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BIPARTISAN TRADE PROMOTION AUTHORITY ACT OF 2002

FEBRUARY 28, 2002.—Ordered to be printed

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

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 3005]

[Including cost estimate of the Congressional Budget Office]

The Committee on Finance, to which was referred the bill (H.R. 3005) to grant trade promotion authority to the President through June 1, 2005, with the possibility of extension through June 1, 2007, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

I. SUMMARY

H.R. 3005 establishes special rules for the implementation of international trade agreements that the President concludes prior to June 1, 2005, with a possibility of extension to June 1, 2007. The bill would give the President the authority to proclaim modifications to certain tariff rates in order to implement such agreements. Where specific conditions have been met, legislation to implement trade agreements—including tariff reductions not subject to proclamation authority and other changes to current U.S. law—would be subject to streamlined procedures (known as "fast track procedures" or "trade authorities procedures") when considered in the House of Representatives and the Senate. Under these fast track procedures, trade agreement implementing bills would not be subject to amendment and would be guaranteed a vote on the floor of each Chamber by a date certain.

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For implementing legislation to qualify for trade authorities procedures, the underlying trade agreement must make progress toward achieving the applicable objectives, policies, and priorities set forth in the bill. Further, the President must consult regularly with Members of Congress regarding agreements under negotiation. Congress reserves the right to withdraw the application of fast track procedures to an agreement or agreements in the event the President fails to consult as required.

Fast track procedures for trade agreement implementing legislation were last enacted in 1988 and extended in 1991 and 1993 with respect to certain agreements entered into before April 16, 1994. It is expected that the present extension of fast track procedures will support the President's efforts to conclude a new round of negotiations in the World Trade Organization, an agreement to establish a Free Trade Area of the Americas, and bilateral free trade agreements with Chile and Singapore, as well as efforts to conclude additional agreements the President may identify during the period covered by the bill.

II. GENERAL EXPLANATION

A. Background

Implementation of trade agreements often requires the United States to enact legislation modifying tariffs and making other changes to U.S. law. Congressional consideration of such implementing legislation under ordinary rules of procedure carries several disadvantages. Under ordinary rules, a bill may be amended in a manner inconsistent with the underlying agreement, which may require the President to re-open negotiation of the agreement. Ordinary rules do not require that a bill be voted on by a date certain, or that it be voted on at all. A trade agreement could be concluded and languish indefinitely.

These aspects of ordinary legislative procedure pose difficulties for trade negotiations. A foreign country may be reluctant to conclude negotiations with the United States faced with uncertainty as to whether and when a trade agreement will come up for approval by Congress. Similarly, a country may be reluctant to make concessions, knowing that it may have to renegotiate following Congress's initial consideration of the agreement.

Recognizing that the failure to implement certain agreements concluded during the Kennedy Round of multilateral trade negotiations had damaged U.S. negotiating credibility, and desiring to facilitate the negotiation and implementation of trade agreements, Congress enacted special procedures for the consideration of trade agreement implementing legislation in the Trade Act of 1974. The "fast track" procedures were first applied to the Trade Agreements Act of 1979, in which Congress approved the results of the Tokyo Round of negotiations under the General Agreement on Tariffs and Trade. Fast track procedures were renewed in 1984 and extended to a broader array of agreements. They were renewed again in the Omnibus Trade and Competitiveness Act of 1988. That Act provided for application of fast track procedures to agreements concluded through June 1, 1991 with the possibility of extension through June 1, 1993. This period was subsequently extended to April 15, 1994. The procedures in the 1988 Act were used to ap-

prove the North American Free Trade Agreement and the Uruguay Round Agreements, including the Marakesh Agreement Establishing the World Trade Organization. Today, fast track procedures are widely viewed as essential to consideration of certain complex international trade agreements to which the United States may become a party.

The present bill follows the model of past fast track legislation, with certain modifications to reflect new priorities and objectives, as well as an increased emphasis on consultation by the President with Congress at all phases of trade agreement negotiation. As under past fast track legislation, the present bill sets forth a series of detailed negotiating objectives covering particular sectors, such as agriculture and services, and issues that cut across sectors, such as dispute settlement and transparency in the institutions that regulate international trade. Next, the bill sets forth the conditions under which trade agreement implementing legislation will be eligible for consideration under fast track procedures. Generally, the President must make progress toward achieving the relevant objectives set forth in the bill and explain how he has done so. Further, the President must consult with Congress at all phases of an agreement's negotiation.

If these conditions are met, then a bill approving a trade agreement and making only those changes to U.S. law necessary or appropriate to implement the agreement will be considered under fast track rules. Given the inability to amend legislation under fast track rules, it is important to protecting the constitutional authority of Congress that such legislation be limited to measures necessary or appropriate to implement the underlying agreement. For this reason, practice under past fast track legislation has been for the congressional Committees of jurisdiction and the President to collaborate closely on the drafting of implementing legislation before it is formally introduced. It is the Committee's expectation that this practice will be followed under the present bill.

The very nature of trade authorities procedures requires that the executive and legislative branches work hand-in-hand during international trade negotiations. Constitutionally, the power to regulate commerce with foreign nations rests squarely with the Congress. In agreeing to fast track procedures, Congress retains this power, but modifies its use. In doing so, Congress recognizes that the Constitution vests the President with the power to speak to foreign leaders with one voice, and that the international trade interests of the United States can best be promoted by negotiating international trade agreements with foreign nations. In short, trade authorities procedures represent a partnership between the legislative and executive branches of government. By forging this partnership, Congress and the President enhance the effectiveness of their constitutionally endowed powers to serve the best interests of the American people. The foundation of this partnership is regular, detailed and frequent Presidential consultation with Congress.

Recognizing the importance of congressional-executive consultation on trade negotiations, Congress set forth certain consultation requirements in the same legislation that contained the original fast track provisions. Section 161 of the Trade Act of 1974 requires the Speaker of the House of Representatives and the President pro tempore of the Senate to designate congressional advisers for trade

policy and negotiations at the beginning of each regular session of Congress. These advisers consist of five members of the House Committee on Ways and Means and five members of the Senate Committee on Finance, as well as certain members that the Speaker and President pro tempore may designate from other Committees, according to the subject matter under negotiation. These advisers are tasked with providing "advice on trade policy and priorities for the implementation thereof." They are to be "accredited by the United States Trade Representative on behalf of the President as official advisers to the United States delegations to international conferences, meetings, and negotiating sessions relating to trade agreements."

The Trade Representative is required to keep the congressional advisers currently informed on matters affecting trade policy, possible trade negotiations, and ongoing trade negotiations, as well as changes to domestic law or administration of the law that may be required by trade agreements. Section 161 requires similar consultations with the Ways and Means Committee and Finance Committee, as well as other appropriate Committees of Congress.

The present bill adds to the trade policy consultation requirements in several important respects. It establishes a special Congressional Oversight Group, in addition to the congressional trade advisers designated under section 161 of the Trade Act. The Group will consist of Members of the Ways and Means and Finance Committees, as well as Members of other Committees with jurisdiction over laws that may be affected by ongoing negotiations. Like the advisers under section 161, Members of the Oversight Group will be accredited as official advisers to the U.S. delegation in trade negotiations. To ensure their ability to fulfill this role effectively, the present bill requires the Trade Representative, in consultation with the Chairmen and Ranking Members of the Finance and Ways and Means Committees, to develop written guidelines for consultations with the Oversight Group.

Additionally, the present bill contains special notice and consultation requirements regarding negotiations and proposed negotiations on particular subjects, including import-sensitive agricultural products, fish and shellfish, textiles, and trade remedy laws (i.e., antidumping, countervailing duty, and safeguards laws).

The Committee recognizes that fast track procedures have facilitated the negotiation of important trade benefits for the United States. Trade agreements approved and implemented under fast track procedures have led to the opening of markets for U.S. manufactured goods, agricultural products, and services, the establishment of international disciplines on an array of practices affecting U.S. trade relations with foreign countries, and the adoption of rules fostering an environment conducive to foreign investment by U.S. individuals and businesses. The Committee believes that enactment of the Bipartisan Trade Promotion Authority Act of 2002 will promote U.S. leadership in trade policy, and enable the United States to expand on the benefits achieved under previous fast track legislation, while preserving strong and effective roles for both the legislative and executive branches of government in trade policy making.

B. Action in Committee

1. HEARINGS

On June 20 and 21, 2001, the Committee held hearings on Trade Promotion Authority. The Committee heard testimony from Secretary of Commerce Donald Evans and U.S. Trade Representative Robert B. Zoellick, several Members of the Senate and of the House of Representatives, and witnesses from the private sector, including several former U.S. trade officials. Private sector witnesses represented a broad cross-section of interests, including agriculture, financial services, labor, and the environment. The Committee also received written statements from a number of interested parties.

In general, witnesses expressed support for a U.S. policy of pursuing trade liberalization and expansion of the rules-based world trading system, and recognized that this would be facilitated by enactment of fast track legislation. Witnesses observed that increased trading opportunities should have a positive impact on economic growth and employment in the United States. It was noted that, since fast track legislation lapsed in 1994, free trade agreements among other countries have proliferated, and that a new grant of fast track legislation would help the United States to affirm its leading role in world trade.

At the same time, some witnesses testified that new fast track legislation should contain certain modifications from the 1988 legislation. Some urged that new legislation take account of the relationships between trade and labor standards and trade and environmental standards—in particular, that a bill reflect the principles on these issues embedded in the United States-Jordan Free Trade Agreement. Others urged changes to procedures for congressional and executive branch interaction on trade policy—for example, excluding from fast track procedures any changes to U.S. trade remedy laws, and requiring that Congress expressly approve the implementation of any adverse decisions rendered in trade-related dispute settlement.

A number of witnesses pointed out the importance that U.S. trade policy be built upon the foundation of a clear mandate agreed to by Congress and the President.

2. CONSIDERATION OF LEGISLATION

On December 6, 2001, the Senate received from the House of Representatives the Bipartisan Trade Promotion Authority Act of 2001 (H.R. 3005). The bill was read twice and referred to the Committee on Finance. The Committee held a meeting on December 12, 2001, which continued on December 18, 2001. The Chairman offered an amendment in the nature of a substitute, which was agreed to by the Committee. Several other amendments were rejected by voice vote. The motion to report the bill as amended by the Chairman's amendment in the nature of a substitute was approved by a vote of 18 to 3.

III. SECTION-BY-SECTION ANALYSIS

Section 1. Short title; findings

The short title of the bill is the "Bipartisan Trade Promotion Authority Act of 2002."

Section 1(b) sets forth three sets of findings. First, Congress finds that expanded trade is vital to the national security of the United States, because it promotes stability through economic growth and prosperity and binds nations together in networks of mutual rights and obligations.

Second, Congress finds that trade expansion has been the engine of economic growth for the United States, maximizing opportunities for sectors vital to the U.S. economy. By fostering new opportunities for the U.S. economy, it is expected that expanded trade will preserve a leading role for the United States in world affairs.

The third set of findings, set forth in section 1(b)(3), expresses the view that continued support for trade expansion requires a preservation of the balance of rights and obligations negotiated in trade agreements. It identifies a growing concern that this balance may be upset by decisions of dispute settlement panels convened in the World Trade Organization ("WTO") and the WTO Appellate Body. This concern is prompted by recent decisions placing new obligations on the United States, and identifying restrictions on the use of antidumping, countervailing duty and safeguard measures, which are not found anywhere in the negotiated texts of the relevant WTO agreements.

Congress finds that WTO panels and the Appellate Body have ignored their obligation to afford an appropriate level of deference to the technical expertise, factual findings, and permissible legal interpretations of national investigating authorities—particularly the U.S. Department of Commerce and the U.S. International Trade Commission ("ITC"). The record compiled so far in reviews of antidumping duty, countervailing duty, and safeguard measures reflects a bias against import relief.

First, WTO panels and the Appellate Body have, through interpretation, substantially rewritten the WTO Antidumping Agreement in ways disadvantageous to the United States. For example, in United States—Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan, the Appellate Body held that investigating authorities, in order to justify antidumping measures, must separate and distinguish the amount of injury caused by each potential factor relating to a domestic industry's material injury, rather than simply finding that material injury exists and that dumped imports are among the causes of material injury. This decision has no basis in the text of the Antidumping Agreement and is inconsistent with previously adopted decisions of panels under the General Agreement on Tariffs and Trade ("GATT") concerning the causation analysis required in material injury investigations in antidumping cases. Moreover, it is contrary to the expectations of the Committee based on the Statement of Administrative Action that accompanied the Uruguay Round Agreements Act. See Uruguay Round Trade Agreements, Texts of Agreements, Implementing Bill, Statement of Administrative Action, and Required Supporting Statements, H. Doc. No. 316, 103d Cong., 2d Sess. at 851 (1994) ("Article 3.5 of the Antidumping Agreement and 15.5 of the Subsidies Agreement do not change the causation standard from that provided in the 1979 Tokyo Round Codes. * * * The GATT 1947 Panel Report in the Norwegian Salmon case approved U.S. practice as consistent with the 1979 Codes. The panel noted that the [U.S. International Trade] Commission need not isolate

the injury caused by other factors from injury caused by unfair imports.").

In the same case, the Appellate Body further held that investigating authorities may not include, among the company-specific dumping margins averaged together to establish an antidumping duty deposit rate for companies not individually investigated, any company-specific margin based even in part on "facts available"—a decision with no basis in the text of the Antidumping Agreement. In this and other respects, the Hot-Rolled Steel case resulted in the announcement of obligations concerning the use of facts available that are different from the obligations set forth in the Antidumping Agreement.

In this case and in others, the panels and Appellate Body have avoided or misapplied the standard of review in Article 17.6 of the Antidumping Agreement, which is supposed to ensure deference to reasonable factual determinations and legal interpretations rendered by national investigating authorities. [1]

Second, WTO panels and the Appellate Body have, through interpretation, substantially rewritten Part V of the Agreement on Subsidies and Countervailing Measures, which applies to WTO Members' countervailing duty actions, in ways disadvantageous to the United States. For example, the Appellate Body in United States—Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom refused to apply a deferential standard of review which the United States had sought and negotiated and which is applicable, under a 1994 WTO Ministerial Declaration, to countervailing duty disputes. The Appellate Body also invented new limits, with no basis in the text of the Agreement on Subsidies and Countervailing Measures, on the use of countervailing duties to offset nonrecurring subsidies whose benefits are allocated over time. The substantive rules announced by the Appellate Body created a loophole in the existing WTO anti-subsidy regime and undermined negotiated disciplines which the United States worked for decades to achieve.

Third, WTO panels and the Appellate Body have, through interpretation, substantially rewritten the WTO's rules on safeguard measures, including the Agreement on Safeguards, in ways disadvantageous to the United States. In United States—Safeguard Measures on Wheat Gluten from the EU and United States—Safeguard Measures on Lamb from Australia and New Zealand, WTO tribunals faulted the ITC's longstanding method for assessing the role played by imports when multiple factors are contributing to a domestic industry's serious injury—decisions with no basis in the text of the Agreement on Safeguards. These two recent decisions against the United States continued a pattern in which no challenged safeguard measure has ever been upheld in WTO dispute

[1] Other examples of WTO panels and the Appellate Body wrongly narrowing the discretion of national investigating authorities, and thereby upsetting the carefully negotiated balance of the Antidumping Agreement, include: United States—Anti-Dumping Duty on Dynamic Random Access Memory Semiconductors (DRAMS) of One Megabit or Above from Korea; United States—Anti-Dumping Measures on Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip from Korea; Thailand—Anti-Dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel H-Beams from Poland; European Communities—Anti-Dumping Duties on Imports of Cotton-Type Bed-Linen from India; and Guatemala—Definitive Anti-dumping Measure regarding Grey Portland Cement from Mexico.

settlement, and they have invited additional challenges to valid U.S. safeguard measures on other products.

This record in WTO dispute settlement proceedings is particularly troubling, because the right to act against dumped, subsidized, and surging imports is a fundamental part of the multilateral trade regime, having been codified in Articles VI and XIX of the original General Agreement on Tariffs and Trade 1947. Foreign governments' successful use of dispute settlement procedures to erode bargained-for trade remedy protections negatively affects American firms, workers, and farmers and may jeopardize public support for a liberal trading system.

Because of the Committee's concerns about the trend in WTO dispute settlement involving U.S. trade remedy laws and its potential damage to support for the WTO, a later provision of the bill (section 5(b)(2)) requires the Secretary of Commerce to submit a report to Congress outlining a strategy for correcting instances in which dispute settlement panels and the Appellate Body have added to obligations or diminished rights of the United States, as described in section 1(b)(3).

Section 2. Trade negotiating objectives

Summary

Section 2 of the bill sets forth the objectives, policies, and priorities of the United States in negotiating trade agreements over the next 5 years. In order for legislation implementing a trade agreement to qualify for consideration under the special trade authorities procedures set forth in section 3 of the bill, the President must state that the agreement makes progress in achieving the applicable purposes, policies, priorities, and objectives of the bill. Further, these purposes, policies, priorities, and objectives should serve as the basis for consultations between the President and Congress during the course of an agreement's negotiation.

Section 2 is organized into three subsections, all of which carry equal importance in defining the trade negotiating positions of the United States. Subsection (a) addresses overall objectives—that is, goals that cut across sectors and issue areas. Subsection (b) addresses objectives that are specific to particular sectors, such as services and agriculture, and particular issue areas, such as investment, dispute settlement, and the intersection between trade and core labor standards and between trade and the environment. Subsection (c) addresses priorities that are not necessarily negotiating objectives themselves but that should inform trade negotiations or be pursued parallel to trade negotiations. For example, one priority requires the conduct of environmental reviews in conjunction with new trade negotiations. Another priority directs the President to seek the establishment of consultative mechanisms among trade agreement partners to strengthen their capacity to promote respect for core labor standards.

It is the expectation of the Committee that in affirming that a trade agreement makes progress toward achieving the applicable purposes, policies, priorities and objectives of this bill, the President will address the purposes, policies, priorities, and objectives in each of the subsections of section 2.

Section 2(a). Overall trade negotiating objectives

Section 2(a) identifies eight overall trade negotiating objectives, as follows:

- Obtaining more open, equitable, and reciprocal market access;
- Obtaining the reduction or elimination of trade barriers and other trade-distorting policies and practices;
- Further strengthening the system of international trading disciplines and procedures, including dispute settlement;
- Fostering economic growth, raising living standards, and promoting full employment in the United States, and enhancing the global economy;
- Ensuring that trade and environmental policies are mutually supportive, and seeking to protect and preserve the environment and enhance the international means of doing so, while optimizing the use of the world's resources;
- Promoting respect for worker rights and the rights of children, consistent with core labor standards as defined in section 13(2) of the bill;
- Seeking commitments by trade agreement partners to strive not to weaken or reduce protections afforded in domestic environmental or labor laws in order to gain trade advantages; and
- Ensuring that trade agreements afford small businesses equal access to international markets, equitable trade benefits, and expanded export opportunities, and provide for the elimination of barriers that affect small businesses disproportionately.

These overall objectives reflect several priorities in U.S. trade policy. Establishing greater access to foreign markets is one of those priorities, but it is not the only one. In particular, the overall objectives make clear that the pursuit of trade expansion should not be carried out at the expense of other priorities, such as protection of a sound, sustainable environment and protection of the rights of workers. Rather, these goals should be pursued in ways that will be mutually reenforcing. Similarly, as negotiators seek to expand trading opportunities for U.S. producers of goods and services, they also should seek to strengthen the disciplines that establish fairness and predictability in the world trading system.

Section 2(b). Principal trade negotiating objectives

Section 2(b) sets forth 14 objectives that are sector- or issue-specific, as follows:

1. Trade barriers and distortions

The principal negotiating objectives regarding trade barriers and distortions are:

- To expand competitive market opportunities for U.S. exports and to obtain fairer and more open conditions of trade by reducing or eliminating tariff and nontariff barriers and policies and practices of foreign governments directly related to trade that decrease market opportunities for U.S. exports and distort U.S. trade, and

- To obtain reciprocal tariff and nontariff barrier elimination agreements, with particular attention to products covered in section 111(b) of the Uruguay Round Agreements Act.

This language covers any tariff or non-tariff barrier as well as any policy or practice that is directly related to trade, regardless of whether the barrier is imposed at the foreign border or at some other point. The objective is directed at policies and practices, as well as formal statutes and regulations. The Committee recognizes that some of the most onerous foreign trade barriers faced by U.S. exporters consist of informal policies and practices that may not be as easy to identify as a written law that violates an international trade obligation. Further, this objective is directed at barriers regardless of the branch of government in which they occur (*e.g.*, executive, legislative, or judicial), and regardless of the level of government at which they occur (*e.g.*, national, provincial, or local).

Section 2(b)(1)(B) directs the President to continue to seek the elimination of duties on a reciprocal basis for products covered in section 111(b) of the Uruguay Round Agreements Act, as described in page 45 of the Statement of Administrative Action accompanying that Act. Although the President was successful in obtaining the reciprocal elimination of duties for a number of products contained in that list as part of the Information Technology Agreement negotiated under the auspices of the WTO, there are a number of products on the list for which "zero-for-zero" agreements have not been reached. It is the Committee's intention that the President pay particular attention to the elimination of tariffs on these products, which could result in substantial benefits to U.S. industry and workers. For many of these products, U.S. producers remain at a significant competitive disadvantage. In other sectors, tariff inequities are aggravated by tariff escalation, which occurs when a country establishes low or zero tariffs for raw materials but maintains relatively high tariffs for processed products. The Committee intends that the Administration pursue ending such practices for the sectors covered by the proclamation authority provided in section 111(b) of the Uruguay Round Agreements Act.

2. Services

The principal negotiating objectives regarding services are to reduce or eliminate barriers to international trade in services, including regulatory and other barriers, that deny national treatment or unreasonably restrict the establishment or operations of services suppliers.

The Committee notes that U.S. services exports are approaching $300 billion annually. Many markets for U.S. services are vast and essentially untapped. As income in foreign countries grows, their imports of U.S. services tend to rise disproportionately. Thus, negotiations that reduce barriers to all modes of supply of services could lead to a major expansion of U.S. services exports, resulting in a significant improvement in the U.S. balance of payments account.

Certain services, such as telecommunications, financial services, supply of energy, information technology, and express delivery, are essential to a country's infrastructure. Additionally, U.S. manufacturers benefit from the efficient delivery of services to support production, such as product design and engineering, marketing and distribution, outsourcing, and globalized logistics strategies. Ac-

cordingly, the objective on services directs negotiators to expand market access for all service sectors.

Specifically, it is important to: (1) achieve maximum liberalization of trade in all modes of supply, including cross-border supply of services and movement of natural persons, across the widest possible range of services; (2) provide rights of establishment with majority ownership and national treatment for companies operating in foreign markets; (3) allow investors to establish in whatever corporate form is most appropriate to their business objectives; (4) grandfather existing liberalization commitments; (5) create a free and open commercial environment for the development of electronic commerce; (6) ensure that market access commitments apply no matter what technology is used to deliver the service; (7) in sectors where appropriate, promote domestic regulatory reform, with the objective of securing "best practices" and committing governments to avoid discrimination against foreign service suppliers in their current and future regulations; (8) promote transparency of regulatory processes, including rule-making, granting of licenses, setting of standards, and judicial and arbitral proceedings; (9) challenge both the desirability and the feasibility of a services safeguard regime, especially in light of the impact of such a provision on the climate for foreign direct investment and economic development; (10) explicitly acknowledge the importance of maintaining free flows of financial and other information that is necessary for the operation of global business; (11) increase transparency and access to government procurement for services providers; and (12) seek the elimination of cross-subsidization by holders of foreign government granted monopoly rights—that is, the use of revenues from the provision of a service (e.g., postal or telecommunications service) on a monopoly basis to subsidize the provision of another, non-monopoly service.

U.S. negotiators should pursue liberalization of trade in services in bilateral and regional trade agreements, as well as in the WTO. In general, they should seek commitments that go beyond the baseline established in the WTO's General Agreement on Trade in Services ("GATS").

Where possible, services trade liberalization should be pursued through a "negative list," rather than a "positive list" approach. That is, negotiators should seek market-opening commitments that apply across sectors, minimizing exceptions for particular sectors, rather than seeking market commitments on a sector-by-sector basis.

3. Foreign investment

Foreign investment is closely interrelated to trade. Companies invest abroad to get closer to markets, acquire new technologies, form strategic alliances, and enhance competitiveness by integrating production and distribution. When they invest abroad, U.S. companies often become consumers of U.S. exports—either from affiliated entities or other U.S. companies.

The importance of international investment to the U.S. economy is large and growing. The United States receives more than 30 percent of worldwide investment. According to the U.S. Bureau of Economic Analysis, foreign investment in the United States grew sevenfold between 1994 and 2000, reaching almost $317 billion last

year. As of 1998, foreign companies had invested over $3.5 trillion in the United States. They employed 5.6 million people and paid average annual salaries of over $46,000, well above the average salary for U.S. workers as a whole. U.S. subsidiaries of non-U.S. companies accounted for 13.5 percent of all U.S. manufacturing jobs. In 1998, foreign companies' affiliates in the United States accounted for approximately 22 percent of total U.S. exports.

The ability of U.S. companies to invest abroad is also vital to U.S. economic growth. Between 1994 and 2000, U.S. investment abroad doubled from $73 billion to $148 billion. This investment spurs economic growth and U.S. exports, as over 40 percent of U.S. large company exports and 20 percent of U.S. small company exports go to foreign affiliates overseas. The sales of U.S. affiliates abroad exceed $2.4 trillion and help support jobs and business activities in the United States.

As the extent of foreign investment has increased in recent decades, the interest of the United States in protecting the rights of U.S. investors abroad has grown. Since the early 1980s, the United States has entered into bilateral investment treaties ("BITs") to secure the rights of U.S. investors abroad. In fact, even before the BITs, the United States sought to protect the rights of U.S. investors in treaties of friendship, commerce and navigation and similar agreements. Currently, the United States has concluded BITs with 46 countries. Additionally, the Parties to the North American Free Trade Agreement ("NAFTA") incorporated the substance of a BIT in chapter 11 of that agreement.

There are a number of common elements among the BITs (including NAFTA chapter 11). These include obligations of a host country not to discriminate among investors of different nationalities (most-favored-nation obligation), not to discriminate as between foreign and domestic investors (national treatment obligation), and to accord foreign investors, at a minimum, fair and equitable treatment and full protection and security of their investments (minimum standards obligation). Further, host countries generally undertake an obligation not to expropriate or nationalize covered investments (either directly or indirectly), except for a public purpose; in a non-discriminatory manner; upon payment of prompt, adequate, and effective compensation; and in accordance with due process of law and the minimum standards obligation.

A key aspect of investment agreements is the establishment of neutral tribunals in which foreign investors may seek redress for host government measures which they believe to be violations of those agreements. Rather than pursue their complaints through local courts under local laws, foreign investors may invoke arbitration under the law of the appropriate investment agreement, including the rules of customary international law as may be incorporated by reference into the agreement.

Under NAFTA chapter 11, the number of investor-state disputes to which the United States is a party has grown substantially. While there are no reported cases of foreign investor challenges to U.S. measures under the BITs, there have been four such challenges since NAFTA's inception in 1994. (To date, a total of 13 investor complaints have been filed under NAFTA chapter 11.)

The growing number of investor-state disputes has caused concern among certain interest groups. In particular, some environ-

mental groups see investor-state dispute settlement provisions as having a potentially chilling effect on the adoption of environmental laws and regulations.

It is argued that arbitral tribunals may interpret the concept of what constitutes a compensable "expropriation" for purposes of an investment agreement more broadly than courts of the United States have interpreted what constitutes a compensable "taking" for purposes of the Constitution of the United States. Thus, a Canadian or Mexican investor might be able to seek compensation for loss of value flowing from a U.S. (or state or local) government measure, whereas a similarly situated U.S. investor would not. It is argued that the fear of challenge by a Canadian or Mexican investor might cause the U.S. (or a state or local) government to reverse an environmentally beneficial measure or to refrain from adopting such a measure in the first place.

Some environmental groups point to the obligation to accord fair and equitable treatment to foreign investments as having a similar impact. As in the case of expropriation, they view this common investment agreement term as potentially giving to foreign investors a right not available to U.S. investors to seek compensation for U.S. (or state or local) government measures.

The negotiating objective on foreign investment reflects the Committee's view that it is a priority for negotiators to seek agreements protecting the rights of U.S. investors abroad and ensuring the existence of an investor-state dispute settlement mechanism. It also reflects the view that in entering into investment agreements, negotiators must seek to protect the interests of the United States as a potential defendant in investor-state dispute settlement. In other words, there ought to be a balance. Protecting the rights of U.S. investors abroad should not come at the expense of making Federal, State and local laws and regulations unduly vulnerable to challenge by foreign investors.

The goal of seeking balance is described in the specific objectives set forth in section 2(b)(3) of the bill. First, the provision recognizes that protections of investor rights under U.S. law generally equal or exceed international law standards (including the non-discrimination and investment protection obligations described above). Accordingly, it is the understanding of the Committee that, when the United States agrees to afford foreign investors the protections required by international law, it is not making a commitment that will result in foreign investors having substantially different rights in the United States than those accorded U.S. investors under U.S. law.

This point is made expressly in the direction to negotiators "to reduce or eliminate artificial or trade-distorting barriers to trade related foreign investment, while ensuring that United States investors in the United States are not accorded lesser rights than foreign investors in the United States." Negotiators should seek to dismantle barriers to U.S. investment abroad. But the reciprocal obligations the United States undertakes in pursuing that goal should not result in foreign investors being entitled to compensation for government measures where a similarly situated U.S. investor would not be entitled to relief.

This does not mean that foreign investors should be required to go to U.S. courts to pursue their claims under investment agree-

ments. The Committee recognizes that the procedures for resolving disputes between a foreign investor and a government may differ from the procedures for resolving disputes between a domestic investor and a government.

Section 2(b)(3) of the bill further instructs negotiators to refer to U.S. legal principles and practice for guidance in seeking to enhance protections for U.S. investors abroad. The goal should be agreements that give U.S. investors a level of protection in foreign countries comparable to the level of protection they receive in the United States. It should be noted that, for purposes of section 2(b)(3), the Committee intends the term "United States legal principles and practice" to mean U.S. legal principles and practice as interpreted and applied by the courts of the United States in matters involving U.S. persons.

The foreign investment provision in the bill then delineates specific ways in which the basic objective should be pursued, as follows:

- *Reducing or eliminating exceptions to the principle of national treatment*. Some countries have carved out sectoral or other specific exceptions to their general obligation not to discriminate as between foreign and domestic investors. Reducing or eliminating such exceptions would enhance opportunities for U.S. investors.
- *Freeing the transfer of funds relating to investments*. Some countries restrict the rights of foreign investors to repatriate profits. Such policies act as barriers to foreign investment. Negotiators should seek commitments from countries to eliminate these policies.
- *Reducing or eliminating performance requirements, forced technology transfers, and other unreasonable barriers to the establishment and operation of investments*. Some countries condition the right of a foreign national to make a direct investment on performance requirements. For example, a country may insist that a certain quantity of inputs used by a manufacturer be made locally. Or, the country may insist that a certain portion of the manufacturer's products be sold for export. These conditions are obstacles to U.S. investment abroad, and negotiators should seek their elimination.
- *Seeking to establish standards for expropriation and compensation for expropriation, consistent with U.S. legal principles and practice*. As noted above, one concern expressed about investment agreements currently in force is that the concept of what constitutes an expropriation may be interpreted more broadly than the concept of what constitutes a "taking" under U.S. law. U.S. takings law has evolved through more than two centuries of decisions by the Supreme Court and lower courts. While there is no fixed set of criteria, that jurisprudence has given rise to certain guidelines, such as criteria for determining when a government regulation (as opposed to a physical appropriation of land) amounts to a compensable "taking." By contrast, certain complaints under NAFTA chapter 11 have urged arbitrators to find expropriations where the applicable tests under U.S. law may not support compensation for a taking. While there is unlikely ever to be a perfect overlap, and U.S. courts themselves differ on these issues, section 2(b)(3)(D) directs negotiators to draw on the guidelines developed in U.S. takings jurisprudence in seeking to refine the concept of expropriation for purposes of international investment agreements. This

should help ensure that investment agreements do not confer on foreign investors in the United States a right to compensation for expropriation that differs substantially from the right to compensation for takings that U.S. citizens already enjoy.

• *Seeking to establish standards for fair and equitable treatment consistent with U.S. legal principles and practice, including the principle of due process*. The concept of fair and equitable treatment as defined in investment agreements raises concerns similar to those described above with respect to expropriation. The possibility of challenging a government measure as unfair or inequitable should not mean that a foreign investor effectively has access to a remedy where a U.S. investor would not. Accordingly, negotiators should seek to incorporate fair and equitable treatment protection that is consistent with applicable U.S. legal principles and practice. It is the understanding of the Committee that the concepts in U.S. law most closely analogous to fair and equitable treatment as used in investment agreements are the concepts of due process and the safeguards against arbitrary or discriminatory measures. Thus, section 2(b)(3)(E) expressly directs negotiators to ensure that the term "fair and equitable treatment" is interpreted consistently with these concepts.

The Committee recognizes that these are fluid concepts, which take shape through interpretation by U.S. courts. It is not the expectation of the Committee that negotiators will develop a fixed definition of fair and equitable treatment—or, indeed, expropriation—that contemplates all conceivable circumstances. However, negotiators should seek to provide guidelines to which tribunals should refer in deciding particular cases, including guidelines distinguishing the scope of fair and equitable treatment from the scope of expropriation. It is the expectation of the Committee that in developing such guidelines, U.S. negotiators will draw on U.S. case law interpreting the relevant legal principles.

• *Providing meaningful procedures for resolving investment disputes*. As discussed above, one of the goals of investment agreements to which the United States is a party is to ensure that U.S. investors can resolve disputes with host governments in a fair and efficient way. Often, this means giving investors the option of going to arbitration, rather than pursuing their claims through local courts. Negotiators should continue to seek provisions in investment agreements that allow U.S. investors to resolve disputes with foreign governments through arbitration, mediation, consultations, or other alternatives to local courts. Accordingly, section 2(b)(3)(F) directs negotiators to seek agreements providing meaningful procedures for resolving investment disputes. By "meaningful procedures," the Committee means efficient procedures, judicial in character, that comport with principles of fair play and substantial justice. Moreover, the dispute settlement procedures adopted in investment agreements should reflect the fact that there often will be a public interest in how investor-state disputes are resolved. Given this interest, dispute settlement should be as transparent as possible, as discussed in greater detail in section 2(b)(3)(H).

• *Seeking to improve mechanisms used to resolve disputes between an investor and a government*. Section 2(b)(3)(G) delineates four specific improvements that negotiators should seek in investor-state dispute settlement. First, they should seek mechanisms to

eliminate frivolous claims and to deter the filing of frivolous claims. Agreements should authorize arbitrators to dismiss promptly complaints that plainly fail to state a cognizable claim. This will ensure that the United States and other governments are not put to needless expenditures of resources on discovery and other case preparation. Further, agreements should provide for deterrence of frivolous filings by, for example, authorizing arbitrators to impose attorneys' fees and costs on parties that file frivolous claims.

Second, negotiators should seek to ensure the efficient selection of arbitrators and the expeditious disposition of claims. A benefit to U.S. investors of resolving disputes through arbitration is the ability to get quick and just results. That benefit is diminished if the selection of arbitrators and rules of arbitration can be abused to bring about delay. Negotiators should seek agreements that minimize the possibilities for abuse.

Third, negotiators should seek procedures to enhance opportunities for public input into the formulation of government positions. Since investor-state dispute settlement generally will involve measures taken by a government ostensibly to enhance the welfare of the general public, there often will be interest in a case from an array of different perspectives. For example, several cases to date under NAFTA chapter 11 involve environmental laws and regulations. The public nature of the measures at issue in these disputes distinguishes them from arbitration between private parties. Because the resolution of these disputes may affect broader public policy, interested parties should have the opportunity to provide input into the formulation of government positions, consistent with pleadings schedules determined by arbitral tribunals. The Committee notes that the United States-Jordan Free Trade Agreement includes a Memorandum of Understanding on Transparency in Dispute Settlement in which the United States and Jordan commit to "solicit and consider the views of members of their respective publics in order to draw upon a broad range of perspectives." While that commitment pertains to eventual disputes between two states, the underlying aim of increasing democratization is equally applicable to disputes between a state and a foreign investor. Accordingly, U.S. negotiators should seek to obtain similar commitments in investment agreements.

Fourth, negotiators should seek to establish a single appellate body to review decisions in investor-state disputes. As the United States enters into more investment agreements and the number of investor-state disputes grows, the need for consistency of interpretation of common terms—such as expropriation and fair and equitable treatment—will grow. Absent such consistency, key terms may be given different meanings depending on which arbitrators are appointed to interpret them. This will detract from the predictability of rights conferred under investment agreements. A single appellate mechanism to review the decisions of arbitral panels under various investment agreements should help to address this issue and minimize the risk of aberrant interpretations.

- *Ensuring the fullest measure of transparency in the dispute settlement mechanism.* Recognizing the public interest in matters that generally will be at issue in investor-state dispute settlement, section 2(b)(3)(H) sets forth specific ways in which negotiators should seek to make such dispute settlement open to public view and pub-

lic input. First, requests for dispute settlement should promptly be made available to the public. Second, written submissions, as well as panel decisions should promptly be made available to the public, and hearings should be open to the public. Finally, mechanisms should be established whereby arbitral panels may receive and consider submissions from interested third parties. Each of the foregoing objectives should be pursued within limits necessary to protect classified and business confidential information that may come out during dispute settlement proceedings and maintain the essential judicial character of the process.

There is precedent for each of the foregoing transparency-related objectives in the United States-Jordan Memorandum of Understanding on Transparency in Dispute Settlement. These objectives are restated in the United States-Jordan Joint Statement on WTO Issues, another side document concluded with the United States-Jordan Free Trade Agreement. While these precedents involve a different type of dispute settlement (state-to-state, rather than investor-to-state), the public nature of the matters that generally will be in dispute underlies the need for transparency in both cases.

4. Intellectual property

The principal negotiating objectives regarding intellectual property are:

- Ensuring accelerated and full implementation of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (the "TRIPs Agreement"), especially with respect to enforcement obligations;
- Ensuring that trade agreements reflect a standard of protection of intellectual property rights similar to that found in U.S. law;
- Providing strong protection for new and emerging technologies and new methods of transmitting and distributing products embodying intellectual property;
- Preventing discrimination regarding the availability, acquisition, scope, maintenance, use, and enforcement of intellectual property rights;
- Ensuring that standards of protection and enforcement keep pace with technological developments and, in particular, that rights are adequately protected and enforced with respect to intellectual property conveyed via the Internet and other global communications media;
- Providing strong enforcement of intellectual property rights, including through accessible, expeditious, and effective civil, administrative and criminal enforcement mechanisms; and
- Securing fair, equitable and non-discriminatory market access opportunities for U.S. persons who rely on intellectual property protection.

The priorities of the United States are to ensure that all countries provide an adequate level of protection through their laws and regulations, and that they support that protection with meaningful enforcement.

Levels of protection of intellectual property rights have increased significantly in recent years, due in large part to enhanced obligations under the TRIPs Agreement. However, levels of enforcement

of intellectual property rights remain inadequate in many countries.

Piracy and counterfeiting rates in much of the world remain alarmingly high. The advent of the Internet, along with the rapid globalization of the world economy, mean that piracy, counterfeiting and other economic crimes are, to an increasing extent, global problems. U.S. industries based on copyright, patent, trademark, and other forms of intellectual property rights are among the fastest growing and most productive of all sectors of the U.S. economy. To enable these export-oriented industries to prosper, it is essential that the United States work together with governments throughout the world to prevent, punish, and ultimately deter these violations. Without effective enforcement, the full benefits of the TRIPS Agreement cannot be realized.

Given the significant effort that many countries still must make to come into compliance with their TRIPs obligations, it probably would be premature to undertake WTO negotiations on the improvement of the TRIPs Agreement. At the same time, the Committee expects negotiators to pursue "TRIPs plus" commitments in bilateral and regional trade agreements, as they routinely have done in negotiations undertaken in recent years. An example of such a commitment is an obligation to give effect to provisions contained in other conventions on intellectual property, such as the World Intellectual Property Organization ("WIPO") Copyright Treaty (1996) and the WIPO Performances and Phonograms Treaty (1996). These WIPO conventions reflect enhanced global minimum standards of protection and enforcement for the networked digital environment, and negotiators should continue to seek their ratification and implementation by other trade partners. They also should seek additional "TRIPs plus" commitments in free trade agreements as appropriate based on technological, legal, and other developments.

The negotiating objective on intellectual property directs negotiators to seek standards of intellectual property rights protection comparable to standards contained in U.S. law.

Finally, the Committee notes that U.S. industries based on intellectual property continue to suffer from unnecessary and discriminatory market access barriers around the globe. U.S. negotiators must remain vigilant in their efforts to eliminate these barriers, since they stunt the growth of otherwise highly productive industries.

5. Transparency

The principal negotiating objectives regarding transparency are:

- To increase timely public access to information regarding trade issues as well as the activities of international trade institutions;
- To increase openness in international trade fora, including the WTO, by increasing public access to appropriate meetings, proceedings, and submissions, including with regard to dispute settlement and investment; and
- To increase timely public access to notifications made by WTO Members and the supporting documents.

The Committee believes that the continued success of the WTO and other fora in setting and administering the rules of inter-

national trade requires that these institutions operate in transparent ways. This means that their decision making processes must be clear and, where practicable, open to public observation and to input by interested parties. These principles should govern each of the various kinds of decisions international trade institutions make, whether in day-to-day administration, dispute settlement, or otherwise.

The objectives regarding transparency reflect principles that govern decision making within the institutions of the United States and other democratic governments. Transparency is a strength of our system that reenforces support for our democratic institutions, even though individuals may disagree with particular decisions by those institutions.

The same concept should apply to the WTO and other international trade institutions. Transparency can engender confidence that the institutions are operating fairly, even though individuals may disagree with particular decisions. Further, greater openness within these international institutions should encourage greater openness within the states that are members of those institutions.

As described in section 2(b)(5), greater transparency requires three general undertakings within international institutions: first, keeping the public informed in a detailed and timely manner; second, allowing the public to observe, where practicable, meetings, proceedings, and submissions of international trade institutions; and third, giving the public greater and more timely access to written submissions to international institutions.

Other parts of the bill call for negotiators to seek greater transparency in trade dispute settlement, in particular. For example, section 2(b)(3)(H) directs negotiators to seek greater transparency in investor-state dispute settlement, and section 2(b)(12)(A) directs negotiators to seek transparent mechanisms for resolving trade disputes, including state-state disputes. To illustrate how greater transparency can be achieved, the Committee notes the following provisions from a Memorandum of Understanding on Transparency in Dispute Settlement, which was entered into concurrently with the United States-Jordan Free Trade Agreement. In the MOU, the parties agreed that:

- They will solicit and consider the views of members of their respective publics to draw upon a broad range of perspectives;
- Submissions will be made available to the public within ten days of filing;
- Oral presentations will be open to the public, except as necessary to protect confidential information;
- Arbitral panels will accept and consider *amicus curiae* submissions by interested third parties; and
- Arbitral panels will release their reports to the public at the earliest possible time.

The United States and Jordan repeated these commitments in a separate Joint Statement on WTO Issues, which applies to disputes that may arise between the two parties in the WTO.

The transparency commitments in the United States-Jordan agreements should serve as a guide to negotiators in ongoing and future trade talks. In particular, seeking commitments from free trade agreement partners that will apply in the WTO as well as

under the free trade agreement itself should help to foster a consensus in support of greater transparency in the WTO.

Finally, the Committee emphasizes that, with respect to public access to documents filed with international trade institutions, negotiators should seek transparency commitments that cover the broadest possible array of filings, taking into account reasonable protections for proprietary and other confidential information. For example, when notice of government action is made available to the public, supporting documentation should be made available as well. The Committee is aware of concerns that while government notices to the WTO regarding levels of foreign government agriculture subsidies have been made available to the public, documents supporting notices to the WTO have not always been made available. Meaningful transparency requires that the public have reasonable access to all information necessary to make independent evaluations of the facts.

6. Anti-corruption

The principal negotiating objectives with respect to anti-corruption are:

- To obtain high standards and appropriate domestic enforcement mechanisms to prevent and deter the use of money or other things of value to influence acts, decisions, or omissions of foreign governments, and
- To ensure that anti-corruption standards do not put United States persons at a competitive disadvantage.

Corruption at all levels of government can constitute significant barriers to trade. Bribe-taking may impede the ability to get health and safety certificates necessary to move imported goods from port to consumer. Corruption may distort the market for government procurement. Corruption impairs the ability of investors to make well-informed determinations about the risks to expect in a foreign market. Further, to the extent that U.S. persons are legally bound not to engage in corrupt acts, even outside the United States, they may be placed at a competitive disadvantage vis-a-vis foreign persons who are not so bound.

To eliminate barriers to trade, and to ensure that the playing field is level for U.S. producers of goods and services and their foreign competitors, negotiators should seek agreement from our trading partners to adopt and enforce strong anti-corruption disciplines. Strong disciplines are rules comparable to section 30A of the Securities and Exchange Act of 1934 and sections 104 and 104A of the Foreign Corrupt Practices Act.

The Committee takes note of efforts to expand implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions negotiated under the auspices of the Organization for Economic Cooperation and Development, which came into effect in 1999. Parties to that Convention are required to take measures necessary to establish that it is a criminal offense under their respective domestic laws to offer or to give a bribe to a foreign official to induce that person to act or refrain from acting in a particular way. To promote adherence to the Convention, Congress established as a condition of eligibility for trade benefits under the African Growth and Opportunity Act that a country "has established or is making continual progress toward

establishing . . . a system to combat corruption and bribery, such as signing and implementing the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions." Pub. L. No. 106–200, § 104(a)(1)(E), 114 Stat. 251, 254 (2000). Congress established a similar condition for receipt of trade benefits under the United States-Caribbean Basin Trade Partnership Act. 19 U.S.C. § 2703(b)(5)(B)(vi), as amended by Pub. L. No. 106–200, § 211(a), 114 Stat. 251, 285 (2000) (in determining whether to designate country as "CBTPA beneficiary country," President to consider "extent to which the country has taken steps to become a party to and implements the Inter-American Convention Against Corruption"). And a bill to enhance the Andean Trade Preference Act reported by the Committee in the first session of this Congress would establish a similar condition for receipt of expanded benefits under that program. See S. Rep. No. 126, 107th Cong., 1st Sess. at 8 (Dec. 14, 2001).

The anti-corruption policy expressed in the above-mentioned laws and pending legislation is clear. It is the Committee's expectation that U.S. negotiators will continue to pursue that policy in ongoing and future trade negotiations.

7. Improvement of the WTO and multilateral trade agreements

The principal negotiating objectives concerning the WTO Agreements are:

- To achieve full implementation of the existing Agreements and to expand their coverage to products, sectors, and trade conditions not currently covered, and
- To enhance and expand participation in the Information Technology Agreement and other trade agreements.

As important as the objective of negotiating strong trade agreements is the objective of ensuring that trading partners of the United States fully implement their obligations under those agreements. In the WTO, dispute settlement is available to challenge a country's non-implementation of its obligations. However, dispute settlement can be time-consuming and is not always the most cost-effective means of bringing about compliance. The United States should use all available tools to bring about full implementation of obligations, including technical assistance, positive incentives, and dispute settlement, as appropriate.

The question of full implementation has become more pressing as developing countries have reached or are about to reach the expiration of transition periods under certain WTO Agreements, including the Agreement on Trade-Related Aspects of Intellectual Property Rights, the Agreement on Customs Valuation, and the Agreement on Trade-Related Investment Measures. During these transition periods, developing countries were not required to fully implement their obligations. Since expiration of the transition periods, some WTO Members have sought extensions of time in which to fully comply. Negotiators should consider such requests on a case by case basis, taking into account specific steps toward compliance that countries seeking extensions have taken and are willing and able to take. At the same time, negotiators should firmly resist blanket requests for extensions and requests that the United

States undertake new obligations in exchange for other countries' commitments to fully implement existing obligations.

In addition to seeking enhanced implementation of current obligations under the WTO Agreements, negotiators should seek to expand the coverage of those Agreements to address circumstances, such as technological changes, that highlight gaps in existing WTO disciplines. For example, in the discussion above on intellectual property objectives, the Committee notes the "TRIPs plus" commitments agreed to in the United States-Jordan Free Trade Agreement, taking account of advances in international intellectual property rights law achieved since conclusion of the TRIPs Agreement. It is the expectation of the Committee that continued pursuit of TRIPs plus commitments in bilateral and regional trade agreements will generate support among trading partners of the United States to pursue similar advances in the TRIPs Agreement itself at the appropriate time.

Moreover, negotiators should seek expanded country participation in and expanded product and service coverage of the various plurilateral agreements of the WTO—i.e., agreements to which countries are not automatically bound by virtue of WTO membership, but which they may join at their option. These include the Agreement on Government Procurement ("GPA") and the Ministerial Declaration on Trade in Information Technology Products (known as the Information Technology Agreement or "ITA").

The ITA, which eliminates tariffs on a wide range of products essential to the new economy, was concluded at the WTO's First Ministerial Conference at Singapore in December 1996. As of this writing, the ITA has 56 participants representing over 95 percent of trade in the $600 billion-plus global market for information technology products. Through its work identifying standards, non-tariff measures, and possibilities for expansion of product coverage, the WTO Committee of Participants on the Expansion of Trade in Information Technology Products has demonstrated how the WTO can provide dynamic mechanisms for trade liberalization that are responsive to the ever-changing nature of sectors such as the information technology sector. Unfortunately, several countries in Latin America have shown reluctance in the past to joining the ITA. It is the Committee's expectation that the ongoing negotiations to establish a Free Trade Area of the Americas offer a strong opportunity to expand both the country participation and the product coverage of this important agreement.

Like the ITA, WTO Members may commit to the Agreement on Government Procurement at their option. Obligations under this agreement apply to designated central and sub-central government entities and to the particular goods and services listed in a separate schedule for each party.

Ordinary WTO rules on trade in goods and services make exceptions for government procurement. The GPA narrows those exceptions to the extent that WTO Members accept its obligations. In general, procurement subject to the GPA must be undertaken in accordance with the principles of nondiscrimination that apply under the General Agreement on Tariffs and Trade and the General Agreement on Trade in Services. The GPA also sets forth special rules for tendering procedures, placing particular emphasis on transparency.

According to the WTO, government procurement typically constitutes 10 to 15 percent of a country's gross domestic product, and procurement currently subject to the GPA is worth about $300 billion annually. The benefits to U.S. producers of goods and services of continuing to bring this market under the umbrella of WTO disciplines should be significant. Accordingly, U.S. negotiators should seek to encourage those WTO Members not party to the GPA to become members and to reduce exceptions that particular governments have taken under the GPA (with respect to both entities and goods and services). This objective also should apply to negotiations on the accession of new Members to the WTO.

Additionally, negotiators should seek to conclude a WTO Agreement on Transparency in Government Procurement, in furtherance of the mandate defined by the Singapore Ministerial Declaration in December 1996, and to promote global use of electronic publication of procurement information, including notices of procurement opportunities. Access to foreign government procurement markets, consistent with the terms of the GPA, also should be pursued in regional and bilateral free trade agreements, including the Free Trade Area of the Americas.

8. Regulatory practices

The principal negotiating objectives with respect to regulatory practices are:

- To seek increased transparency and opportunity for public participation in foreign country processes for developing regulations;
- To require that proposed regulations be based on sound science, cost-benefit analysis, risk assessment, or other objective evidence;
- To establish consultative mechanisms among trade agreement parties to promote increased transparency in developing laws, rules, regulations, and guidelines; and
- To eliminate regulatory practices, such as price controls and reference pricing, that operate as market access barriers.

Foreign government regulatory practices may effectively constitute trade-distorting barriers that diminish or nullify negotiated trade agreement benefits. For example, market access for agricultural products accorded through tariff concessions may be substantially offset by non-scientifically-based health and safety regulations that cause delay in getting the products to consumers. Similarly, a U.S. exporter of pharmaceutical products gains little benefit from a reduction in tariffs if the ministry of health in the importing country imposes regulatory controls on prices for those products. The problem of laws and regulations that act as disguised trade barriers is compounded when a government's processes for making its laws and regulations are not open to public view and are not receptive to public input.

The negotiating objectives on regulatory practices focus on enhancing the transparency of foreign governments' law- and rulemaking, and on eliminating practices that allow governments to set up trade barriers on the pretext of pursuing legitimate public purposes, such as protection of health and safety. The transparency-related objectives complement the objectives in section 2(b)(5) on enhancing transparency in international trade fora. U.S. nego-

tiators are directed to promote greater openness and opportunity for public comment in foreign law- and rule-making processes, including through the establishment of consultative mechanisms among trade agreement parties.

In seeking to eliminate foreign trade barriers in the guise of apparently legitimate laws and regulations, U.S. negotiators should focus on the evidence that governments use to justify trade-restrictive measures. A law or regulation purporting to serve a legitimate public purpose should not be immune from challenge as a trade barrier if it is not grounded in scientific or other objective data and analysis.

Additionally, the objectives on regulatory practices direct negotiators to seek the elimination of particular regulatory barriers that occur with increasing frequency—price controls and reference pricing. Under these barriers, the government of an importing country restricts market access by limiting the prices at which particular products can be sold.

9. Electronic commerce

The principal negotiating objectives with respect to electronic commerce are:

- To ensure that current obligations, rules, disciplines, and commitments under the WTO apply to electronic commerce;
- To ensure that electronically delivered goods and services receive no less favorable treatment than like products delivered in physical form, and that the classification of such goods and services ensures the most liberal trade treatment possible;
- To ensure that governments refrain from implementing trade-related measures that impede electronic commerce;
- To obtain commitments that any regulations affecting electronic commerce are the least trade restrictive necessary to achieve legitimate policy objectives, nondiscriminatory, transparent, and supportive of an open market environment; and
- To extend the WTO moratorium on duties on electronic transmissions.

Electronic commerce is potentially subject to rules and disciplines from a variety of different subject matter areas, including trade in goods, trade in services, and trade-related aspects of intellectual property rights. Because electronic commerce does not fall exclusively into any one subject-matter area, but rather, straddles several areas, it warrants special consideration in trade negotiations. Negotiators must ensure that countries are not able to evade core disciplines—such as national treatment and most-favored-nation treatment—on the grounds that electronic commerce does not come neatly within any particular WTO Agreement. At the same time, negotiators must guard against regulations and disciplines that would discriminate against electronic commerce in favor of more traditional forms of commerce, or otherwise retard the growth of this technologically innovative way of doing business.

The Committee notes that the United States-Jordan Free Trade Agreement represents an important step forward in achieving the objectives on electronic commerce described in the bill and in this report. That agreement requires the United States and Jordan to seek to refrain from imposing tariffs or other unnecessary barriers on electronic transmissions. It further requires them to seek to re-

frain from impeding the supply through electronic means of services subject to the agreement. The parties also are committed to make publicly available all relevant laws, regulations, and requirements affecting electronic commerce. Jordan made market access and national treatment commitments in all sectors critical to completing an electronic transaction, including telecommunications, computer-related services, financial services, distribution services, and express delivery services. Finally, as noted above in the discussion of objectives regarding intellectual property, the United States-Jordan Free Trade Agreement establishes certain obligations beyond those of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights, a number of which should help to promote the objectives regarding electronic commerce. The Committee expects that the advances on electronic commerce made in the United States-Jordan Free Trade Agreement will be a guide to negotiators in ongoing and future negotiations, recognizing that technological and other evolving circumstances may require building on the terms of that agreement.

10. Reciprocal trade in agriculture

The principal negotiating objectives on agriculture are:

- To ensure that U.S. trade negotiators duly recognize the importance of agricultural issues;
- To obtain competitive market opportunities for U.S. exports in foreign markets substantially equivalent to the competitive opportunities afforded foreign exports in U.S. markets, and to achieve more equitable and more open conditions of trade in bulk, specialty crop and value-added commodities;
- To reduce or eliminate, by a date certain, tariffs or other charges that decrease market opportunities for U.S. exports; to reduce or eliminate trade-distorting export subsidies, while maintaining legitimate food assistance, export credit, and market development programs;
- To enhance disciplines on production subsidies;
- To impose disciplines on the operations of state-trading enterprises or similar administrative mechanisms;
- To eliminate unjustified restrictions, including labeling, that adversely affect products of new technology, including biotechnology;
- To eliminate sanitary or phytosanitary restrictions that contravene the Uruguay Round Agreements;
- To eliminate unjustified technical barriers to trade; and
- To improve import relief mechanisms to accommodate the unique aspects of perishable and cyclical agriculture.

The principal negotiating objectives on agriculture require negotiators to take into account certain key factors, including:

- Whether a country has failed to adhere to (or has circumvented) obligations under existing agreements with the United States;
- Whether a product is subject to market distortions by reason of other countries' failure to adhere to existing obligations;
- The impact that existing agreements to which the United States is a party is having on U.S. agriculture; and
- The impact that simultaneous negotiations in several fora may have on import-sensitive agricultural products.

The Committee intends that the United States secure a fairer world agricultural trading system that provides greater market access for U.S. agricultural products. The Committee believes this objective can best be achieved by reducing and preventing restrictions and distortions in world agricultural markets, and by addressing agricultural concerns in a non-trade-distorting manner.

The Committee acknowledges that trade in agricultural products is a critical element in multilateral, regional, and bilateral negotiations, and expects that the specific objectives in this section can be achieved while taking into account the special situation of import-sensitive products.

The Committee believes that agricultural export subsidies are among the most disruptive elements in the operation of world markets. Especially when paired with domestic subsidies linked to price and/or production, they result in food prices within the countries that provide the subsidies that often are higher than world market prices. By skewing production decisions, they foreclose consumer choice in many parts of the world. In addition, agricultural export subsidies significantly distort trade in third-country markets; American farmers and agricultural producers have a difficult time competing with farmers, particularly those in the European Union, who receive large domestic subsidies to produce at home, and then receive additional subsidies to sell the surplus at below-market prices overseas.

Agricultural export subsidies also lead to environmentally destructive farming practices, particularly among farmers in the world's developing nations, who often abandon more environmentally appropriate farming practices in order to keep pace with the artificially low, subsidized prices they must compete with in world export markets.

The Committee believes that eliminating trade-distorting agricultural export subsidies should result in more stable prices for United States agricultural products.

At the same time, the Committee recognizes that trade-distorting export subsidy regimes should be distinguished from those agricultural market-development and export credit programs that are consistent with global trade rules, and that allow U.S. agricultural producers to compete on an equal footing with foreign export promotion programs. Similarly, the Committee believes that trade-distorting export subsidies should be distinguished from bona fide food aid programs that allow the United States to meet worldwide consumer needs for food and fiber, and that U.S. trade negotiators should work to preserve the right of the United States to use such programs.

The Committee affirms the goal, outlined in the United States Proposal for Comprehensive Long-Term Agricultural Trade Reform submitted to the WTO in June 2000, of substantially reducing trade-distorting domestic support for agricultural production. The Committee notes that about 90 percent of European Union agricultural budget spending is related to trade-distorting intervention programs. This spending category in the European Union has increased by approximately 29 percent since 1995. As a result, market access opportunities for American farmers, ranchers, and agricultural producers in European markets is severely limited. The Committee believes that new disciplines on trade-distorting domes-

tic support should be vigorously pursued in the recently launched WTO negotiations.

In this regard, the Committee is particularly concerned about the disparity in the relative levels of agricultural production support between the United States and other developed countries. This disparity is especially evident in the difference between the maximum Aggregate Measurement of Support ("AMS") of the United States and the maximum AMS of the European Union.

The AMS is the annual level (expressed in monetary terms) of all domestic support measures where government funds are used to subsidize farm production and incomes. This is domestic agricultural spending that distorts trade.

Under the Uruguay Round Agreements, certain countries bound their maximum AMS at specified annual levels and committed to reduce those levels through the end of 2000. The AMS was one of the more significant agricultural policy innovations of the Uruguay Round negotiations.

However, the process for determining each WTO Member's AMS level, and thus the amount of trade-distorting subsidization that is subject to reduction commitments, can result in disparities. This is because the AMS calculation is based on each country's selection of a "base period" for determining the maximum AMS to which reduction commitments apply. By selecting a base period during which trade-distorting domestic spending was unusually high (by historical standards), a country can gain a trade advantage by minimizing its reduction commitments. In this way, the purpose of the AMS to constrain trade-impeding domestic spending can be thwarted. In addition, by selectively choosing favorable base years, and thereby keeping trade-distorting "Amber Box" spending at higher levels, countries have less incentive to allocate spending to non-trade-distorting "Green Box" policies.

The Committee believes that the AMS constraint is useful in putting pressure on countries to re-orient domestic support programs away from trade-distorting spending. The selection of a common base year should contribute to that process. In addition, establishing a common base year should improve the transparency of negotiations on further reduction commitments by more accurately reflecting relative subsidy levels. Further, the common base year should be the end of each country's Uruguay Round implementation period, as reported in its Uruguay Round market access schedule. Thus, countries would be starting negotiations from the lowest, bound level of domestic support and would commit to make further reductions from that level.

The Committee also believes that negotiators should pay special attention to the growing role of state trading enterprises. These entities distort markets by exerting monopoly power over sales prices and monopsony power over purchase prices. They allow foreign governments to drive production and marketing decisions, which in turn deny market access to competitive U.S. farmers, ranchers, and food processors, and distort sales within the United States.

With regard to trade-related agricultural health and safety regulations, the Committee recognizes that trade measures may be used to address legitimate health and safety concerns, but they must not be used as disguised barriers to trade. In this regard, the Committee believes that both the spirit and the letter of the WTO

Agreement on the Application of Sanitary and Phytosanitary Measures should be preserved in new trade negotiations.

As the world's leader in the research and development of innovative, safe, technologies, including biotechnology, U.S. agricultural producers are increasingly facing new measures aimed at unfairly restricting trade in products that incorporate these technologies. The Committee is concerned about the proliferation of such measures, and believes that U.S. negotiators should work to preserve market access for these products. It is the Committee's intent that such negotiations not affect valid, non-discriminatory consumer measures in the United States.

The Committee believes that trade obligations and competitive opportunities for agricultural products ought to be reciprocal. Therefore, negotiators should take into account whether a particular trading partner has failed to adhere to existing agreements, or has circumvented obligations under those agreements, and whether trade in specific products is subject to market distortions resulting from the failure of that trading partner to comply with its trade agreements with the United States.

Finally, the bill requires negotiators to take account of the particular interests of producers of import-sensitive agricultural products and perishable and cyclical agricultural products. Negotiators should seek to eliminate practices that adversely affect perishable and cyclical products, for example, excessively burdensome inspection procedures that prevent goods from getting from port to market before they spoil. At the same time, negotiators should seek to ensure that antidumping, countervailing duty, and safeguards disciplines adequately account for the special nature of perishable and cyclical goods. With regard to import-sensitive agricultural goods, the bill directs negotiators to take into account the particular impact that overlapping sets of negotiations may have on these products. The Committee recognizes that bilateral and regional trade negotiations, by their nature, involve a significantly smaller group of countries than negotiations in the World Trade Organization, and as a result, they may be less effective in getting a critical mass of foreign countries to eliminate barriers and practices that distort world agricultural trade. Failure to get such a critical mass of foreign countries also may result in more intense pressure on import-sensitive agricultural products, since worldwide trade distortions by non-parties will continue to promote over-production.

11. Labor and the environment

The principal negotiating objectives with respect to labor and the environment are:

- To ensure that a party does not fail to effectively enforce its environmental or labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the United States and that party;
- To recognize that a party to a trade agreement is effectively enforcing its laws if a course of action or inaction reflects a reasonable exercise of discretion or results from a bona fide decision regarding allocation of resources, and that no retaliation may be authorized based on the exercise of these rights or the right to establish domestic labor standards and levels of environmental protection;

- To strengthen the capacity of U.S. trading partners to promote respect for core labor standards, and to protect the environment through the promotion of sustainable development;
- To reduce or eliminate government practices or policies that unduly threaten sustainable development;
- To seek market access for U.S. environmental technologies, goods, and services; and
- To ensure that labor, environmental, health, or safety policies and practices of parties to trade agreements do not arbitrarily or unjustifiably discriminate against U.S. exports or serve as disguised barriers to trade.

Section 2(b)(11), in conjunction with section 2(a)(7), is based upon the trade and labor and trade and environment provisions found in articles 5 and 6 of the United States-Jordan Free Trade Agreement. Those provisions (including their coverage by the Agreement's general dispute settlement procedures) have come to be known as the "Jordan standard." They seek to ensure that a country does not promote exports or attract investment by lowering or relaxing the enforcement of its environmental and labor laws. The agreement with Jordan accomplishes this through several commitments, which the present bill directs negotiators to pursue in ongoing and future trade negotiations.

First, the bill directs negotiators to seek provisions in trade agreements under which parties to those agreements will strive to ensure that they do not weaken or reduce the protections afforded in domestic environmental and labor laws as an encouragement for trade. This objective applies both to measures affecting exports to the United States and measures affecting investment by U.S. persons.

Second, the bill directs negotiators to work to strengthen the capacity of U.S. trading partners to promote respect for sustainable development and for core labor standards. The labor standards defined as "core" in section 13(2) of the bill are: (a) right of association; (b) right to organize and bargain collectively; (c) prohibition on the use of any form of forced or compulsory labor; (d) minimum age for employment of children; and (e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational health and safety. By way of illustration, in the United States-Jordan Free Trade Agreement, promotion of respect for core labor standards was encouraged through the parties' reaffirmation of their obligations as members of the ILO and their commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up. Under the foregoing Declaration, all 174 members of the ILO have an obligation, by virtue of that membership, "to respect, to promote and to realize, in good faith and in accordance with the [ILO] Constitution, the [ILO core] principles."

Third, the bill directs negotiators to seek trade agreement provisions ensuring that countries do not fail to effectively enforce their own environmental and labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade with the United States. Like the first objective, this provision applies both to measures affecting exports to the United States and measures affecting investment by U.S. persons. This objective is not implicated when a country undertakes a course of action or inaction

which reflects a reasonable exercise of discretion or results from a bona fide decision regarding the allocation of resources.

The latter qualification is set forth in subparagraph (B) of section 2(b)(11). At the end of subparagraph (B), the bill makes clear that "no retaliation may be authorized based on the exercise of these rights or the right to establish domestic labor standards and levels of environmental protection." The Committee understands this provision to clarify the language that precedes it in subparagraph (B). That is, in negotiating provisions on trade and labor and trade and the environment, the United States should make clear that a country is effectively enforcing its laws if a course of action or inaction is the result of a reasonable exercise of discretion or a bona fide decision regarding the allocation of resources, and, as such, the country cannot be subject to retaliation on the basis of that course of action or inaction alone.

Importantly, this phrase does not limit the ability of the United States to negotiate trade agreements incorporating all elements of the "Jordan standard." Nor does it provide an exception to the objective, set forth in section 2(b)(12)(G) of the bill, that U.S. negotiators should seek provisions in trade agreements that treat principal negotiating objectives equally with regard to the ability to resort to dispute settlement, the availability of dispute settlement procedures, and the availability of equivalent remedies.

Sections 2(b)(11)(C) and (D) direct negotiators to help trading partners of the United States strengthen their capacity to promote respect for core labor standards and to protect the environment and promote sustainable development. Relatively low labor and environmental standards in a given country can affect trade by keeping costs of production low, thereby attracting investment and giving a competitive advantage to exports. However, low labor and environmental standards often do not reflect a political choice, but rather a lack of resources. Recognizing this circumstance, the bill sets as an objective the provision of assistance to trading partners to enable them to strengthen their labor and environmental standards.

In sections 2(b)(11) (E) and (F), the bill sets forth additional objectives for pursuing sustainable development in conjunction with expanded trade. It directs negotiators to focus on reduction and elimination of government practices and policies that unduly threaten sustainable development. It further directs negotiators to pursue so-called "win-win" market access goals—*i.e.,* reductions in tariff and non-tariff barriers which promote both expanded trade and a cleaner environment. One such win-win goal referred to in the bill is the elimination of tariffs and non-tariff barriers for U.S. environmental technologies, goods, and services. Another win-win would be the elimination of fisheries subsidies, which tend to be both trade-distorting and harmful to the extent that they encourage over-fishing.

Finally, section 2(b)(11)(G) calls on negotiators to ensure that other countries' labor, environmental, health and safety policies and practices do not arbitrarily or unjustifiably discriminate against U.S. exports or serve as disguised barriers to trade. This objective reflects a concern that some countries may establish laws and regulations that purport to serve legitimate public purposes, but that actually amount to unreasonable or unjustifiable trade

barriers. For example, the Committee is aware of instances in which other countries have used sanitary and phytosanitary standards, not based in science, to arbitrarily discriminate against U.S. agricultural exports. New trade agreements should prohibit these and similar mis-uses of labor, environmental, health and safety standards.

12. Dispute settlement and enforcement

The principal negotiating objectives regarding dispute settlement and enforcement are:

- To seek provisions in trade agreements providing for resolution of disputes between governments in an effective, timely, transparent, equitable, and reasoned manner requiring determinations based on facts and the principles of the agreement, with the goal of increasing compliance;
- To seek to strengthen the capacity of the WTO Trade Policy Review Mechanism to review compliance;
- To seek improved adherence by WTO dispute settlement panels and the Appellate Body to the standard of review in applicable WTO Agreements, including greater deference to the fact finding and technical expertise of national investigating authorities;
- To seek provisions encouraging the early identification and settlement of disputes through consultations;
- To seek provisions encouraging trade-expanding compensation;
- To seek provisions to impose a penalty that encourages compliance, is appropriate to the parties, nature, subject matter, and scope of the violation, and has the aim of not adversely affecting parties or interests not party to the dispute while maintaining the effectiveness of the enforcement mechanism; and
- To seek provisions that treat U.S. principal negotiating objectives equally with respect to ability to resort to dispute settlement and availability of equivalent procedures and remedies.

Fair and efficient dispute settlement mechanisms are essential to well-functioning trade agreements. They help to clarify and consistently interpret agreement terms. This, in turn, enables interested parties to understand the rules of the trading system and to develop reasonable expectations upon which to base their business decisions. Moreover, fair and efficient dispute settlement can help to safeguard the rule-based trading system against unilateral retaliation and other disruptions that could arise in the absence of neutral arbiters of the rules.

To function well, a dispute settlement mechanism must have several features. First, it must be effective. That is, it must be capable of interpreting the rights and obligations of disputing parties and rendering determinations that the parties treat as binding. Where a party is found to be in violation of its obligations, the mechanism must be capable of bringing about prompt compliance, failing which, it must be capable of identifying ways for the complaining party to be compensated for any nullification or impairment of its trade agreement rights.

Second, dispute settlement mechanisms must be capable of rendering determinations in a timely matter. Their utility diminishes if countries are reluctant to use them because of the time it takes to get a final decision.

Third, dispute settlement mechanisms must be transparent. As discussed more generally above, a system that is open to public view and that is amenable to input from interested parties fosters confidence among the system participants. This is vital to sustaining long-term support for dispute settlement mechanisms in trade agreements.

Next, dispute settlement mechanisms must be designed to render equitable and reasoned decisions, based on the facts of cases presented and the principles of the agreements they interpret. In other words, arbitral panels and other tribunals should explain the bases for their conclusions, which should be grounded in the text and (as appropriate) the context of trade agreements, as applied to the evidence before them.

Finally, the goal of dispute settlement should be increased compliance with trade agreements. Retaliation, compensation, and other measures to adjust parties' rights and obligations generally should be considered only second-best options.

The Committee recognizes that dispute settlement is not the exclusive means of bringing about greater compliance with trade agreements. Other means include periodic review of countries' trade policies for purposes of identifying potentially non-compliant measures and addressing them through consultation. In the WTO, this function is filled by the Trade Policy Review Mechanism ("TPRM"). As described in Annex 3 to the Agreement Establishing the World Trade Organization, the purpose of the TPRM is "to contribute to improved adherence by all [WTO] Members to rules, disciplines, and commitments made under the [WTO Agreements], and hence to the smoother functioning of the multilateral trading system, by achieving greater transparency in, and understanding of, the trade policies and practices of Members." The Trade Policy Review Board, established under the WTO Agreements, conducts reviews of WTO Members every 2, 4, or 6 years, depending on the country's share of world trade, and reports back to the full WTO membership. These reviews and reports may flag policies and practices that could conflict with WTO obligations, enabling members to address them before they give rise to actual disputes.

Section 2(b)(12)(B) of the bill directs negotiators to seek to strengthen the capacity of the TPRM to review countries' compliance with their WTO commitments. More generally, section 2(b)(12)(D) directs negotiators to seek other provisions encouraging the early identification and settlement of disputes, short of formal dispute settlement proceedings.

Section 2(b)(12)(C) highlights a concern of the Committee with the standard of review that dispute settlement panels and the WTO Appellate Body have applied in cases involving measures taken by administrative agencies of the United States—in particular, the U.S. International Trade Commission and the Department of Commerce. A familiar concept in U.S. administrative law is that courts reviewing actions of administrative agencies should give due deference to the fact finding and technical expertise of those agencies. Similar concepts are embedded in the WTO Agree-

ments. For example, article 17.6 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("the Antidumping Agreement") provides that, where a dispute settlement panel finds that a national investigating authority's "establishment of the facts was proper and the evaluation was unbiased and objective, even though the panel might have reached a different conclusion, the evaluation shall not be overturned." Similarly, "Where the panel finds that a relevant provision of the Agreement admits of more than one permissible interpretation, the panel shall find the authorities' measure to be in conformity with the Agreement if it rests upon one of those permissible interpretations."

As discussed in greater detail in connection with the findings in section 1(b)(3) of the bill, recent decisions by panels and the Appellate Body have interpreted article 17.6 in a manner that strictly narrows the deference to be accorded to national investigating authorities. See, e.g., United States—Anti-Dumping Measures on Certain Hot-Rolled Steel Products From Japan, Report of the Appellate Body (WT/DS184/AB/R) at ¶¶50–62 (July 24, 2001). Similar concerns are prompted by cases involving U.S. countervailing duty and safeguards laws. This trend jeopardizes U.S. trade remedy laws by empowering panels and the Appellate Body to put their interpretations of the applicable agreements in place of U.S. investigating authorities' equally permissible interpretations of those agreements.

Section 2(b)(12)(C) of the bill directs negotiators to seek improved adherence by WTO panels and the Appellate Body to the standard of review applicable under the WTO Agreement involved in a particular dispute, including greater deference, where appropriate, to the fact finding and technical expertise of national investigating authorities. Negotiators should pursue either amendments to the existing WTO Agreements or the conclusion of supplemental agreements to give clearer guidance to panels and the Appellate Body regarding standards for reviewing the actions of national investigating authorities.

Section 2(b)(12)(E) of the bill directs negotiators to seek provisions encouraging the provision of trade-expanding compensation where a party to a trade dispute fails to come into timely compliance with its obligations. When a country is found to be in violation of its WTO obligations and fails to come into compliance within a reasonable period of time, there is a disruption in the balance of rights and obligations under the WTO Agreements. WTO rules contemplate two options for restoring balance. The first is the provision of compensation by the non-compliant country. The second is the suspension of concessions or other obligations by the complaining country.

Compensation may take the form of a lowering of tariffs by the non-compliant country—on a non-discriminatory (most-favored-nation) basis—on imports of products of importance to the complaining party. The suspension of concessions or other obligations typically entails an increase in tariffs imposed by the complaining country on imports from the non-compliant country. By definition, suspensions of concessions are trade-reducing, as they raise barriers to trade between the complaining country and the non-compliant country, often harming the interests of both producers in the latter and consumers in the former. The harm to one's own con-

sumers—as well as to subsidiaries and affiliates of one's own nationals that happen to be producing in the non-compliant country—often makes it difficult for a complaining country to suspend concessions. The problem is further complicated by the fact that sectors penalized by increased tariffs frequently have had nothing to do with the underlying dispute.

By contrast, compensation is trade expanding. Exporters in the complaining country benefit from the lowering of tariffs or other barriers by the non-compliant country. And, since such compensation generally must be provided on a non-discriminatory basis, exporters in other countries may benefit as well. Consumers in the non-compliant country presumably benefit from the lower prices. The compensating country may lose some tariff revenue, and import-competing industries may face increased competitive pressure. However, since the compensation is undertaken voluntarily, the non-compliant country may assert some control over how the burdens are borne and may be able to counteract any adverse impact on import-competing industries.

Section 2(b)(12)(E) of the bill expresses a preference for compensation over suspension of concessions or other obligations. It directs negotiators to seek trade agreement provisions that encourage compensation where a party fails to come into compliance with its obligations, in accordance with a dispute settlement decision.

Recognizing that there may be cases where a party to a dispute fails to come into compliance with its obligations and compensation is not forthcoming, section 2(b)(12)(F) identifies guidelines for trade agreement provisions concerning the imposition of penalties. Most importantly, penalty provisions should encourage compliance with a country's obligations under a trade agreement. They should not be imposed simply to give a trade advantage to producers in the complaining country.

Next, penalties should be appropriate to the parties, nature, subject matter, and scope of the violation. Trade agreements should require that authorized penalties be proportionate to the trade impact of the underlying violation and that they take account of the particular circumstances of a given case.

Finally, penalties should minimize harm to parties or interests not party to the dispute, while maintaining the effectiveness of the enforcement mechanism. This objective reflects the principle, under WTO rules, that a party authorized to suspend concessions or other obligations should seek to do so first with respect to "the same sector(s) as that in which the panel or Appellate Body has found a violation or other nullification or impairment." WTO Understanding on Rules and Procedures Governing the Settlement of Disputes, art. 22.3(a). Only if this is not practicable or effective should the complaining party seek to suspend concessions or other obligations with respect to other sectors.

Section 2(b)(12)(G) directs negotiators to seek provisions that treat the principal negotiating objectives of the United States equally with respect to the ability to resort to dispute settlement, the procedures available in dispute settlement, and the remedies available. The Committee recognizes that parties (correctly or not) may consider their obligations under trade agreements to be more or less binding, according to how they may be enforced. Obligations enforceable through arbitration may be treated as more binding

than obligations as to which parties have a duty simply to consult. Similarly, where violation of an obligation may give rise to a penalty, compliance may be more forthcoming than violations where no penalty is available.

Acknowledging that differences in method and degrees of enforceability may influence parties' compliance with their commitments, the Committee directs negotiators to pursue the principle of equivalence in negotiating agreement provisions on dispute settlement and enforcement. No commitment or commitments obtained pursuant to particular principal negotiating objectives should be relegated to less effective modes of enforcement than commitments obtained pursuant to other principal negotiating objectives.

This does not mean that, in implementing trade agreements, U.S. officials should treat all disputes identically. It may be that certain differences are more amenable to consultation than arbitration. Likewise, some non-compliant practices may be better addressed through cooperation and technical assistance than through the threat of sanctions. Recognizing that trade officials should be able to deal with individual disputes according to the facts of the case presented, the United States should have equivalent enforcement tools available to it with respect to all commitments.

13. Border taxes

The principal negotiating objective regarding border taxes directs negotiators to seek a revision of WTO rules that will eliminate the current disadvantage to countries, such as the United States, that rely primarily on direct taxes (such as income taxes), rather than indirect taxes (such as sales and value-added taxes), and that tax income on a worldwide rather than a territorial basis. Rulings adopted by the WTO Dispute Settlement Body have found that the WTO Agreement on Subsidies and Countervailing Measures prohibits provisions in the United States Internal Revenue Code that exempt from taxation certain income from export transactions. By contrast, provisions under the laws of other countries that exempt export sales income from indirect taxes or remit to exporters taxes previously imposed might not be prohibited even though they provide similar relief to that afforded by the Internal Revenue Code.

In the matter of United States—Tax Treatment for "Foreign Sales Corporations," the WTO Appellate Body recognized the sovereign right of every country to set its own taxation rules. At the same time, the Appellate Body reached decisions concerning the Foreign Sales Corporation provisions of the Internal Revenue Code (and, more recently, the Extraterritorial Income Exclusion Act of 2000 provisions) that severely constrain the sovereign right of the United States to set its own rules of taxation for foreign source income earned in export transactions. Under the Appellate Body's interpretations, it would be difficult for the United States, consistent with WTO rules, to maintain its "worldwide" approach to international taxation while ensuring that U.S. producers are not at a competitive disadvantage compared with producers in jurisdictions that take a "territorial" approach to international taxation.

In short, WTO subsidy rules as interpreted by dispute settlement panels and the Appellate Body give rise to a disparity that favors territorial tax jurisdictions over worldwide tax jurisdictions. The view of the Committee is that this disparity must be corrected, in

order to preserve the sovereign right of every country to choose its own rules of taxation. Accordingly, the objective on border taxes directs the President to pursue this correction in the recently launched round of WTO negotiations. It is the Committee's expectation that in eliminating the existing disparity, the President will avoid a result that would place U.S. workers and companies now benefitting from the Extraterritorial Income Exclusion Act of 2000 at a competitive disadvantage.

14. WTO extended negotiations

Section 2(b)(14) incorporates by reference two negotiating objectives previously set forth in the Uruguay Round Agreements Act ("URAA"). The first objective concerns negotiations under the auspices of the WTO regarding trade in civil aircraft. Section 135(c) of the URAA identified five specific objectives for extended negotiations on trade in civil aircraft. These objectives called for the pursuit of greater market access through the reduction or elimination of tariff and non-tariff barriers, the maintenance of vigorous and effective disciplines on subsidies in this sector, the maintenance of the scope and coverage of rules on indirect support in the U.S.-E.C. Bilateral Agreement on Large Civil Aircraft, and the pursuit of increased transparency in foreign subsidy programs in the civil aircraft sector. Additionally, the Statement of Administrative Action that accompanied the URAA, and that Congress approved in section 101(a)(2) of the URAA, elaborated on how the United States would pursue the objectives set forth in section 135(c). See Uruguay Round Trade Agreements, Texts of Agreements, Implementing Bill, Statement of Administrative Action, and Required Supporting Statements, H. Doc. No. 316, 103d Cong., 2d Sess. at 681 (1994). The present bill reaffirms the objectives in section 135(c) of the URAA, along with the corresponding provisions from the Statement of Administrative Action.

The second objective in section 2(b)(14) is the conclusion of a WTO agreement on harmonization of rules of origin. A work program for this purpose was established in article 9 of the WTO Agreement on Rules of Origin. Section 132 of the URAA requires that Congress enact separate authorizing legislation before the President implements an eventual agreement on harmonization of rules of origin.

Section 2(c). Promotion of certain priorities

Section 2(c) sets forth 12 priorities that the President shall pursue in conjunction with trade negotiations conducted under the authority provided in the present bill. While these priorities are not formally described as negotiating objectives, their importance as statements of the trade policy of the United States is equal to the importance of the general and specific objectives set forth in subsections (a) and (b). It is the expectation of the Committee that these priorities will be pursued with the same vigor as the objectives in those subsections, that the President will consult regularly with Congress regarding their status, and that the reports he transmits to Congress in support of trade agreements will address the progress made in achieving the priorities. This section summarizes the 12 priorities.

The President shall seek greater cooperation between the WTO and the International Labor Organization. In setting forth this priority, the Committee recalls that section 131 of the Uruguay Round Agreements Act requires the President to seek the establishment in the WTO of a working party to examine the relationship of internationally recognized worker rights to the articles, objectives, and related instruments of the WTO. The objectives of the contemplated working party include developing methods to coordinate the work program of the working party with the International Labor Organization. 19 U.S.C. § 3551(b)(4). The Committee takes note of the WTO Ministerial Declaration adopted November 14, 2001, in which the Members of the WTO reaffirmed their commitment to the observance of internationally recognized core labor standards and recognized the work of the ILO on "the social dimension of globalization." The Committee expects that the President will work to reenforce this commitment through enhanced collaboration between the WTO and the ILO.

Recognizing that capacity building is an important means to encourage trading partners of the United States to improve labor and environmental standards, the bill directs the President to establish consultative mechanisms among trade agreement parties for this purpose. The Committee notes that such mechanisms have been established in connection with several recent trade agreements. For example, in conjunction with the recently concluded free trade agreement with Jordan, the United States and Jordan adopted a Joint Statement on Environmental Technical Cooperation, in which they established a Joint Forum to meet regularly and develop technical cooperation initiatives to advance environmental protection in Jordan. Similarly, in conjunction with the conclusion of a bilateral trade agreement with Vietnam, the United States and Vietnam entered into a Memorandum of Understanding establishing a program of cooperation and dialogue on labor matters, and the United States provided technical assistance in collaboration with the ILO. And, labor consultations were agreed to as part of the recently extended United States-Cambodia Textile Agreement.

Related to the priorities of establishing consultative mechanisms on labor and environmental standards, section 2(c)(7) directs the President to have the Secretary of Labor consult with any country seeking a trade agreement with the United States concerning that country's labor laws and the provision of technical assistance as appropriate.

Sections 2(c) (4) and (5) direct the President, before concluding new trade agreements, to conduct reviews of the likely impact of the proposed agreements on the environment in the United States and, as appropriate, outside the United States, and on employment in the United States. The concept for such reviews was established in Executive Order 13141 of November 16, 1999. 64 Fed. Reg. 63,169 (Nov. 18, 1999). That Executive Order directed the U.S. Trade Representative, in collaboration with other agencies, to undertake environmental reviews of certain trade agreements to enable the United States to factor environmental considerations into the development of its trade negotiating objectives. The present bill elevates the environmental review requirement to statutory status, and requires that the President report to the Senate Committee on Finance and the House Committee on Ways and Means on the re-

sults of such reviews. Further, the bill establishes a similar requirement with respect to the impact of future trade agreements on U.S. employment. The enactment of these review requirements is not intended to give rise to any private rights of action.

Additionally, section 2(c)(8) of the bill requires the President to submit to the Senate Finance Committee and the House Ways and Means Committee a report on labor rights in any country with which the President is negotiating a trade agreement. It is the expectation of the Committee that this report will discuss (i) the extent to which the country complies with internationally recognized core labor standards, as defined by the International Labor Organization, (ii) the extent to which any failures to comply with core labor standards are likely to affect trade with the United States, and (iii) the extent to which the country has in place laws prohibiting exploitative child labor and is enforcing those laws. The timing for transmittal of labor rights reports is to be determined by the U.S. Trade Representative in collaboration with the Chairmen and Ranking Members of the Finance Committee and Ways and Means Committee as part of the development of guidelines on trade negotiation consultations, as required by section 7(b) of the bill.

Section 2(c)(6) requires that in negotiating trade agreements, in addition to taking into account the commercial objectives of the United States, the President shall take into account other domestic policy objectives, including, but not limited to, the protection of health and safety, essential security, and consumer interests.

Section 2(c)(9) addresses certain priorities regarding U.S. trade remedy laws, in particular, the antidumping, countervailing duty, and safeguards laws. It is a priority to preserve the ability of the United States to rigorously enforce these laws. Negotiators must avoid agreements that lessen their effectiveness or weaken the ability of the United States to enforce them. Preserving the integrity of these trade remedy regimes is essential to ensuring that benefits achieved through hard negotiations are not eroded, and that U.S. workers, farmers and businesses are able to compete on a level playing field. The Committee is concerned that some dispute settlement mechanisms, such as Chapter 19 of the North American Free Trade Agreement, could undermine the effectiveness of U.S. trade remedy laws.

Negotiators also must avoid agreements that lessen the effectiveness of international disciplines on unfair trade, as well as international safeguard provisions. Further, section 2(c)(9)(B) directs the President to address and remedy market distortions that lead to dumping and subsidization, including overcapacity, cartelization, and market-access barriers. The Committee notes that the WTO Ministerial Declaration adopted on November 14, 2001 calls for negotiations "aimed at clarifying and improving" disciplines on dumping and subsidies, "while preserving the basic concepts, principles and effectiveness" of existing WTO Agreements "and their instruments and objectives." It is the expectation of the Committee that in pursuing these negotiations, the United States will advance as an affirmative agenda the priorities set forth in section 2(c)(9)(B), while defending U.S. interests as described in section 2(c)(9)(A). These two sets of priorities go hand in hand and should not be traded off against each other.

Section 2(c)(10) directs the President to promote consideration of multilateral environmental agreements ("MEAs") and to consult with U.S. trading partners on the consistency of trade measures permitted under such agreements with environmental exceptions to ordinary trade rules. This provision refers, in particular, to Article XX of the General Agreement on Tariffs and Trade ("GATT"). That article, entitled "general exceptions," permits WTO Members to adopt and enforce certain measures that otherwise would be inconsistent with WTO rules, as long as such measures are not applied in an arbitrary or discriminatory manner and do not constitute a disguised restriction on international trade. Measures subject to this general exception include measures to protect human, animal, or plant life or health and measures relating to the conservation of exhaustible natural resources.

Certain existing MEAs, such as the Convention on International Trade in Endangered Species, permit parties to take trade-related measures in response to a party's violation of the agreement. Future MEAs may contain similar provisions. However, it is not clear whether measures taken pursuant to such provisions would be considered as coming under any of the categories of exceptions set forth in Article XX of the GATT. The present bill urges consultations among MEA parties that are also WTO Members to determine how trade provisions in MEAs should work with Article XX of the GATT.

Section 2(c)(11) requires the President to report to the House Ways and Means Committee and the Senate Finance Committee on the effectiveness of trade remedies or penalties imposed under agreements concluded pursuant to the present bill. With respect to each remedy or penalty imposed, the President would be required to submit a report within 12 months discussing the effectiveness of the remedy in enforcing U.S. rights under the trade agreement. The report should discuss what steps the target country has taken to comply with its commitments following imposition of the remedy or penalty. The report also should discuss any impacts of the remedy or penalty on parties or interests not party to the underlying dispute.

Finally, section 2(c)(12) requires the President to seek to establish consultative mechanisms among parties to trade agreements to examine the trade consequences of significant and unanticipated currency movements. These mechanisms also should examine whether a government has engaged in a pattern of manipulating its currency to promote a trade advantage. This provision reflects the concern of the Committee that significant swings in currency valuations have important impacts on trade and may erode benefits anticipated under trade agreements. Recognizing the inherent links between currency valuations and trade, the means to monitor those links should be built into trade agreements. It is expected that appropriate agencies, including the Department of Treasury, would be closely involved in the development and operation of such mechanisms.

Section 2(d). Consultations

Section 2(d) requires the U.S. Trade Representative to consult closely and on a timely basis with certain Members of Congress and to keep these Members fully apprized of negotiations con-

ducted under the present bill. These Members are the newly established Congressional Oversight Group (described in section 7 of the bill), all Committees of the House and Senate with jurisdiction over laws that would be affected by trade agreements resulting from the negotiations, the congressional advisers for trade policy and negotiations appointed under section 161 of the Trade Act of 1974, the House Committee on Ways and Means, and the Senate Committee on Finance. Additionally, with regard to negotiations relating to agriculture trade, the U.S. Trade Representative shall consult closely and on a timely basis with the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition and Forestry.

The Committee expects the consultations required under section 2(d) to occur throughout negotiation of an agreement, including immediately before initialing of the agreement. Consultations should keep Members of Congress currently and fully informed of progress in negotiations, including steps taken to fulfill each of the policies, priorities, and objectives of the present bill. Moreover, for consultations to be meaningful, they must be an opportunity for Members of Congress to provide input into negotiations, as well as an opportunity for negotiators to keep Members of Congress informed. To the extent that Members provide input, it is the Committee's expectation that negotiators will follow up with explanations of steps taken in pursuit of that input or decisions made notwithstanding that input.

Section 2(e). Adherence to obligations under Uruguay Round Agreements

Section 2(e) requires the President to consider the extent to which a country has implemented or accelerated implementation of its obligations under the Uruguay Round Agreements in determining whether to start new negotiations with that country. This provision complements the objective in section 2(b)(7) to pursue enhanced implementation of WTO obligations. The President necessarily must choose the countries with which the United States will negotiate trade agreements. The Committee recognizes that a number of commercial, foreign policy, and other factors influence these decisions. Section 2(e) emphasizes the importance of compliance with WTO obligations as a criterion in making these selections.

Section 3. Trade agreements authority

Section 3 provides that the President may enter into trade agreements subject to the trade authorities procedures prescribed in the present bill before June 1, 2005 or, if such procedures are extended as provided in section 3(c), before June 1, 2007.

Section 3 contains two different procedures for implementing trade agreements—one for implementing certain results of tariff negotiations, and one for implementing all other results of tariff negotiations, as well as other changes to U.S. law required by trade agreements.

Tariff proclamation authority. Section 3(a) contains the first of these two procedures, commonly referred to as "tariff proclamation authority." Tariff proclamation authority permits the President to proclaim the results of certain tariff negotiations directly into U.S. law, without need for separate legislation.

Section 3(a) puts limits on the President's tariff proclamation authority. Specifically, where a current duty rate exceeds 5 percent ad valorem, the President would not be authorized to reduce it by more than 50 percent. Any greater reduction would have to be approved by Congress. Where a current duty rate is 5 percent ad valorem or less, the President may reduce it or eliminate it without separate congressional approval.

An additional restriction on proclamation authority pertains to tariffs on certain import-sensitive agricultural products. The President may not proclaim reductions of tariff rates on such products below the rates applicable under the Uruguay Round Agreements. Products subject to this restriction are those agricultural products as to which the United States rate of duty was lowered by no more than 2.5 percent on the day the WTO Agreements went into effect (January 1, 1995). Tariff reductions on these products must be approved in separate legislation, described in section 3(b).

Finally, the President may not, by proclamation, increase any rate of duty above the rate applied on the date this bill is enacted. Any such increases will require separate legislation.

To the extent that tariff reductions may be implemented by proclamation, the bill requires that, in general, such reductions take place in stages. The stages may vary in size from period to period. However, the aggregate reduction in place at any given time may not exceed the aggregate reduction that would have been in place if, beginning on the date an agreement is implemented, tariffs had been reduced in equal annual stages of the greater of (i) 3 percent ad valorem, or (ii) one-tenth of the total reduction. The bill permits the President to round numbers off, within limits, to simplify staging calculations.

An exception to the staging requirements is made where the U.S. International Trade Commission determines that there is no domestic production of an article.

Finally, the bill reaffirms the residual proclamation authority granted to the President in section 111(b) of the Uruguay Round Agreements Act ("URAA"). That provision authorizes the President to proclaim certain tariff rate changes for articles that were the subject of duty elimination or harmonization negotiations during the Uruguay Round of multilateral trade negotiations. During that round, the United States sought, but did not achieve, reciprocal duty elimination in the wood products, electronics, distilled spirits, non-ferrous metals, soda ash, and oilseeds and oilseed products sectors. In sectors where the United States did obtain agreement to reciprocal tariff elimination in the Uruguay Round—such as paper and paper products—the President determined, in the Statement of Administrative Action that accompanied the Uruguay Round Agreements Act, that the United States would pursue accelerated elimination of those tariffs following the Uruguay Round. Also, the President determined to continue to pursue harmonization of tariffs on chemical products following the Uruguay Round. Section 111(b) authorizes the President to proclaim tariff changes as necessary to implement each of the foregoing ends, and that authority remains unchanged under the present bill. See Uruguay Round Trade Agreements, Texts of Agreements, Implementing Bill, Statement of Administrative Action, and Required Supporting Statements, H. Doc. No. 316, 103d Cong., 2d Sess. at 701–02 (1994).

Since completion of the Uruguay Round, the President has exercised the residual proclamation authority under section 111(b) to implement U.S. obligations under the WTO Information Technology Agreement ("ITA"), which eliminates tariffs on a wide array of products, including computers, semiconductors and telecommunications equipment. The Committee believes that the ITA was a substantial accomplishment for an important sector of the U.S. economy. The Committee recognizes, however, that the President's ability to negotiate and carry out similar agreements is limited, because section 111(b) applies only to sectors that were the subject of reciprocal duty elimination or harmonization negotiations during the Uruguay Round.

In the interest of building on the success of the ITA, the present bill (in section 3(a)(6)) grants the President authority to modify any duty or the staged rate reduction of any duty, pursuant to a reciprocal elimination or harmonization of duties under the auspices of the WTO, regardless of whether the sector at issue had been subject to duty elimination or harmonization negotiations during the Uruguay Round. This authority is not subject to the ordinary limitations on the scope of proclaimed tariff reductions, the prohibition on proclaimed tariff increases, and the staging rules. However, this authority may not be used to proclaim the reduction or elimination of tariffs on import-sensitive agricultural products as provided for in section 3(a)(2)(B).

Tariff reductions proclaimed under section 3(a)(6) of the present bill, like tariff reductions proclaimed under section 111(b) of the URAA, are subject to the layover and consultation requirements prescribed by section 115 of the URAA. That is, the President must receive advice from the appropriate industry advisory committee and the ITC on the proposed proclamation, and the proclamation must lie before the Senate Finance and House Ways and Means Committees for a period of 60 days before going into effect, in order to give the Committees an adequate opportunity to consult with the President.

It is the expectation of the Committee that the President will continue the efforts at tariff elimination and harmonization left over from the Uruguay Round, as well as efforts at accelerated tariff elimination in those sectors for which "zero-for-zero" agreements have been achieved. In addition, the Committee expects that the President will seek to expand the country and product coverage of existing tariff elimination agreements. Further, the Committee notes that new sectoral initiatives on tariff elimination which may be expected to yield significant benefits to the United States, based on volume of trade, include: electrical and non-electrical machinery, processed foods (such as soups and broths, sauces and biscuits, and snack foods), autos and auto parts, meats (such as beef, pork, and poultry), and information technology products not already covered by the ITA.

Agreements on tariff and non-tariff barriers. The second procedure for implementing trade agreements is found in Section 3(b) and is commonly referred to as "trade authorities procedures" or "fast track." Section 3(b)(1) authorizes the President to enter into a trade agreement with a foreign country whenever he or she determines that any duty or other import restriction, or any other barrier to or distortion of international trade, unduly burdens or

restricts the foreign trade of the United States or adversely affects the U.S. economy, or that the imposition of any such barrier or distortion is likely to result in such a burden, restriction, or effect, and that entering into such agreement will promote the purposes, policies, priorities and objectives of this bill. The agreement must provide for the reduction or elimination of such barrier or other distortion or prohibit or limit the imposition of such a barrier or distortion. Unlike prior fast track legislation, no distinction would be made between bilateral and multilateral agreements.

Conditions. Section 3(b)(2) provides that the trade agreement approval procedures may be used only if the agreement makes progress in meeting the applicable objectives set forth in sections 2 (a) and (b) (Overall and Principal Trade Negotiating Objectives), and the President satisfies the requirements set forth in section 4 (Consultations).

Bills qualifying for trade authorities procedures. Section 3(b)(3) provides that bills implementing trade agreements qualify for trade authorities procedures only if those bills consist solely of provisions approving the trade agreement and any statement of administrative action accompanying the agreement, and provisions necessary or appropriate to implement the trade agreement.

If the foregoing conditions are met, then the trade authorities procedures described in section 151 of the Trade Act of 1974 apply to the implementing bill. Section 151 of that Act sets forth a timetable for consideration of implementing bills in the Committees of jurisdiction and on the floor of each House of Congress. Ordinarily, the maximum time for consideration in both Chambers will be 90 legislative days. Section 151 also prohibits amendments to implementing bills and limits the time for debate on the floor of each House to 20 hours (subject to further limitation).

The Committee intends to extend authority to the President to negotiate agreements subject to the trade authorities procedures similar to that given to past Presidents. The Committee also intends to provide the President with the flexibility needed to negotiate strong trade agreements. However, the Committee believes that for constitutional reasons, it is important to make trade promotion authority as tailored as possible, so as not to unnecessarily intrude on normal legislative procedures. Trade authorities procedures are exceptions to the ordinary rules of procedure, which are permitted only because of the co-equal status that the executive and legislative branches share in the area of trade. The President and Congress both have important powers with respect to trade and foreign affairs issues. Therefore, trade agreements do not readily fit the legislative model used to consider other types of legislation. Trade authorities procedures assure that trade relations with other countries are handled expeditiously and efficiently, with the involvement of the executive and legislative branches. The Committee believes that these procedures should apply only to meet the special requirements of trade agreements. Further, the trade authorities procedures should apply only to those provisions in an implementing bill that are strictly necessary or appropriate to implement the underlying agreement. To apply the procedures more broadly would encroach on Congress's constitutional authority to legislate. The Committee takes a strict interpretation of this requirement.

Time period. Sections 3(a)(1)(A) and 3(b)(1)(C) grant trade promotion authority for agreements entered into before June 1, 2005. An extension until June 1, 2007 would be permitted unless Congress passed a disapproval resolution, as described under section 3(c).

Extension procedures. Section 3(c) outlines a process for extending the tariff proclamation authority of section 3(a) and the trade authorities procedures of section 3(b). Under this process, the President must request the extension from Congress and provide his reasons for that request, along with an explanation of the trade agreements for which he expects to need fast track authority, and a description of the progress he has made to date toward achieving the purposes, policies, priorities, and objectives of the present bill. The President must promptly notify an extension request to the Advisory Committee for Trade Policy and Negotiations established under section 135 of the Trade Act of 1974, which then must file its own report with Congress. The President also must promptly notify the International Trade Commission of his request for an extension. The International Trade Commission must file a report that contains a review and analysis of the economic impact on the United States of all trade agreements implemented between the date of enactment of this bill and the date upon which the President requests an extension.

Consistent with prior law, the President's request for an extension through June 1, 2007 will be granted, unless either House of Congress passes a "resolution of disapproval." Any Member of Congress may introduce such a resolution in his or her respective House of Congress. Such a resolution will be referred, in the Senate, to the Committee on Finance, and in the House, jointly to the Committees on Rules and Ways and Means. Floor action on such a resolution will not be in order unless the resolution is reported by the aforementioned committees. In the event the Committee on Finance reports an extension disapproval resolution, the resolution will be considered on the Senate floor under the fast track procedures set forth in section 152(e) of the Trade Act of 1974. In the event the Committee on Ways and Means and the Committee on Rules report an extension disapproval resolution, the resolution will be considered on the House floor under the fast track procedures set forth in section 152(d) of that Act.

Section 4. Consultations and assessment

H.R. 3005 revises and strengthens the legislative-executive trade consultation procedures. To this end, section 4 establishes a number of new requirements to help ensure close coordination and consultation at every stage of trade agreement negotiation.

Specifically, section 4(a)(1) requires the President to provide written notice to Congress at least 90 calendar days prior to entering into negotiations. In the notice, the President must set forth the date on which he intends to initiate negotiations, the specific objectives for the negotiations, and whether the President intends to seek a new agreement, or to change an existing agreement. Failure to provide notice may trigger the introduction and consideration of a "procedural disapproval resolution" under the provisions of section 5(b). If a disapproval resolution were adopted, it would withdraw trade authorities procedures for legislation implementing

the agreement at issue. Section 4(a)(2) requires the President to consult with relevant Committees regarding the negotiations before and after formal submission of the notice of intention to negotiate. Section 4(a)(3) requires the President, upon the request of a majority of the members of the Congressional Oversight Group (an entity established in section 7 of this bill), to meet with the Congressional Oversight Group before initiating negotiations or at any other time concerning the negotiations.

Section 4(b) establishes a special consultation requirement for agriculture and the fishing industry. Before initiating negotiations with a country concerning tariff reductions in agriculture, the President is to assess whether U.S. tariffs on agricultural products that were bound under the Uruguay Round Agreements are lower than the tariffs bound by that country. In his assessment, the President is also required to consider whether the tariff levels bound and applied throughout the world with respect to imports from the United States are higher than U.S. tariffs on like products, and whether the negotiation provides an opportunity to address any such disparity.

The President is required to consult with the Committees on Ways and Means and Agriculture of the House and the Committees on Finance and Agriculture, Nutrition, and Forestry of the Senate concerning the results of this assessment, whether it is appropriate for the United States to agree to further tariff reductions under such circumstances, and how all applicable negotiating objectives will be met.

Section 4(b)(2) sets forth special consultation procedures for import-sensitive agricultural products. It requires the U.S. Trade Representative, before initiating agriculture negotiations, to identify import-sensitive agricultural products, and consult with the Committee on Ways and Means and the Committee on Agriculture of the House of Representatives and the Committee on Finance and the Committee on Agriculture, Nutrition, and Forestry of the Senate concerning whether further tariff reductions on these products would be appropriate, whether these products face unjustified sanitary and phytosanitary restrictions, and whether the countries participating in the negotiations maintain export subsidies or other programs that distort world trade in these products. The U.S. Trade Representative also must request that the International Trade Commission prepare an assessment of the probable economic effect of any tariff reduction on the U.S. industry producing an import-sensitive agricultural product. After complying with these provisions, the U.S. Trade Representative must notify the aforementioned Committees of his or her intention to seek tariff liberalization in the identified products. Further, if during the course of negotiations additional import-sensitive agricultural products become candidates for tariff reductions, the Trade Representative must notify the foregoing Committees promptly and explain the reasons for seeking the proposed tariff reductions.

For purposes of these special consultation requirements, "import-sensitive agricultural products" are defined as agricultural products that are currently subject to tariff-rate quotas and agricultural products for which the rate of duty on the date the World Trade Organization was established (January 1, 1995) was lowered by 2.5 percent.

Section 4(b)(3) requires the President, before initiating or continuing negotiations directly related to fish or shellfish trade, to consult with the Committee on Ways and Means and the Committee on Resources of the House of Representatives, and the Committee on Finance and the Committee on Commerce, Science, and Transportation of the Senate and to keep these Committees apprized of negotiations on an ongoing and timely basis.

Section 4(c) sets forth a special consultation requirement for negotiations regarding textiles. Textile and apparel production in the United States is especially sensitive to import competition. Pressures on this sector are increasing, due to the gradual elimination of quotas on textile imports. Under WTO rules, all quotas must be eliminated by January 1, 2005. Given these special circumstances, the Committee believes there is a need for a separate mechanism for consultations in this sector. Accordingly, before initiating trade negotiations with a country, the bill requires the President to determine whether U.S. textile and apparel tariffs bound under the Uruguay Round Agreements are lower than tariffs bound by that country, and whether the negotiation affords an opportunity to address that disparity. The President then must consult with the House Ways and Means Committee and the Senate Finance Committee about his assessment, whether the United States should agree to further textile and apparel tariff reductions, and how all applicable negotiating objectives will be met.

Section 4(d) requires the President, before entering into any trade agreement, to consult with the relevant Committees and the Congressional Oversight Group concerning the nature of the agreement, how and to what extent the agreement will achieve the applicable purposes, policies, and objectives set forth in H.R. 3005, as amended, and all matters relating to implementation under section 5, including the general effect of the agreement on U.S. laws.

Section 4(d)(3) of the bill, in conjunction with section 5(a)(2)(B)(ii)(VI), establishes a special structure for consultation between the President and Congress on the subject of changes to U.S. trade remedy laws that may be required by trade agreements to which the United States may become a party. The importance of preserving the integrity of trade remedy laws—in particular, the antidumping, countervailing duty, and safeguards laws—is described elsewhere in the bill. For example, section 2(c)(9)(A) directs the President to "preserve the ability of the United States to enforce rigorously its trade laws." Section 1(b)(3) expresses concern about the way in which WTO dispute settlement panels and the Appellate Body have handled cases involving U.S. trade remedy laws.

Given the priority the Committee attaches to keeping U.S. trade remedy laws strong and ensuring that they remain fully enforceable, the bill puts in place a process requiring special scrutiny of any impact that trade agreements may have on these laws. The process put in place by the bill requires Presidential comments on pending trade agreements, followed by congressional replies, followed by additional Presidential comments. It is the Committee's expectation that this process will focus attention on the interaction between trade agreements and trade laws and reenforce the goal of not sacrificing the latter for the sake of the former.

Under section 4(d)(3), at least 90 calendar days before entering into a trade agreement, the President must notify the House Committee on Ways and Means and the Senate Committee on Finance of any changes to the antidumping, countervailing duty, or safeguard laws he proposes to include in a bill implementing the trade agreement. Along with this notification, the President must transmit to the Committees a report explaining his reasons for believing that these changes to U.S. law are (1) necessary to implement the agreement, and (2) consistent with the purposes, policies and objectives (described in section 2(c)(9) of the bill) of avoiding agreements that lessen the effectiveness of trade remedy laws and preserving the ability of the United States to enforce those laws rigorously.

Not later than 60 calendar days after receiving the foregoing notification and report from the President, the Chairmen and Ranking Members of the Ways and Means and Finance Committees would be required to transmit to their respective Chambers reports of their own. These reports would be developed in consultation with the membership of the respective Committees and would state whether the changes to U.S. trade remedy laws proposed by the President are, in fact, consistent with the purposes, policies, and objectives of avoiding agreements that lessen the effectiveness of those laws and preserving the ability of the United States to enforce them rigorously. In the event that the Chairman and Ranking Member of either of the Committees disagreed with one another, the report would contain the separate views of the Chairman and Ranking Member.

The purpose of the reports by the Chairmen and Ranking Members is to give the House and Senate membership alternative perspectives on the likely impact of proposed changes to trade remedy laws and thereby keep the bodies fully informed. Further, it is the Committee's expectation that anticipation of the reports by the Chairmen and Ranking Members will create a strong incentive for the President to consult closely with the Committees during negotiation of trade agreements. Working closely with the Committees may be expected to reduce the likelihood of dissent in the reports by the Chairmen and Ranking Members and thus improve the chances of congressional approval of the proposed trade agreement.

The Committee notes that, under the bill, there would be no penalty in the event that the Chairman and Ranking Member of either Committee failed to issue their report as prescribed by section 4(d)(3) (C) and (D). In other words, a bill implementing the trade agreement at issue would remain eligible for consideration under trade authorities procedures. However, the Committee believes that the reports by the Chairmen and Ranking Members contemplated by this bill will play a critical part in congressional consideration of trade agreements and fully expects that they will be transmitted in a timely fashion. No negative inferences with respect to any aspect of the President's consultations with Congress should be drawn from the fact that the Chairman and Ranking Member of either Committee file dissenting reports.]

The final piece in the special procedures for consultation on trade remedy laws is a response by the President to the reports by the Chairmen and Ranking Members. Section 5(a)(2) of the bill sets forth certain supporting information that the President must provide to Congress when transmitting a trade agreement and imple-

menting bill for consideration under trade authorities procedures. Among the supporting information required is a response to the reports of the Chairmen and Ranking Members, in the event that those reports find the President's proposed changes to trade remedy laws to be inconsistent with the purposes, policies, and objectives of avoiding agreements that lessen the effectiveness of those laws and preserving the ability of the United States to enforce them rigorously. In that case, the President must explain why he disagrees with the report of the Chairman and/or Ranking Member, as the case may be. This explanation (along with other information set forth in section 5(a)(2)) is required in order for an agreement entered into under the provisions of this bill to enter into force with respect to the United States.

Section 4(e) concerns the timing of certain reports to be prepared by the Advisory Committee on Trade Policy and Negotiations (the "ACTPN") and sectoral or functional advisory committees at the conclusion of trade agreement negotiations.

The ACTPN is an entity that Congress directed the President to establish in section 135 of the Trade Act of 1974. It consists of up to 45 members, appointed by the President on the recommendation of the U.S. Trade Representative for 2-year terms, and includes representatives from non-Federal governments, labor, industry, agriculture, small business, service industries, retailers, nongovernmental environmental and conservation organizations, and consumer interests. The ACTPN's mandate is to provide overall policy advice on trade negotiations, the operation of trade agreements in force, and other trade policy matters.

The Trade Act of 1974 also directed the President to establish sectoral or functional advisory committees. Like the ACTPN, the sectoral or functional committees provide advice on negotiations, operation of trade agreements, and trade policy matters. Unlike the ACTPN, which focuses on the economy as a whole, the sectoral or functional committees focus on particular parts of the economy.

Section 135(e)(1) of the Trade Act of 1974 directed the ACTPN, as well as the sectoral or functional committees whose issue areas are affected by a negotiation, to meet at the conclusion of a trade agreement negotiation and to prepare a report for the President, Congress, and the U.S. Trade Representative.

Under the 1988 Omnibus Trade and Competitiveness Act, the advisory committee reports were required to be submitted no later than the date on which the President notified Congress of his intention to enter into an agreement. In recognition of the fact that important terms of trade agreements often are not determined before the final hours of the negotiations, the present bill would permit the committees to submit their reports within 30 days after the President notifies his intent to enter into an agreement, as opposed to requiring the report be filed on the same day as that notification. The Committee believes that the additional time would contribute to the usefulness of the reports.

Finally, section 4(f) requires the President, at least 90 days before entering into a trade agreement, to ask the International Trade Commission to assess the agreement, including the likely impact of the agreement on the U.S. economy as a whole, specific industry sectors, and U.S. consumers. The ITC's report of its assessment must be transmitted to Congress and the President not

later than 90 days from the date on which the President enters into the agreement.

The Committee believes that strong legislative-executive consultations are the key to successful trade negotiations undertaken under the authorities provided in this bill. A strong consultation procedure, effectively utilized by both branches of government, can help build broad political support for trade agreements negotiated under this bill. Conversely, failure to adhere to the consultation procedures erodes trust between the executive and legislative branches and could lead to withdrawal of trade agreement approval procedures or rejection of trade agreements.

The improvements made with respect to consultations, as compared with previous fast track legislation, are designed to assure maximum congressional participation before, during, and after the trade negotiating process. Given Congress's constitutional role in trade policy, it is imperative that Members and their staffs be given periodic and timely substantive briefings by U.S. negotiators and access to relevant documents and information sources. To this end, the Committee expects that the USTR will, consistent with past practice, commit to a set of procedures for supplying Members and properly cleared staff with relevant documents, whether classified or unclassified, on a timely basis.

It is equally important that congressional trade advisers—those named under section 161 of the Trade Act of 1974, as well as Members of the Congressional Oversight Group established under section 7 of the present bill—be given appropriate access to international conferences, meetings, and negotiating sessions relating to trade agreements. The Committee notes that under both section 161(a)(1) of the Trade Act of 1974 and section 7(a)(4) of the present bill, certain Members of Congress are to be accredited by the U.S. Trade Representative on behalf of the President as official advisers to the U.S. delegation in trade agreement negotiations. While these Members will not be negotiating on behalf of the United States, access to the negotiations as observers is critical to enabling the Members, in their capacity as official advisers, to provide timely input to the U.S. negotiators.

The Committee is of the view that meaningful consultations entail an ongoing dialogue between the legislative and executive branches. The burden on the executive branch is not simply to keep Committees of jurisdiction and other congressional advisers informed. Negotiators also must solicit and take into account input from Congress. To the extent that negotiators take positions that differ from the input provided by Committees of jurisdiction and other congressional advisers, it is generally expected that they will explain the divergences to the Committees and other advisers in a timely manner.

Moreover, while the obligations to consult under the present bill generally are placed on the President and the U.S. Trade Representative, the Committee recognizes that it may be appropriate for other executive branch officials to consult on particular matters. For example, the Committee expects that the Secretary of the Treasury or his designee will consult with the Committees of jurisdiction and other congressional advisers on matters regarding trade and monetary policy. Similarly, the Committee expects that the Secretary of Agriculture or her designee will consult on matters

regarding trade and agriculture. Likewise, the Committee expects that where other matters that are the subject of trade negotiations come within the jurisdiction of departments and agencies other than the Office of the U.S. Trade Representative, the appropriate executive branch personnel will consult with Congress.

The Committee emphasizes that Congress must be fully involved in all phases of the negotiating process and must have the ability to fully express its views and fulfill its constitutional role. The Committee intends that throughout the process, the consultations address the nature of the agreement in question, how and to what extent the agreement will achieve the applicable purposes, policies, and objectives set forth in H.R. 3005, as amended, and all matters relating to implementation under section 5, including the effects of the agreement on U.S. laws.

It is the Committee's view that comprehensive, detailed consultations are especially important toward the conclusion of a negotiation—the point at which key, and often controversial, matters are resolved. Accordingly, it is the Committee's expectation that the U.S. Trade Representative will work with the Committees of jurisdiction and other congressional trade advisers to develop a set of procedures for consultations as negotiations enter their final days. Members will then have the opportunity to provide the USTR with their views as to any concerns regarding the status of negotiations at that time and possible tradeoffs that are likely to occur in the waning hours.

Section 5. Implementation of trade agreements

Summary

Section 5 of the bill describes the procedures to be followed for a trade agreement to enter into force with respect to the United States. It sets forth the documentation that the President must transmit to Congress to enable Congress to make a fully informed decision as to whether to approve a trade agreement. It then sets forth certain conditions under which a trade agreement implementing bill's eligibility for consideration under trade authorities procedures may be withdrawn. Finally, it affirms that the provisions for withdrawal of trade authorities procedures contained here and elsewhere in the bill are adopted pursuant to the constitutional authority of each House of Congress to determine the rules of its proceedings and to change those rules as it deems appropriate.

Section 5(a). In general

The information that the President must provide to Congress in connection with a proposed trade agreement is described in section 5(a). The requirement set out here complements the various requirements that the President consult with Congress during the course of an agreement's negotiation. Consultation during negotiation, combined with a complete accounting after negotiation, should enable Congress to participate in the trade policymaking process to the fullest extent of its constitutional authority.

At least 90 days before entering into a trade agreement subject to this bill, the President must notify Congress of his intention to enter into the agreement and publish notice of that intention in the Federal Register. Also at this time, the President must transmit to

the House Ways and Means Committee and the Senate Finance Committee the notification and report (described in section 4(d)(3) of the bill) concerning proposed changes to U.S. trade remedy laws.

Within 60 days after entering into the agreement, the President must transmit to Congress a description of changes to U.S. law he believes would be necessary to bring the United States into compliance with the agreement. This requirement is in addition to the notification and report concerning proposed changes to trade remedy laws to be transmitted before entering into the agreement. That is, the description of necessary changes to U.S. law transmitted after entering into the agreement, must address all changes to U.S. law, not only changes to trade remedy laws.

Next, the President must transmit to Congress (1) the final legal text of the agreement, (2) a draft bill to implement the agreement, (3) a statement of administrative action proposed to implement the agreement, and (4) certain supporting information (described in greater detail, below). There is no deadline for this transmittal. However, it must be made on a date on which both Houses of Congress are in session.

It is the expectation of the Committee that, for any agreement subject to trade authorities procedures under the present bill, the draft implementing bill and statement of administrative action will be developed by the President in close collaboration with the Committees of jurisdiction in both Houses of Congress. This has been the practice under prior fast track legislation. Because an implementing bill subject to trade authorities procedures is not subject to amendment, cooperation between the executive branch and the Committees of jurisdiction prior to the bill's introduction is critical to protect congressional prerogatives in the development of legislation. In addition to such cooperation, the Committee expects that other past practices—such as hearings, informal markups, and informal conferences between House and Senate Committees of jurisdiction—will precede formal transmittal of a trade agreement, draft implementing bill, and supporting documentation to Congress. To ensure that the legislative and executive branches have adequate time to complete these pre-transmittal processes, the bill establishes no deadline for transmittal. It simply provides, in section 5(a)(1)(C), that this is to happen "after entering into the agreement."

The supporting information that the President must transmit to Congress, along with the agreement, draft implementing bill, and statement of administrative action, is as follows:

- An explanation as to how the bill and proposed administrative action will change or affect existing law.
- A statement asserting that the agreement makes progress in achieving the applicable purposes, policies, and objectives set forth in section 2 of the bill, and an explanation of how and to what extent it does so. This should be a detailed statement, addressing each of the applicable purposes, policies, and objectives in section 2 (recognizing that there may be certain purposes, policies, and objectives that are not applicable).
- A statement of whether and how the agreement changes provisions of previously negotiated agreements.
- A statement of how the agreement serves the interests of U.S. commerce.

• A statement of how the draft implementing bill meets the requirements for application of trade authorities procedures. Section 3(b)(3) of the bill provides that the special “fast track” rules contained in section 151 of the Trade Act of 1974—referred to in this bill as “trade authorities procedures”—apply to Congress's consideration of trade agreement implementing bills that contain certain provisions. As explained above, such bills must (1) approve the underlying agreement and the proposed statement of administrative action, and (2) contain changes to existing law necessary or appropriate to implement the underlying agreement. The supporting information accompanying transmittal of the bill must explain how the bill meets each of these requirements. In particular, it is important that the President explain his reasons for believing that the changes to existing law contained in the bill are necessary or appropriate to implement the agreement.

• A statement of how and to what extent the agreement makes progress in achieving the applicable priorities set forth in section 2(c) of the bill.

• A response to any findings by the Chairmen and Ranking Members of the Finance and Ways and Means Committees that proposed amendments to U.S. trade remedies laws are inconsistent with the purposes, policies, priorities, and objectives (in section 2(c)(9) of the bill) to preserve the ability of the United States to enforce those laws rigorously, and to avoid agreements that lessen the effectiveness of domestic and international dumping, subsidies, and safeguards disciplines. As discussed above, section 4(d)(3) of the bill requires the President, at least 90 days before concluding an agreement, to notify the Finance and Ways and Means Committees of any changes to U.S. trade remedy laws that may be necessary to implement the agreement. He also must explain his reasons for believing that these changes will not contravene the purposes, policies, priorities, and objectives in section 2(c)(9) of the bill. This notification is followed by a report by the Chairmen and Ranking Members of the two Committees. To the extent that any of these reports (including separate views of the Chairman and Ranking Member, where there is a lack of consensus) disagree with the President's assessment, the President must transmit a statement responding to the disagreeing views. His statement should address the arguments of the Member or Members who believe that the proposed changes to U.S. trade remedy laws will weaken those laws.

Section 5(a) contains two safeguards to ensure that a bill implementing a trade agreement does not do things it was not intended to do. First, to ensure that a trade agreement does not inadvertently bestow benefits on countries not party to the agreement, section 5(a)(3) requires that an implementing bill provide explicitly that benefits and obligations under the agreement apply only to the parties to the agreement. This section also provides that an implementing bill may treat different trade agreement partners differently, if such differential treatment is consistent with the underlying agreement.

Second, section 5(a)(4) provides that in enacting a trade agreement implementing bill, Congress does not approve any side agreements between governments that have not been disclosed to Congress. In other words, Congress's approval of a trade agreement is

not an approval of any undisclosed deals that may be ancillary to that agreement. It is an approval only of those terms that have been expressly identified to Congress.

Section 5(b). Limitations on trade authorities procedures

Section 5(b) of the bill sets forth two circumstances under which the trade authorities procedures described in section 3(b)(3) of the bill will not apply to trade agreement implementing legislation. First, trade authorities procedures will not apply to a particular agreement if a procedural disapproval resolution has been adopted with respect to that agreement. Second, trade authorities procedures will not apply if the Secretary of Commerce fails to transmit to Congress, by December 31, 2002, a report identifying a strategy for the United States to redress past instances in which WTO dispute settlement panels have effectively added to obligations or diminished rights of the United States.

A disapproval resolution may be introduced at any time by any Member of either House. The language of the resolution is prescribed by section 5(b)(1)(B) of the bill. It withdraws application of trade authorities procedures to any implementing bill submitted with respect to a trade agreement or agreements as to which the President has failed or refused to notify or consult as required elsewhere in the bill. The Member introducing the resolution must identify in the resolution the agreement or agreements as to which that Member believes the President has failed or refused to notify or consult with Congress.

The term "failed or refused to notify or consult in accordance with the Bipartisan Trade Promotion Authority Act of 2002" is defined to make clear that the President has not met his obligations simply by going through the formalities of consultations. Section 5(b)(1)(B)(ii) establishes that the President may be considered to have failed to consult even if, from time to time, he has met with congressional representatives concerning a trade agreement.

Specifically, this section provides that the President has failed or refused to notify or consult if:

- The President has failed to comply with the requirements of sections 4 or 5 of this bill;
- The U.S. Trade Representative has failed to develop or meet the consultation guidelines required by section 7(b) of the bill;
- The President has not met with the Congressional Oversight Group established under section 7(a), pursuant to a request made under section 7(c); or
- The agreement or agreements at issue fail to make progress in achieving the purposes, policies, priorities, and objectives of the present bill.

Special rules apply to congressional consideration of a disapproval resolution. Such a resolution is referred to the Committee on Ways and Means and the Committee on Rules in the House of Representatives and to the Committee on Finance in the Senate. A disapproval resolution may not be amended. Such a resolution may not be considered on the floor of the House unless it has been reported by the Committee on Ways and Means and the Committee on Rules. It may not be considered on the floor of the Senate unless it has been reported by the Committee on Finance. In other words,

a disapproval resolution cannot be forced to the floor through a discharge of the Committee(s) to which it has been referred.

If a disapproval resolution is reported by the Committee or (in the House) Committees to which it has been referred, then it is eligible for consideration under fast track rules in the Chamber to which it has been reported. For this purpose, the fast track rules set forth in section 152(d) and (e) of the Trade Act of 1974 apply. Under those rules, a motion to proceed to consideration of a qualifying resolution is considered privileged (in the Senate) or highly privileged (in the House), and time for debate is limited. However, a disapproval resolution with respect to a particular agreement may be considered under these rules in a given Chamber only once per Congress.

For trade authorities procedures to be withdrawn pursuant to a disapproval resolution, both Houses of Congress must adopt the resolution within 60 days of one another.

Section 5(c) affirms that the foregoing procedures for adopting a disapproval resolution—as well as the procedures described in section 3(c) for adopting a resolution disapproving the extension of trade authorities procedures after June 30, 2005—are enacted pursuant to the rule-making powers of the House of Representatives and the Senate. It further recognizes the constitutional right of either House to change its rules at any time.

Section 5(c) simply confirms what is the case under Article I, section 5, clause 2 of the Constitution of the United States, which provides that "[e]ach House may determine the Rules of its Proceedings. . . ." Because the rules of proceedings in each House are determined by that House and do not require the consent of the other Chamber, each House may change its rules independently of the will of the other Chamber. Thus, if the Senate, by simple resolution, for example, chose to withdraw trade authorities procedures with respect to a particular agreement, it could do so, notwithstanding the failure of the House of Representatives to adopt an identical resolution within the 60–day period prescribed by section 5(b). The House's failure to act would not preclude the Senate from withdrawing trade authorities procedures by virtue of its simple resolution. Historically, when fast track legislation has been in place for trade agreements, neither House has ever acted unilaterally to withdraw application of fast track procedures.

In addition to adoption of a procedural disapproval resolution, section 5(b) provides for a second circumstance under which trade authorities procedures will not apply to proposed legislation implementing a trade agreement negotiated under the auspices of the WTO. This second circumstance is failure of the Secretary of Commerce to transmit to Congress, by December 31, 2002, a report setting forth a strategy for addressing certain adverse consequences to the United States stemming from a series of recent WTO dispute settlement decisions.

The dispute settlement decisions at issue involve four cases in which other countries have challenged different aspects of U.S. antidumping, countervailing duty, and safeguards law. These are: (1) United States—Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan ("the Hot-Rolled Steel case"); (2) United States—Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the

United Kingdom ("the UK Bar case"); (3) United States—Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities ("the Wheat Gluten case"); and (4) United States—Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia ("the Lamb Meat case").

This is not an exhaustive list of dispute settlement decisions with which the Committee has concerns. However, the decisions in these cases highlight the concern that WTO dispute settlement may be weakening the ability of the United States to enforce trade remedy laws which Congress believed to be WTO-consistent when it approved application of the WTO Agreements to the United States. The particular ways in which these cases may have weakened the ability of the United States to enforce its trade remedy laws are summarized in the findings in section 1(b)(3) of the bill.

The consistent trend of panels and the Appellate Body upholding challenges to U.S. trade remedy laws suggests a systemic problem. Preserving the ability to respond promptly and effectively to unfair trade practices and to harmful import surges is critical to maintaining support in the United States for an open, rule-based trading system. To the extent that decisions in dispute settlement erode that ability, they may well weaken support for the system.

Given the seriousness of this problem, the bill directs the Secretary of Commerce to develop a comprehensive strategy for correcting instances in which dispute settlement panels and the Appellate Body have added to obligations or diminished rights of the United States, as described in section 1(b)(3). The strategy should identify ways to redress the weakening of trade remedy laws that resulted from the four cases noted above, as well as ways to ensure against further erosion in future cases. Because of the high priority attached to development of this strategy, submission of the strategy to Congress by December 31, 2002 is a condition for application of trade authorities procedures to any bill implementing a trade agreement negotiated under the auspices of the WTO.

Section 6. Treatment of trade agreements for which negotiations already underway

Section 6 provides that the requirements (set forth in section 4(a)) that the President notify and consult with Committees of jurisdiction in Congress before initiating trade agreement negotiations do not apply to certain negotiations already underway at date of enactment. Specifically, the pre-negotiation notice and consultation requirements do not apply to negotiations commenced before enactment of the present bill (1) under the auspices of the WTO; (2) to establish a free trade agreement with Chile; (3) to establish a free trade agreement with Singapore; and (4) to establish a Free Trade Area for the Americas.

Since the foregoing negotiations already have commenced, the absence of the formal notification and consultation that ordinarily would be required before initiating negotiations will not preclude trade authorities procedures from being applied with respect to these agreements. Similarly, failure to formally notify and consult with Congress before initiating these agreements cannot form the basis for a disapproval resolution under section 5(b)(1)(B).

However, all notification and consultation requirements that apply after negotiations have commenced will apply with equal force to the four enumerated sets of negotiations. Further, as soon as feasible after enactment, the President is required to notify Congress of the negotiations underway, identify specific objectives of the United States in those negotiations, and state whether the negotiations seek to establish new agreements or make changes to existing agreements. Both before and after providing this notice, the President is required to consult with the Senate Finance Committee, the House Ways and Means Committee, other Committees of both Houses with interest in the subject matter of the negotiations, and the Congressional Oversight Group established under section 7.

Section 7. Congressional Oversight Group

Section 7 establishes a Congressional Oversight Group to consult with and provide advice to the U.S. Trade Representative on negotiating objectives, strategies, and positions, and on compliance with and enforcement of agreements in force. This Group will be a point of contact between Congress and the USTR, in addition to the Committees of jurisdiction and the congressional trade advisers designated under section 161 of the Trade Act of 1974.

The bill requires the Chairmen of the Senate Finance Committee and the House Ways and Means Committee to convene the Congressional Oversight Group within 30 days of the commencement of each Congress. The first Congressional Oversight Group is to be convened within 60 days of enactment of the present bill. The Chairmen of the Finance and Ways and Means Committees will also be chairmen of the Congressional Oversight Group.

The Group will be comprised of the following Members of the Senate: the Chairman and Ranking Member of the Committee on Finance and three additional members of the Committee (not more than two of whom are from the same party), and the Chairman and Ranking Member (or their designees) of the Committees which would have, under the Rules of the Senate, jurisdiction over provisions of law affected by a trade agreement being negotiated during the Congress. The Group would be comprised of the following Members of the House: the Chairman and Ranking Member of the Committee on Ways and Means and three additional members of the Committee (not more than two of whom are from the same party), and the Chairman and Ranking Member of the Committees which would have, under the Rules of the House, jurisdiction over provisions of law affected by a trade agreement being negotiated during the Congress.

Congressional Oversight Group Members are to be accredited as official advisers to the U.S. delegation in negotiations to which the present bill applies. USTR is to develop written guidelines to facilitate the useful and timely exchange of information between USTR and the Group, including regular briefings, access to pertinent documents, and the closest possible coordination at all critical periods during the negotiations, including at negotiation sites. The guidelines also should address consultation on compliance with and enforcement of trade agreements once they enter into force. Finally, the guidelines should set forth a timetable for submission of the

labor rights reports on proposed trade agreement partners (described in section 2(c)(8)).

It is the Committee's expectation that USTR will develop these guidelines in close consultation with the Chairmen and Ranking Members of the Finance and Ways and Means Committees and that the guidelines will be developed within 120 days of enactment of the present bill. It also is the Committee's expectation that the guidelines will be updated from time to time, as necessary.

The Committee believes that the establishment of the Congressional Oversight Group will greatly facilitate the meaningful and timely exchange of information and views between USTR and Congress. The Group is designed to involve a broad, bipartisan cross-section of the House and Senate, so that USTR will benefit from many viewpoints. The composition of the Group is flexible, to allow for the inclusion, after the convening of the Group, of representatives from additional Committees if developments in the negotiation indicate that laws over which such Committees have jurisdiction will be affected.

The Committee emphasizes that the establishment of the Congressional Oversight Group in no way diminishes the obligation of the President and the U.S. Trade Representative to keep all Members of the Committee on Finance and the Committee on Ways and Means fully informed, on a timely and on-going basis, of pending trade negotiations. The Finance Committee and the Ways and Means Committee remain the Committees of primary jurisdiction over tariffs and international trade policy. Establishment of the Congressional Oversight Group is not intended to diminish that role.

Section 8. Additional implementation and enforcement requirements

Section 8 requires the President to submit to Congress a plan for implementing and enforcing any trade agreement concluded under the present bill. The plan is to be submitted simultaneously with the text of the agreement and is to include a review of the executive branch personnel needed to enforce the agreement as well as an assessment of any U.S. Customs Service infrastructure improvements required. The range of personnel to be addressed in the plan is comprehensive, including U.S. Customs and Department of Agriculture border inspectors, and monitoring and enforcement personnel at USTR, the Departments of Agriculture, Commerce, and the Treasury, and any other agencies as may be required. The plan also must contain an assessment of the costs of the additional personnel and infrastructure needs associated with the agreement at issue.

The Committee believes that successful negotiations by themselves are not sufficient to realize the benefits from freer trade. Monitoring and enforcement are complementary and necessary factors in the trade liberalization process. That is, meaningful progress will result when trading partners know that the United States stands ready to enforce its rights under trade agreements. This provision, the Committee believes, will help to enhance the enforcement readiness of the United States by requiring the President to conduct a systematic review of the various agencies involved in border inspection and other types of trade monitoring and implementing activities. Further, the Committee recognizes that in-

frastructure improvements are important for Customs to maintain adequate border controls. Therefore, the provision also requires the President to provide a description of any additional equipment and facilities required by Customs to enforce the agreement at issue.

Section 9. Committee staff

Section 9 expresses the view that increased staff should be provided to the Committees with primary jurisdiction over trade matters to accommodate the increase in trade negotiations and related activities expected to flow from enactment of the present bill. Also, the establishment of the Congressional Oversight Group under section 7 will bring more Members of Congress into the oversight of and consultation on trade negotiations which, in turn, will increase the demands on staff.

As of the writing of this report, the United States is engaged in a new round of WTO negotiations, free trade agreement negotiations with Chile and Singapore, and negotiations to establish a Free Trade Area of the Americas. Additionally, it is expected that the President will seek to launch new trade negotiations during the period that trade promotion authority is in effect. It is expected that this Committee, the House Ways and Means Committee, other Committees with jurisdiction over laws that may be affected by negotiations, and the Congressional Oversight Group will monitor the negotiations closely. In addition to meeting regularly with U.S. negotiators, it is expected that Members accredited as official advisers to the U.S. delegation in trade negotiations pursuant to section 7(a)(4) of the present bill and section 161(a)(1) of the Trade Act of 1974 will attend international conferences, meetings, and negotiating sessions relating to trade agreements. It also is expected that, in addition to keeping abreast of developments in negotiations, these Members will offer input to the negotiators.

Enabling the Committees, trade advisers, and Oversight Group to play a meaningful role in ongoing and future negotiations will require adequate staff support. Accordingly, section 9 calls for an increase in the trade staff resources of the primary Committees of jurisdiction.

Section 10. Conforming amendments

Section 10 of the bill makes certain technical changes to the Trade Act of 1974 to conform to the changes described above.

Section 11. Report on impact of trade promotion authority

Section 11 requires the International Trade Commission to report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on the impact of past trade agreements which have been entered into by the United States using trade authorities procedures. The trade agreements to be reviewed are: the United States-Israel Free Trade Agreement; the United States-Canada Free Trade Agreement; the North American Free Trade Agreement; the Uruguay Round Agreements; and the Tokyo Round of Multilateral Trade Negotiations. The purpose of this provision is to provide the U.S. Congress and the public with a broader context in which to view future trade agreements which Congress may implement using trade authorities procedures. The Committee believes that a broader understanding

of the costs and benefits of past trade agreements will enhance general understanding of the potential impact of future agreements.

Section 12. Identification of small business advocate at WTO

Section 12(a) requires the U.S. Trade Representative to pursue the identification of a small business advocate at the World Trade Organization Secretariat. The advocate would examine the impact of WTO agreements on the interests of small- and medium-sized enterprises, serve as a contact source for these businesses, and make recommendations on ways to address their interests in WTO negotiations.

Section 12(b) designates an individual within the Office of the United States Trade Representative, currently, the Assistant USTR for Industry and Telecommunications, to be responsible for the interests of small business in trade negotiations. In particular, this person will be responsible for carrying out the general negotiating objective on small business interests described in section 2(a)(8) of the bill. The bill also expresses the sense of the Congress that the person within the Office of the U.S. Trade Representative who is responsible for small business matters should have that responsibility reflected in his or her title. While organization of the Office of the United States Trade Representative is an executive branch matter, section 12(b) expresses the sense of the Congress that the Trade Representative should designate a person within that Office as the Assistant USTR for Small Business. It is the Committee's view that this may be done by expanding the portfolio of an existing Assistant USTR.

The Committee notes that small and medium-sized businesses in the United States are increasingly active in international trade. The number of American small businesses that export grew from 69,354 in 1987 to 209,244 in 1997, more than a 200 percent increase. Sixty-five percent of America's exporters are small businesses that employ 20 or fewer workers. Given the critical importance of small- and medium-sized businesses to the U.S. economy, the Committee believes that effective advocates for small business within USTR and the WTO will advance the overall interests of the U.S. economy.

Section 13. Definitions

Section 13 defines terms used in this bill, including Agreement on Agriculture, Core Labor Standards, GATT 1994, ILO, Uruguay Round Agreements, World Trade Organization, and WTO Agreement.

IV. CONGRESSIONAL ACTION

On December 6, 2001, H.R. 3005 was received in the Senate, read twice, and referred to the Committee on Finance.

On December 12, 2001, the Committee on Finance held a meeting to consider the bill. At that time, the Chairman offered an amendment in the nature of a substitute to H.R. 3005. The bill as amended by the Chairman's amendment in the nature of a substitute was ordered favorably reported on December 12, 2001, subject to amendments that might be accepted at a continuation of the

Committee's meeting. The vote on the motion to report the bill was 18 to 3.

On December 18, 2001, the Committee continued its consideration of the bill, at which time several amendments were considered and rejected, as discussed in section V of this report.

V. VOTES OF THE COMMITTEE ON REPORTING THE BILL

In compliance with paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the following statements are made concerning the roll call votes in the Committee's consideration of H.R. 3005.

A. Motion To Report the Bill

H.R. 3005 as amended by the Chairman's amendment in the nature of a substitute was ordered favorably reported on December 12, 2001, subject to amendments that might be accepted at a continuation of the Committee's meeting. The vote on the motion to report the bill was 18 to 3.

Ayes: Baucus, Daschle (proxy), Breaux (proxy), Graham, Jeffords, Bingaman (proxy), Kerry, Lincoln, Grassley, Hatch, Murkowski, Nickles, Gramm, Lott, Thompson, Snowe, Kyl, Thomas.

Nays: Rockefeller, Conrad, Torricelli.

B. Votes on Amendments

At a meeting of the Committee on December 18, 2001, amendments to H.R. 3005 were considered and disposed of as follows:

(1) Senator Kerry offered an amendment that would change the principal negotiating objective on foreign investment by: requiring that trade agreements preserve the authority of federal, state, and local governments to take measures to protect the environment, consumers and public health; seeking to ensure that foreign investors in the United States do not receive a greater level of protection than U.S. investors in the United States; providing that foreign investors be compensated only for those expropriations that are physical invasions of property or denials of all economic or productive use of property; and requiring that an investor get the permission of its home government before seeking compensation from a host government under investor-state dispute settlement provisions of a trade agreement. The amendment failed by a voice vote.

(2) Senator Conrad offered an amendment that would require the U.S. Trade Representative to consult with the Senate Committee on Finance and the House Committee on Ways and Means during a 10–day period between conclusion of negotiation of a trade agreement and initialing of the agreement. If either Committee requested that changes be made to the agreement, the Trade Representative would be required to negotiate those changes or submit a detailed explanation to the Committees as to why it was not possible to achieve those changes and what actions the Administration would take to address the concerns that prompted the request for those changes. The amendment failed by a voice vote.

(3) Senator Conrad offered an amendment that would establish a negotiating objective that the U.S. Trade Representative seek mechanisms in trade agreements to permit the renegotiation of agreements where an agreement's implementation yields consequences not anticipated by Congress at the time it approved im-

plementation of the agreement. The amendment failed by a voice vote.

VI. BUDGETARY IMPACT OF THE BILL

A. Committee Estimates

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 statement is made concerning the estimated budget effects of the bill.

Enacting H.R. 3005 would have no budgetary impact.

B. Budget Authority and Tax Expenditures

1. BUDGET AUTHORITY

In accordance with section 308(a)(1) of the Budget Act, the Committee states that the Bipartisan Trade Promotion Authority Act involves no new or increased budget authority.

2. TAX EXPENDITURES

In accordance with section 308(a)(2) of the Budget Act, the Committee states that the Bipartisan Trade Promotion Authority Act will result in no change in tax expenditures over the period fiscal years 2002–2012.

C. Consultation With Congressional Budget Office

In accordance with section 403 of the Budget Act, the Committee advises that the Congressional Budget Office has submitted the following statement on the budgetary impact of the Bipartisan Trade Promotion Authority Act.

U.S. Congress,
Congressional Budget Office
Washington, DC, January 14, 2002.

Hon. Max Baucus,
Chairman, Committee on Finance,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3005, the Bipartisan Trade Promotion Authority Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Erin Whitaker, who can be reached at 226–2720.

Sincerely,

Barry B. Anderson
(For Dan L. Crippen, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 3005 Bipartisan Trade Promotion Authority Act

Summary: H.R. 3005 would restore the President's authority to enter into multilateral and bilateral trade agreements with Congressional approval or rejection of, but not amendment to, those

agreements. Enacting this legislation would not affect revenues, so pay-as-you-go procedures would not apply.

CBO had determined that H.R. 3005 contains no new private-sector or intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: CBO estimates that enacting H.R. 3005 would have no budgetary impact.

Basis of estimate: Before their expiration on June 1, 1993, sections 1102 and 1103 of the Omnibus Trade and Competitiveness Act of 1988 granted the President the authority to enter into multilateral and bilateral trade agreements. The President could reduce certain tariffs by proclamation within specified bounds prescribed by the law. For provisions subject to Congressional approval, the Congress could not amend implementing legislation once it was introduced. Furthermore, as long as the President met statutory requirements concerning Congressional consultation during the negotiation process, Congress was required to act on the legislation following a strict timetable. Public Law 103–40 temporarily extended these provisions through April 16, 1994, for any trade agreement resulting from the Uruguay Round negotiations taking place under the General Agreement on Tariffs and Trade. H.R. 3005 would restore the President's authority to propose trade agreements under an expedited procedure for Congressional approval. The act would have no direct effect on revenues, because future trade agreements would require implementing legislation.

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: H.R. 3005 contains no new private-sector or intergovernmental mandates as defined in UMRA and would not impose any costs on state, tribal, or local governments.

Previous estimates: On October 11, 2001, CBO transmitted an estimate of H.R. 3005 as ordered reported by the House Committee on Ways and Means. The earlier version of H.R. 3005 was similar to the version ordered reported by the Senate Committee on Finance, and CBO estimated that it also would have no direct effect on revenues.

Estimate prepared by: Revenues: Erin Whitaker; Impact on State, Local, and Tribal Governments: Elyse Goldman; and Impact on the Private Sector: Paige Pipe/Bach.

Estimate approved by: G. Thomas Woodward, Assistant Director for Tax Analysis.

VII. REGULATORY IMPACT AND OTHER MATTERS

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 affect the personal privacy of individuals, and will result in no significant additional paperwork.

The following information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4). The Committee has reviewed the provisions of H.R. 3005 as approved by the Committee on December 12, 2001. In accordance with the requirements of Pub. L. No. 104–04, the Committee has determined that the bill contains no intergovernmental man-

dates, as defined in the UMRA, and would not affect the budgets of state, local, or tribal governments.

VIII. ADDITIONAL VIEWS OF SENATOR GRAMM

Trade brings benefits to America in the form of high-paying jobs, lower consumer prices, and increases in competitiveness and consumer choice.

The first step to increase trade is to give the President the negotiating tools he needs. The authority in this bill is intended to allow the Administration, in consultation with the Congress, to negotiate trade agreements with the understanding that the Congress can either approve or reject the final agreement, but not change it, avoiding what could become and endless renegotiation. Therefore, H.R. 3005, The Bipartisan Trade Promotion Authority Act of 2002, is intended to help America be more competitive in the global marketplace. This authority will increase our ability to negotiate trade agreements while ensuring close consultations with the Congress during such negotiations. While the bill has my support, there are some points that merit clarification.

In general, the Jordan Free Trade Agreement (FTA) must not be considered as a new template for future trade bills in general and this bill in particular. It was a special agreement negotiated and approved under unusual circumstances. While some elements of the Jordan FTA are present in this bill, it certainly does not embody a "Jordan standard" of any kind.

Also, the role of the negotiating objectives in subsections (a) and (b) (addressing overall objectives and objectives specific to certain sectors, respectively) of section 2 is to inform trade negotiators what the objectives are while negotiating a trade agreement. This is an important element of the legislative-executive branch teamwork that is the central concept of the legislation. But, while it is imperative that these objectives are listed, the priorities in subsection (2)(c) do not carry the same weight as subsections (2)(a) and (2)(b). Rather, they are overall priorities that should be considered in general but by no means are items that should be the focus of a trade agreement.

Currently, there are over a hundred and thirty free trade agreements in existence in the world; the United States is party to only three of these. The Congress and the Administration need to team up and promote a trade agenda that will progressively remove the barriers to the flow of goods and services that operates so powerfully to enhance our economic strength and well being.

PHIL GRAMM.

IX. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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

TRADE ACT OF 1974

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TITLE I—NEGOTIATING AND OTHER AUTHORITY

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CHAPTER 3—HEARINGS AND ADVICE CONCERNING NEGOTIATIONS

SEC. 131. ADVICE FROM INTERNATIONAL TRADE COMMISSION.

(a) LISTS OF ARTICLES WHICH MAY BE CONSIDERED FOR ACTION.—

(1) In connection with any proposed trade agreement under [section 123 of this Act or section 1102 (a) or (c) of the Omnibus Trade and Competitiveness Act of 1988,] *section 123 of this Act or section 3 (a) or (b) of the Bipartisan Trade Promotion Authority Act of 2002,* the President shall from time to time publish and furnish the International Trade Commission (hereafter in this section referred to as the "Commission") with lists of articles which may be considered for modification or continuance of United States duties, continuance of United States duty-free or excise treatment, or additional duties. In the case of any article with respect to which consideration may be given to reducing or increasing the rate of duty, the list shall specify the provision of this subchapter under which such consideration may be given.

(2) In connection with any proposed trade agreement under [section 1102 (b) or (c) of the Omnibus Trade and Competitiveness Act of 1988] *section 3(b) of the Bipartisan Trade Promotion Authority Act of 2002,* the President may from time to time publish and furnish the Commission with lists of nontariff matters which may be considered for modification.

(b) ADVICE TO PRESIDENT BY COMMISSION.—Within 6 months after receipt of a list under subsection (a) or, in the case of a list submitted in connection with a trade agreement, within 90 days after receipt of such list, the Commission shall advise the President, with respect to each article or nontariff matter, of its judg-

ment as to the probable economic effect of modification of the tariff or nontariff measure on industries producing like or directly competitive articles and on consumers, so as to assist the President in making an informed judgment as to the impact which might be caused by such modifications on United States interests, such as sectors involved in manufacturing, agriculture, mining, fishing, services, intellectual property, investment, labor, and consumers. Such advice may include in the case of any article the advice of the Commission as to whether any reduction in the rate of duty should take place over a longer period of time than the minimum period provided for in ⟦section 1102(a)(3)(A)⟧ *section 3(a)(3)(A) of the Bipartisan Trade Promotion Authority Act of 2002.*

(c) ADDITIONAL INVESTIGATIONS AND REPORTS REQUESTED BY THE PRESIDENT OR THE TRADE REPRESENTATIVE.—In addition, in order to assist the President in his determination whether to enter into any agreement under section 123 of this Act or ⟦section 1102 of the Omnibus Trade and Competitiveness Act of 1988,⟧ *section 3 of the Bipartisan Trade Promotion Authority Act of 2002,* or how to develop trade policy, priorities or other matters (such as priorities for actions to improve opportunities in foreign markets), the Commission shall make such investigations and reports as may be requested by the President or the United States Trade Representative on matters such as effects of modification of any barrier to (or other distortion of) international trade on domestic workers, industries or sectors, purchasers, prices and quantities of articles in the United States.

* * * * * * *

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

Before any trade agreement is entered into under section 123 of this Act or ⟦section 1102 of the Omnibus Trade and Competitiveness Act of 1988,⟧ *section 3 of the Bipartisan Trade Promotion Authority Act of 2002,* the President shall seek information and advice with respect to such agreement from the Departments of Agriculture, Commerce, Defense, Interior, Labor, State and the Treasury, from the United States Trade Representative, and from such other sources as he may deem appropriate. Such advice shall be prepared and presented consistent with the provisions of Reorganization Plan Number 3 of 1979, Executive Order Number 12188 and section 141(c).

SEC. 133. PUBLIC HEARINGS.

(a) OPPORTUNITY FOR PRESENTATION OF VIEWS.—In connection with any proposed trade agreement under section 123 of this Act or ⟦section 1102 of the Omnibus Trade and Competitiveness Act of 1988,⟧ *section 3 of the Bipartisan Trade Promotion Authority Act of 2002*, the President shall afford an opportunity for any interested person to present his views concerning any article on a list published under section 131, any matter or article which should be so listed, any concession which should be sought by the United States, or any other matter relevant to such proposed trade agreement. For this purpose, the President shall designate an agency or an interagency committee which shall, after reasonable notice, hold public hearings and prescribe regulations governing the conduct of

such hearings. When appropriate, such procedures shall apply to the development of trade policy and priorities.

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SEC. 134. PREREQUISITES FOR OFFERS.

(a) In any negotiation seeking an agreement under section 123 of this Act or [section 1102 of the Omnibus Trade and Competitiveness Act of 1988,] *section 3 of the Bipartisan Trade Promotion Authority Act of 2002*, the President may make a formal offer for the modification or continuance of any United States duty, import restrictions, or barriers to (or other distortions of) international trade, the continuance of United States duty-free or excise treatment, or the imposition of additional duties, import restrictions, or other barrier to (or other distortion of) international trade including trade in services, foreign direct investment and intellectual property as covered by this title, with respect to any article or matter only after he has received a summary of the hearings at which an opportunity to be heard with respect to such article has been afforded under section 133. In addition, the President may make an offer for the modification or continuance of any United States duty, the continuance of United States duty-free or excise treatment, or the imposition of additional duties, with respect to any article included in a list published and furnished under section 131(a), only after he has received advice concerning such article from the Commission under section 131(b), or after the expiration of the 6-month or 90-day period provided for in that section, as appropriate, whichever first occurs.

(b) In determining whether to make offers described in subsection (a) in the course of negotiating any trade agreement under [section 1102 of the Omnibus Trade and Competitiveness Act of 1988] *section 3 of the Bipartisan Trade Promotion Authority Act of 2002*, and in determining the nature and scope of such offers, the President shall take into account any advice or information provided, or reports submitted, by—

(1) * * *

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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] *section 3 of the Bipartisan Trade Promotion Authority Act of 2002*;

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

(1) The Advisory Committee for Trade Policy and Negotiations, each appropriate policy advisory committee, and each sectoral or functional advisory committee, if the sector or area

which such committee represents is affected, shall meet at the conclusion of negotiations for each trade agreement entered into under [section 1102 of the Omnibus Trade and Competitiveness Act of 1988] *section 3 of the Bipartisan Trade Promotion Authority Act of 2002*, to provide to the President, to Congress, and to the United States Trade Representative a report on such agreement. Each report that applies to a trade agreement entered into under [section 1102 of the Omnibus Trade and Competitiveness Act of 1988] *section 3 of the Bipartisan Trade Promotion Authority Act of 2002* shall be provided under the preceding sentence [not later than the date on which the President notifies the Congress under section 1103(a)(1)(A) of such Act of 1988 of his intention to enter into that agreement] *not later than the date that is 30 days after the date on which the President notifies the Congress under section 5(a)(1)(A) of the Bipartisan Trade Promotion Authority Act of 2002 of the President's intention to enter into that agreement.*

(2) The report of the Advisory Committee for Trade Policy and Negotiations and each appropriate policy advisory committee shall include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the applicable overall and principal negotiating objectives set forth in [section 1101 of the Omnibus Trade and Competitiveness Act of 1988] *section 2 of the Bipartisan Trade Promotion Authority Act of 2002*, as appropriate.

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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) * * *

(b) DEFINITIONS.—For purposes of this section—

(1) The term "implementing bill" means only a bill of either House of Congress which is introduced as provided in subsection (c) with respect to one or more trade agreements, or with respect to an extension described in section 282(c)(3) of the Uruguay Round Agreements Act, submitted to the House of Representatives and the Senate under section 102 of this Act, [section 1103(a)(1) of the Omnibus Trade and Competitiveness Act of 1988, or section 282 of the Uruguay Round Agreements Act] *section 282 of the Uruguay Round Agreements Act, or section 5(a)(1) of the Bipartisan Trade Promotion Authority Act of 2002* and which contains—

(A) * * *

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(c) INTRODUCTION AND REFERRAL.—

(1) On the day on which a trade agreement or extension is submitted to the House of Representatives and the Senate under section 102 [or section 282 of the Uruguay Round Agreements Act], *section 282 of the Uruguay Round Agree-*

ments Act, or section 5(a)(1) of the Bipartisan Trade Promotion Authority Act of 2002, 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.

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CHAPTER 6—CONGRESSIONAL LIAISON AND REPORTS

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SEC. 162. TRANSMISSION OF AGREEMENTS TO CONGRESS.

(a) As soon as practicable after a trade agreement entered into under section 123 or 124 【or under section 1102 of the Omnibus Trade and Competitiveness Act of 1988】 *or under section 3 of the Bipartisan Trade Promotion Authority Act of 2002* has entered into force with respect to the United States, the President shall, if he has not previously done so, transmit a copy of such trade agreement to each House of the Congress together with a statement, in the light of the advice of the International Trade Commission under section 131(b), if any, and of other relevant considerations, of his reasons for entering into the agreement.

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