order requiring the return to the non-
9 immigrant of any amount paid in violation of this
10 clause, or, if the nonimmigrant cannot be located,
11 requiring payment of any such amount to the gen-
12 eral fund of the Treasury.

13 “(vii)(I) It is a failure to meet a condition of
14 paragraph (1)(A) for an employer who has filed an
15 attestation under this subsection and who places a
16 nonimmigrant under section 101(a)(15)(W) des-
17 ignated as a full-time employee in the attestation,
18 after the nonimmigrant has entered into employment
19 with the employer, in nonproductive status due to a
20 decision by the employer (based on factors such as
21 lack of work), or due to the nonimmigrant’s lack of
22 a permit or license, to fail to pay the nonimmigrant
23 full-time wages in accordance with paragraph (1)(A)
24 for all such nonproductive time.

1 “(II) It is a failure to meet a condition of para-
2 graph (1)(A) for an employer who has filed an attes-
3 tation under this subsection and who places a non-
4 immigrant under section 101(a)(15)(W) designated
5 as a part-time employee by the employer in the at-
6 testation with respect to the nonimmigrant, after the
7 nonimmigrant has entered into employment with the
8 employer, in nonproductive status under cir-
9 cumstances described in subclause (I), to fail to pay
10 such a nonimmigrant for such hours as are des-
11 ignated on the attestation required in paragraph (1)
12 consistent with the rate of pay identified on such at-
13 testation.

14 “(III) In the case of a nonimmigrant under sec-
15 tion 101(a)(15)(W) who has not yet entered into
16 employment with an employer who has had approved
17 an attestation under this subsection with respect to
18 the nonimmigrant, the provisions of subclauses (I)
19 and (II) shall apply to the employer beginning 30
20 days after the date the nonimmigrant first is admit-
21 ted into the United States or 60 days after the date
22 the nonimmigrant becomes eligible to work for the
23 employer (in the case of a nonimmigrant who is
24 present in the United States on the date of the ap-

1 proval of the application filed with the Secretary of
2 Homeland Security).

3 “(IV) This clause does not apply to a failure to
4 pay wages to a nonimmigrant under section
5 101(a)(15)(W) for nonproductive time due to non-
6 work-related factors, such as the voluntary request
7 of the nonimmigrant for an absence or cir-
8 cumstances rendering the nonimmigrant unable to
9 work.

10 “(V) This clause shall not be construed as pro-
11 hibiting an employer that is a school or other edu-
12 cational institution from applying to a nonimmigrant
13 under section 101(a)(15)(W) an established salary
14 practice of the employer, under which the employer
15 pays to nonimmigrants under section 101(a)(15)(W)
16 and United States workers in the same occupational
17 classification an annual salary in disbursements over
18 fewer than 12 months, if—

19 “(aa) the nonimmigrant agrees to the com-
20 pressed annual salary payments prior to the
21 commencement of the employment; and

22 “(bb) the attestation of the salary practice
23 to the nonimmigrant does not otherwise cause
24 the nonimmigrant to violate any condition of

1 the nonimmigrant's authorization under this
2 Act to remain in the United States.

3 “(VI) This clause shall not be construed as su-
4 perseding clause (viii).

5 “(viii) It is a failure to meet a condition of
6 paragraph (1)(A) for an employer who has filed an
7 attestation under this subsection to fail to offer to
8 a nonimmigrant under section 101(a)(15)(W), dur-
9 ing the nonimmigrant's period of authorized employ-
10 ment, benefits and eligibility for benefits (including
11 the opportunity to participate in health, life, dis-
12 ability, and other insurance plans; the opportunity to
13 participate in retirement and savings plans; and
14 cash bonuses and noncash compensation, such as
15 stock options (whether or not based on perform-
16 ance)) on the same basis, and in accordance with the
17 same criteria, as the employer offers to United
18 States workers.

19 “(D) If the Secretary of Labor finds, after no-
20 tice and opportunity for a hearing, that an employer
21 has not paid wages at the wage level specified under
22 the attestation and required under paragraph (1),
23 the Secretary of Labor shall order the employer to
24 provide for payment of such amounts of back pay as
25 may be required to comply with the requirements of

1 paragraph (1), whether or not a penalty under sub-
2 paragraph (C) has been imposed.

3 “(E) The Secretary of Labor may, on a case-
4 by-case basis, subject an employer to random inves-
5 tigations for a period of up to 5 years, beginning on
6 the date on which the employer is found by the Sec-
7 retary of Labor to have committed a willful failure
8 to meet a condition of paragraph (1) or to have
9 made a willful misrepresentation of material fact in
10 an attestation. The authority of the Secretary of
11 Labor under this subparagraph shall not be con-
12 strued to be subject to, or limited by, the require-
13 ments of subparagraph (A).

14 “(F) Nothing in this subsection shall be con-
15 strued as superseding or preempting any other en-
16 forcement-related authority under this chapter (such
17 as the authorities under section 274B), or any other
18 Act.

19 “(4) For purposes of this subsection:

20 “(A) The term ‘area of employment’ means
21 the area within normal commuting distance of
22 the worksite or physical location where the work
23 of the nonimmigrant under section
24 101(a)(15)(W) is or will be performed. If such
25 worksite or location is within a Metropolitan

1 Statistical Area, any place within such area is
2 deemed to be within the area of employment.

3 “(B) In the case of an attestation with re-
4 spect to 1 or more nonimmigrants under section
5 101(a)(15)(W) by an employer, the employer is
6 considered to ‘displace’ a United States worker
7 from a job if the employer lays off the worker
8 from a job that is essentially the equivalent of
9 the job for which the nonimmigrant or non-
10 immigrants is or are sought. A job shall not be
11 considered to be essentially equivalent of an-
12 other job unless it involves essentially the same
13 responsibilities, was held by a United States
14 worker with substantially equivalent qualifica-
15 tions and experience, and is located in the same
16 area of employment as the other job.

17 “(C)(i) The term ‘lays off’, with respect to
18 a worker—

19 “(I) means to cause the worker’s loss
20 of employment, other than through a dis-
21 charge for inadequate performance, viola-
22 tion of workplace rules, cause, voluntary
23 departure, voluntary retirement, or the ex-
24 piration of a grant or contract; but

1 “(II) does not include any situation in
2 which the worker is offered, as an alter-
3 native to such loss of employment, a simi-
4 lar employment opportunity with the same
5 employer at equivalent or higher com-
6 pensation and benefits than the position
7 from which the employee was discharged,
8 regardless of whether or not the employee
9 accepts the offer.

10 “(ii) Nothing in this subparagraph is in-
11 tended to limit an employee’s rights under a
12 collective bargaining agreement or other em-
13 ployment contract.

14 “(D) The term ‘United States worker’
15 means an employee who—

16 “(i) is a citizen or national of the
17 United States; or

18 “(ii) is an alien who is lawfully admit-
19 ted for permanent residence, is admitted as
20 a refugee under section 207 of this title, is
21 granted asylum under section 208, or is an
22 immigrant otherwise authorized, by this
23 chapter or by the Secretary of Homeland
24 Security, to be employed.”.

1 **SEC. 403. LABOR DISPUTES.**

2 Section 214 of the Immigration and Nationality Act
3 (8 U.S.C. 1184) is amended by redesignating subsection
4 (j) as paragraph (1) of subsection (j) and adding after
5 such paragraph (1), as redesignated, the following new
6 paragraph:

7 “(2) Notwithstanding any other provision of
8 this Act and subject to regulations promulgated by
9 the Secretary of Homeland Security, an alien who
10 seeks to enter the United States under and pursuant
11 to the provisions of a free trade agreement listed in
12 subsection (g)(8)(A), and the spouse and child of
13 such alien if accompanying or following to join him,
14 shall not be classified as a nonimmigrant under sec-
15 tion 101(a)(15)(E), 101(a)(15)(L), or
16 101(a)(15)(W) if there is in progress a strike or
17 lockout in the course of a labor dispute in the occu-
18 pational classification at the place or intended place
19 of employment, unless such alien establishes, pursu-
20 ant to regulations promulgated by the Secretary of
21 Homeland Security, after consultation with the Sec-
22 retary of Labor, that the alien’s entry will not affect
23 adversely the settlement of the strike or lockout or
24 the employment of any person who is involved in the
25 strike or lockout. Notice of a determination under

1 this subsection shall be given as may be required by
2 such agreement.”.