EXECUTIVE COMMITTEE MEETING TO CONSIDER PROPOSED LEGISLATION IMPLEMENTING THE U.S.-CENTRAL AMERICA-DOMINICAN REPUBLIC FREE TRADE AGREEMENT

TUESDAY, JUNE 14, 2005

U.S. Senate,

Committee on Finance,

Washington, DC.

The meeting was convened, pursuant to notice, at 10:30 a.m., in room SD-628, the Dirksen Senate Office Building, Hon. Charles E. Grassley (chairman of the committee) presiding.

Also present: Senators Hatch, Lott, Snowe, Kyl, Thomas, Santorum, Frist, Smith, Bunning, Crapo, Baucus, Rockefeller, Conrad, Jeffords, Bingaman, Kerry, Lincoln, Wyden, and Schumer.

Also present: Kolan Davis, Republican Staff Director and Chief Counsel; Russ Sullivan, Democratic Staff Director; Carla Martin, Chief Clerk; and Amber Williams, Assistant Clerk.

Also present: The Honorable Peter F. Allgeier, Deputy U.S. Trade Representative, USTR; the Honorable Allen F. Johnson, Chief Agricultural Negotiator, USTR; Jim Mendenhall, Acting General Counsel, USTR; and David Johanson, International Trade Counsel, Committee on Finance.

Also present: Everett Eissenstat, Chief Trade

Counsel; Tiffany McCullen-Atwell, International Trade Advisor; Stephen Schaefer, Trade Counsel; Zach Paulsen, Trade Assistant; Russell Ugone, Detailee; Brian Pomper and Shara Aranoff, Trade Counsel.

OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, CHAIRMAN, COMMITTEE ON FINANCE

The Chairman. While the vote is going on, I thought I would take advantage of the opportunity to have an opening statement.

Senator Baucus is dealing with another piece of legislation, kind of in a lump session, over on the floor of the Senate. I told him I would go ahead with my opening statement, and when he came we would defer to Senator Baucus to make his opening statement.

It may be difficult for us to get a quorum. I do not think it is going to be difficult for us to get the minimum number of seven that will be available so we can handle amendments, but other than that, this is going to be a time of uncertainty as far as the number of people who will be here, and when they will be here.

Today, the committee will be reviewing and we will be making informal recommendations on proposed legislation to implement the U.S.-Central America-Dominican Republic Free Trade Agreement.

Before we begin with a technical review of the proposed bill, I would like to put this agreement in context.

For over 20 years now--20 years or more--since

Congress first opened our markets to products from Central America and from the Caribbean, we did so because at the time, as you will recall, Central America was a region in political and economic upheaval. Civil strife, wars, and political violence were a part of daily life. A lot of us at this table were in the Senate during that period of uncertainty.

As a result, many innocent people lost their lives, many more their livelihoods. I have got headlines here that will remind you of that history. I think these headlines accurately reflect a gruesome and chaotic period of violence at that time 20 years ago.

Now, here we are in the year 2005. We see a very different Central America. Through sustained political and economic engagement with the region, including the continuation of unilateral trade preferences for over 20 years, we have a very different story.

Today, with the progressive leadership of their governments, the people of Central America are enjoying the fruits of democracy, meaning elected governments, generally stable civil societies, the rule of law, and all the things that we have been working at in the United States for a long period of time to develop our economy.

These leaders of these countries now want to cement the gains of the past 20 years. They want to build a

better foundation for their future. Part of this progressive vision is articulated in this agreement that we call the Central American Free Trade Agreement.

Remember, the idea of creating a Central American Free Trade Agreement came not from this country, but that request from the leaders of Central America. But just because the idea was theirs does not mean that our Nation will not substantially benefit from this agreement.

I would point to the chart that was just placed in front of you. This chart shows the status quo. On one side, you can see the situation today: very much a one-way street. On the other side, you can see the results of the CAFTA implementation and you see that as a two-way street.

The fact is, passage of CAFTA is good, both for our geopolitical, as well as our economic interests. We have very little to lose and much to gain from its passage. Now, in contrast, we have much to lose and we have little to gain if this agreement does not become part of the law of the United States.

This is better said by one of our former presidents, Jimmy Carter, in a letter that he wrote that, through CAFTA, "Our own national security and hemispheric influence will be enhanced with the improved stability, democracy, and development in our poor, fragile neighbors

of Central America and the Caribbean."

The letter continues, "There are now democratically elected governments in each of the countries covered by CAFTA. In negotiating this agreement, the presidents of the six nations had to contend with their own companies that fear competition with U.S. firms.

They have put their credibility on the line, not only with this trade agreement, but more broadly, by promoting market reforms that had been urged for decades by U.S. presidents of both parties.

If the U.S. Congress were to turn its back on CAFTA, it would undercut these fragile democracies, compel them to retreat to protectionism, and make it harder for them to cooperate with us." I hope that we all understand that the stakes are very high.

Now, today the committee will be reviewing legislation designed to implement this important trade agreement. The committee's informal consideration of the legislation is part of the consultive process envisioned by trade promotion authority.

It is a result of the U.S. constitution giving Congress the ability and responsibility to regulate interstate and foreign commerce. But it also expresses Congress' inability to negotiate with other countries.

So, we have done everything we can in trade promotion

authority to make sure that Congress gives direction to the negotiations of our government, our President, and his people negotiating this agreement. This is the last step in this consultive process.

This constitutional process is an informal act which is not necessarily required as part of the trade promotion authority, but it is important to review the bill in a public forum, providing an opportunity for comment on the bill and to propose potential legislative changes.

If I could, I would like to remind members that trade promotion authority specifically states that implementing legislation should contain only measures that are "necessary or appropriate" to implement the agreement.

I would note that some of the amendments that have been filed go far beyond that which is necessary or appropriate to implement the agreement. And I do not say that to denigrate the substance of the amendments that are put before us, because they are legitimate points of discussion whenever we have any trade bills before the U.S. Senate. In fact, some of these amendments would create entire new programs that are totally unrelated to the agreement in front of us.

And while the recommendations made here today are not legally binding on the administration, how we use this

process, our final step in consultation, sends a strong signal to the administration about how we expect the process to be used, how it has been used, and how we expect it to be used in the future in order for Congress to protect and administer its constitutional responsibilities of regulating and administering foreign trade.

But if we want others to respect the parameters laid out in the statute, we must do the same. Thus, if we abuse the process by recommending that unrelated items be included in the bill or linking approval of the bill to unrelated events or contingencies, we should not be surprised if this, or future, administrations do the same.

At this point, I was going to call on Senator Baucus for statements. When he comes, we will do that. Following Senator Baucus's remarks, we have staff to provide a brief oral summary of the implementing legislation. Then we would open it up for comments, recommendations, and amendments to be considered.

I have already announced to the committee before some of you came that it might be difficult for us to get a quorum for voting the bill out, which takes a minimum of 11, but 7 can do amendments.

My staff reminds me that some members that I was

unaware of have asked to give a short statement. If we allow one member to do that, I should allow everyone.

So, I am going to call on Senator Bunning, and other people if they want to speak, at this point.

Senator Bunning?

OPENING STATEMENT OF HON. JIM BUNNING, A U.S. SENATOR FROM KENTUCKY

Senator Bunning. Thank you, Mr. Chairman.

I have spent a reasonable amount of time examining and discussing this agreement before us today.

As my colleagues know, my vote has never been to rubber stamp any trade agreement. Just check my record. I take responsibility to examine these agreements very seriously. I believe my constituents deserve that respect.

In the past, I have supported trade agreements and I have opposed trade agreements as their merits demanded. After long and careful thought, I have decided that I will support the agreement with Central America before this committee today.

To say the least, this agreement is not perfect. The phase-out time on many of the agricultural products is too long. We should not be waiting for 10, 15, sometimes even 20 years for duty-free access to sell our farm products in these countries.

It is my understanding that the protection of one particular American product was largely responsible for the negotiation situation that led to the long tariff elimination schedules for so many of our farm products.

If not for the fact that, almost without exception, the Central American countries have enjoyed duty-free access to our markets for our agricultural exports for years, these long tariff phase-out schedules might not well have forced me to oppose this agreement.

The truth is, due to the existing trade relationships, the various parties did not start out this trade negotiation on similar footings: we paid to export to them and they did not export to us.

While this agreement absolutely does not even this relationship as quickly and fairly as I would like, it does eventually get the job done. While our farmers are often forced to wait for duty-free access, the duty-free access does eventually go into place.

The opportunity for new export markets and for our farmers will be ultimately beneficial to the folks, particularly in rural Kentucky. While I have concerns about other parts of this agreement, particularly some textile issues, there are also aspects of this agreement which are especially good for Kentucky.

Important to my State is the treatment of the exportation of tobacco products under this agreement. I was particularly pleased to see that the report of the Agricultural Technical Advisory Committee for Cotton, Peanuts, Planting Seed, and Tobacco, which includes a

member of the Kentucky Farm Bureau, found the agreement to be fair regarding tobacco trade.

I was also pleased to see that this agreement immediately eliminates tariffs on bourbon and whiskey exported from America. Furthermore, agreements for the recognition of bourbon as an exclusive Kentucky-made product is important in an industry employing over 30,000 Kentuckians.

As we look to the future of this agreement, I want to express my disappointment with what I see as the lack of active involvement on this issue by the White House. As important as they say this agreement is, the White House has been missing in action when it comes to selling this agreement to Capitol Hill and to the American people.

If they believe, as I have come to agree after long and careful examination, that this agreement is good for America, then before this agreement gets to the floor the President needs to get personally involved in explaining its benefits.

Thank you very much, Mr. Chairman.

The Chairman. Thank you.

If other members want to speak, I think it is fair, and would then call in order of the way they came. Does Senator Crapo want to speak?

Senator Crapo. Mr. Chairman, I will not take the

time of the committee to make an opening statement, but I would like to submit one for the record.

The Chairman. All right. Thank you.

[The prepared statement of Senator Crapo appears in the appendix.]

The Chairman. Senator Conrad?

OPENING STATEMENT OF HON. KENT CONRAD, A U.S. SENATOR FROM NORTH DAKOTA

Senator Conrad. Thank you, Mr. Chairman. Just briefly.

Mr. Chairman, members of the committee, like Senator Bunning, I have supported some trade agreements, I have opposed others. As I look at this agreement, I have concluded it is time to slow down and carefully review the trade strategy of our country because if there is anything that is clear, it is that this strategy is not working.

Mr. Chairman, here is the record on trade deficits. The trade deficit that never exceeded $100 billion has now gone to $600 billion a year. This is after what was reported to us as one success after another. We were told NAFTA was a great success, the Canadian Free Trade Agreement, WTO, China PNTR, Chile, and on and on.

With each successive agreement, the trade deficit has gotten worse. Last year, it was $618 billion. That means, increasingly, we owe large sums of money to other countries. Foreign holdings of our debt have gone up more than 100 percent in four years. That is an unsustainable course. Utterly unsustainable.

Mr. Chairman, when I look for benefits from this

agreement, what are the benefits to our country, I am not able to find much. Here is what was reported to us as the increase in our Gross Domestic Product as a result of this agreement. These are commission calculations, the ITC, our own International Trade Commission.

Here is what they say will be the increase to our Gross Domestic Product if this is passed: zero. Not half of one percent, not a tenth of one percent, but zero. So, there is very little gain here.

Even in agriculture, we are told over and over--and I represent one of the most agricultural states around this table--that there are big benefits for wheat and barley here. How can that be? We already have 94 percent of the wheat market in the CAFTA countries. We have 94 percent of the barley market in those countries. There is not much left to get.

But there is something that is at serious risk here, and it happens to be an entire industry. The industry is the sugar industry. Now, maybe some around this table do not care; let us just negotiate away the sugar industry. I do care. It is a $2 billion industry in my State. Across this country, it employs 146,000 people. It is a $7 billion industry in this country.

I do not think there is any question but that this agreement puts that entire American industry at risk. To

me, that is just a continuation of this flawed strategy that has led us to a record trade deficit and put us increasingly in a vulnerable position of owing more foreign countries more money than we have ever owed before.

Now this agreement says, well, let us just put another industry in America on the chopping block. Let us put it at risk. We are so wealthy, we do not have to care. I think those days are over. I think those days of just blithely negotiating whole industries away is proving to be a failed strategy.

And if anybody doubts that this puts sugar at risk, here are the numbers. This agreement brings in another 109,000 metric tons. If that same approach is adopted in the other agreements being negotiated--South Africa, Thailand, and the Andean countries--you are at 500,000 metric tons of additional sugar coming in a year.

The result of that is very clear. You can see here that import commitments exceed the Farm Bill trigger when you add in CAFTA. That puts every economist of every stripe -- I held a hearing on this in North Dakota, a Budget Committee hearing.

What we learned there from economists of every stripe, is you bring in another 500,000 metric tons of sugar, you collapse the price of sugar in this country

below redemption price, and you unravel the sugar program entirely.

So that is what is at stake here, Mr. Chairman. It is a continuation of a flawed strategy that, try as we might, has not worked. I remember so well when we voted on NAFTA.

I remember the statements that were made around this table then. We were told that was going to improve our trade situation with Mexico, it was going to reduce illegal smuggling, and it was going to improve economic opportunity. At the time, we had a $2 billion trade surplus with Mexico. Now we have got between a $40 and $50 billion trade deficit. If that is a success, I would hate to see a failure.

As I said in the previous mark-up, it reminds me a little of the German general who, toward the end of World War II, said he knew they were in trouble when they kept reporting the victories closer to Berlin.

I have begun to believe that is what is happening with these trade agreements, that we are told, one after another, are a great success, and the trade deficit gets worse.

Let me just conclude as I began. Let us go back to that chart on the trade deficit. How anybody can, with a straight face, argue that that is a success is beyond me.

That is the record. We keep passing these agreements and the trade deficits keep getting worse. Now, here we are, $600 billion.

In the last month, the trade deficit was $57 billion. We are headed for a trade deficit of $700 billion, yet it is, steady as she goes. Just keep on doing what we have been doing. It has not worked, but let us hope somehow everything changes.

Mr. Chairman, I thank you for the time. I thank my colleagues for their consideration. This is, to me, a deeply flawed agreement that puts an entire American industry at risk for precious little gain, and is a continuation of a pattern of pushing us deeper and deeper into debt to countries all around the world.

The Chairman. Senator Baucus?

OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM MONTANA

Senator Baucus. Thank you, Mr. Chairman.

This mark-up is clearly quite important. Frankly, it is shaping up to be one of the biggest trade battles that Congress has faced in this decade.

Although the agreement was signed a year ago, under U.S. law it has no domestic force or effect until Congress enacts the implementing legislation, so today our task it to take a good, hard look at it.

The administration has prepared this bill in consultation with the committee staff, but there are several problems. Before I get to those, a couple of points.

Holding this mark-up is critical. First, it permits Congress to exercise its constitutional responsibility for trade. We consider today how best to implement trade commitments made by the executive branch under delegated authority.

Second, it makes the fast track process more responsive to the concerns of Senators and the public. Most importantly, under fast track procedures adopted in the Trade Act of 2002, this is the first and only time that members of this committee will have an opportunity

to offer amendments to the draft implementing legislation.

Historically, amendments have been common at mark-ups of draft implementing bills. The implementing bills for the agreements with Israel and Canada in the NAFTA and the Uruguay Round all came out of this process looking much different from the way they came in.

In recent years, agreements have been less controversial, and the amendments, correspondingly, less common. That may change today.

Over the past several weeks, there has been an effort in some administration and business circles to discourage members of this committee from offering amendments in today's mark-up. To those delivering this message, I say you are making a big mistake.

Under the constitution, Congress has primary responsibility for trade. For practical reasons, Congress has delegated negotiating authority to the executive branch, but the responsibility for shaping and enacting trade law remains a congressional prerogative.

Fast track procedures are a delicate balance and it requires the Congress and the executive branch to work together as equal partners. Telling Congress not to consider amendments upsets that balance and belittles the role of Congress. It may get an agreement through the

Congress a little faster, but in the end it only serves to confirm the objections of those who see fast track as an abdication of congressional authority.

So to those of my colleagues who have filed amendments, I say, bring them on. Let us debate them. Let us see where the process goes.

I, myself, continue to have concerns. I expressed those concerns at the Finance Committee hearing in April when it came out, without any assurances from the administration that they would try to address those concerns. Two months have gone by and I am sorry to say that nothing has changed.

My State is an agricultural State. The appeal for my State is, first and foremost, because it benefits agriculture. Admittedly, there are some benefits to Montana agriculture in CAFTA, particularly for wheat and for barley. But for Montanan sugar beet producers and the State's two beet sugar processing plants, CAFTA offers no benefits and serious potential harm.

Now, the administration likes to say that the new sugar quota under CAFTA is only a teaspoon a day, nothing to worry about. But the administration's own study from the ITC predicts that CAFTA will lead directly to the loss of more than 3,000 jobs in the sugar sector. I must say that Montana sugar producers do not want to accept a

3,000 person job loss.

I am also disappointed that the administration is willing to undermine our sugar program by negotiating important aspects to that program in bilateral trade agreements.

The United States has steadfastly refused to negotiate on our farm programs in bilateral and regional agreements. Those negotiations belong in the WTO where other major agricultural producers like the European Union and Brazil are at the table. The sugar program should not be treated any differently.

A decisive battle over CAFTA bodes poorly for future trade agreements and it will be on everyone's mind when trade promotion authority must be renewed in 2007. There may still be time to get this right, to make it an agreement that will work for Montana and other sugar-producing States, but only if this administration is willing to try.

In the end, I take a long view. There are a lot of trade priorities awaiting attention--the Doha Round, China, trade enforcement--and those issues will provide new opportunities to work together.

I really appreciate how supportive Ambassador Zoellick has been of my efforts to improve the way we handle environmental issues in free trade agreements. I

look forward to continuing to work with Ambassador Portman as we move forward.

For now, I hope we have full debate and a robust process under CAFTA and move on, but I very much hope that the administration in the future--and this is the key point--works with Congress and tells Congress in advance what it plans to do in trade agreements. This is a two-way street. We do have the constitutional primary authority.

If we do not insist that the administration work with us, we, in effect, are going to be abrogating that authority. One way I know to get this administration's attention, is to vote no. This town revolves around power. It is the main operative word around here. Words do not do it. We have to take actions to show that you mean business around here, and I very much hope we do not have to come to that.

There are lots of future potential trade issues that will come before us, and I strongly urge the administration to work much, much more aggressively, honestly, and directly with members of Congress as to avoid some of the problems that we are now facing today.

The Chairman. Thank you.

I hope that members can keep their remarks short, but I want to go down the list, since members have asked to

speak. It would be: Bingaman, Lincoln, Lott, Thomas, Kerry, Rockefeller, and Kyl.

Senator Bingaman?

STATEMENT OF HON. JEFF BINGAMAN, A U.S. SENATOR FROM NEW MEXICO

Senator Bingaman. Thank you very much, Mr. Chairman.

I want to, first of all, say that I am still a little unsure about the nature of the meeting we are having. I got the memo that staff prepared saying this is a "non-mark-up." That is sort of an unusual animal.

Senator Lott. A mark-up mark-up.

Senator Bingaman. I see.

The Chairman. I have used the word--and I thought it was technical language, it may be jargon--mock mark-up because we go through it like a regular mark-up, but these are recommendations to the administration under the trade promotion authority approach. Go ahead.

Senator Bingaman. So am I correct that our vote on reporting this or not reporting this today is not binding? We come back and have a real mark-up where we vote on the implementing legislation, or we do not?

Senator Baucus. This is it. Next, it will come back without amendments. Without amendments, it is up or down.

Senator Bingaman. Yes. But we do come back and vote either to report this CAFTA bill, or CAFTA

implementing language, to the full Senate or not.

The Chairman. Yes.

Senator Bingaman. That is not today, that is in the future?

The Chairman. Yes.

Senator Bingaman. All right.

Let me list some of my concerns. I have been concerned and have heard the concerns of others. I share some of those. I have also been concerned, Mr. Chairman--I think I mentioned it--when we had the one day of hearing that we had on CAFTA, concerned about the impact that this trade agreement could have on the agricultural sector in Central America.

When I read your chart up there behind you, I notice that the only tariffs that are listed there that are going to be eliminated are the ones that apply to our products going into Central America.

The largest of those tariffs that are going to be eliminated relate to agricultural products, grains, vegetables, those sorts of things. So, I have been concerned. I think the Farm Bureau has estimated that there will be another $1.5 billion of agricultural exports to Central America.

I do not know what that does to farmers in those countries who are supplying that domestic need today, and

I do not know how many of those folks are driven out of the agricultural sector, how many of those folks are driven to the capital of that country, or to Senator Kyl's State, or wherever they are driven to. But I think the implications concern me.

I have talked to the administration about this. Our Trade Representative, Ambassador Portman, Ambassador Zoellick, the Secretary of State, they have indicated a desire to try to do more to help with the transition of the agricultural sector in Central America, and I very much appreciate those efforts.

But they have also indicated that the only way to do that is to try to see if these countries can become eligible for the Millennium Challenge account, and then that process would be trying to decide whether they could get a report by the ILO which says that -- as I understand it, the ILO report notes 27 specific instances where Central America's laws fall short of ILO standards. Very few of these have been remedied since the report was written. At least one country, Guatemala, is in fact backsliding and weakening its own labor laws..

So, frankly, the best way to proceed, from my perspective, would be to get these folks back before the committee and find out, both the administration and the labor representatives, and try to get better information

and get some clarity as to whether we are putting in place weakened labor standards that then will be replicated in each of our other trade agreements. That is their concern.

It is not that CAFTA itself is that big a problem, because the amount of trade is relatively small. But the sugar producers' concern, just as Senator Conrad talked about, is that the provisions in this agreement will be replicated in our other labor agreements.

I think the labor unions that have talked to me are concerned that the weakened labor provisions or standards in this agreement will be replicated as well. So, that is a concern that I have had.

Mr. Chairman, I am hoping that some of the amendments that are talked about today will be agreed to. I know I have had some amendments that I have thought of offering, but I am advised that it is your position that they would be out of order because they would essentially authorize additional assistance for enforcement of labor standards, for the transition of some of these displaced workers in the agricultural sector, and that that is outside the jurisdiction of this committee.

The Chairman. Yes. Senator Lugar sent me a letter on that.

Senator Bingaman. Yes. So I am told that my

amendments would be ruled out of order. I am not sure how Senator Kerry's amendment will be received on labor standards. I hope he can succeed with that. I support that effort.

I firmly believe that it is in our interests to encourage additional trade. I have voted for all the trade agreements that have been approved here in the Congress since I have been in the Senate, so I am not one who has picked and chosen. I have thought that they have all held out promise.

I firmly believe it is in our interests to see these particular countries prosper, because they are in our neighborhood. We have much that we share in common with them, and I think that trade can help them to prosper.

But I do think that we need to be sure that we are not putting in place a trade agreement that is adverse to the interests of the working people in those countries, and that we are not being a party to the weakening of trade provisions which we are requiring in the Jordan Free Trade Agreement, for example. So, those are all very legitimate issues. I hope we can get some changes agreed to.

I understand the administration is willing to do some things to address these concerns about labor standards. I am told that they are. I am not sure what. Maybe the

Chairman knows something there and could enlighten us. I would be interested in knowing.

The Chairman. What I think we will do, I hate to stop right now and have a debate just on this one issue. But can the administration, just as soon as we are done with the list of people having opening remarks, address Senator Bingaman's concerns about labor and textiles?

For instance, I have been told that we are worried about, if this does not go through, that we are going to lose textile workers from the Central America Republic to China, as an example. But I will let you address that.

I am going to go now to Senator Lincoln.

Senator Lincoln. Thank you, Mr. Chairman. I think, in the interest of time, I would just submit my opening statement for the record. And guess what? I have no amendments.

The Chairman. I cannot take either one of those! I am just shocked! [Laughter].

[The prepared statement of Senator Lincoln appears in the appendix.]

The Chairman. Senator Lott?

OPENING STATEMENT OF HON. TRENT LOTT, A U.S. SENATOR FROM MISSISSIPPI

Senator Lott. Thank you, Mr. Chairman. I will try to be brief so you can move on. I know it is hard to get us to be brief.

But I want to thank you for having this meeting, whatever it is. It is a part of the process that the Finance Committee has used traditionally to have a discussion and have some amendments which, if we actually tried to enforce, would undermine or defeat the whole agreement anyway. But, hopefully this will lead to a vote that will favorably report this trade agreement.

I want to commend Ambassador Zoellick and our new Trade Representative, Ambassador Portman, for the work they are doing, and work that was done in the Clinton administration. This is clearly an issue that is not partisan, and should not be.

I struggle with every trade agreement. I am not a natural, instinctive free trader. I viscerally kind of react against them, but intellectually, as you start thinking about it and debating it, I have always come to the conclusion it was the right thing to do, just like free enterprise and freedom. Free trade is in our interests.

I get nervous when people in my State, or in America, kind of take that as, oh, we cannot compete, we have to have protection. I should be the natural protectionist, but I am not.

I think that this is a very important process that, in the long term, should benefit America and benefit the people we trade with. So, I have supported most of the trade agreements, although I struggled mightily in my House years with the textile and garment area.

I think this trade agreement is in our best interests. It is a question of leveling the playing field for U.S. exporters. Today, nearly 80 percent of products from Central America and the Dominican Republic already enter the U.S. duty-free because of unilateral preference programs such as the Caribbean Basin Initiative and the Generalized System of Preferences. I supported the CBI, even in my House years.

America's market is already open. CAFTA opens the region's markets to good services and farm products from the United States. So, I think this is in our best interests that we do this. I believe, on a parochial basis, my own State will be able to benefit from this agreement. We will do more trade and more of our products will go to Central America.

There is another side of this equation. Think of the

impact on these countries in our neighborhood if we do not pass this free trade. After all we have done over the years on PNTR, NAFTA, GATT, and all the different trade agreements, finally we are going to say to these little countries in our neighborhood, sorry, because of one commodity we are not going to be able to do business with you?

Look at where they have come since the 1980s. It was a disaster looming on our doorstep down there in the 1980s. Now they are moving toward freedom, democracy, growth, and opportunity. It has helped their people have a better standard of living and have free, fair, open, and growing trade.

While we fumble around in Europe, worry about every little place in the world, we are ignoring our own neighborhood. I think CAFTA deserves this more than Mexico deserves what they have had. We have put them at a terrible disadvantage with NAFTA. This is leveling the playing field for Central American countries.

How can we not do this? This would be the huge monolith up here north of them saying, "nyaaa" to Honduras, El Salvador, Guatemala, and Nicaragua. Please, I urge my colleagues, we have got to put aside some of our instinctive or parochial desires and do the right thing for this part of our neighborhood. I think we

ignore Central and South America to our long-term peril while we are over there fussing around in Europe, which does not do us a whole lot of good, and even less in the future.

Now, with regard to sugar, look, I am from an agricultural State. I have been in the unholy agricultural alliance for 33 years. I voted for every damn ridiculous agricultural program and subsidy invented by the minds of men. [Laughter]. But I may not any more.

Now, the impact this has on sugar, as I understand it, amounts to a little more than one day's U.S. production. A hard-nosed attitude, no--hell, no--and we are not making any compromise, and we are not letting any, this is not going to work.

This is serious business. This could be the issue that blows the whole agricultural unity apart. If we let sugar alone, take down this agreement, we will live to regret it. I am not threatening anybody.

I love sugar. I love soybeans, wheat, barley, cotton, and all that other stuff we do. But we need to be careful not to let one commodity wag the entire dog of the agricultural community, and would have a devastating effect on our relationship with our friends and neighbors in Central America.

Methinks we protest a little too much here. For my colleagues on the other side of the aisle, I walked the aisle with you all on PNTR, NAFTA, GATT, and all of them. Now it is time that we rise up again and do the right thing when it comes to trade. I urge my colleagues to do the right thing. There is something more important than who has the power, who has control.

I think the administration ought to talk to us more. Hey, look, I am in the Senate and I know every now and then we have to get indignant and rap them about the head and shoulders. I have done that on lumber and lots of other things. But in the end, it is about doing the right thing, and the right thing here is to approve this agreement.

Thank you, Mr. Chairman.

The Chairman. Senator Thomas, then Senator Kerry.

OPENING STATEMENT OF HON. CRAIG THOMAS, A U.S. SENATOR FROM WYOMING

Senator Thomas. Yes. Thank you, Mr. Chairman. I appreciate it. I certainly recognize the significance of this agreement and I know there are lots of goods things in there. It has been signed for more than a year, and we have talked about it.

Lots of strong provisions that have to do with government procurement, industrial tariffs, Customs, all these kinds of things, and reaffirms our commitment, and I agree with that.

However, I have to say there are some things, and I follow my friend's statement, saying one little crop ought not to keep us from doing this. I agree with that. We have known for a long time that this was a problem. It is relatively small, and we have not dealt with it. We could have dealt with it. We do not need to have let this thing be the problem that it is. We talk about, it does not amount to anything.

Well, if it does not amount to anything, I listened to those six presidents, for two hours, talking about how important it was in the broad sense. I have heard from the Secretary of State, I have heard from the Secretary of Defense.

If it is that important, and I think maybe it is, then why are we letting this little piece, which we knew would be a problem, do it? Why do we not fix it? The fact is, I am frustrated by the lack of communications that we have had with respect to it.

Part of that is the fault of the sugar people. They have not been willing to talk as much as they should. I think they are now willing to do that. Part of it, I believe, is the administration's unwillingness to talk about it some. I think we can find some common ground. I think, however we do it, we need to have some time here to get that done, because at least we really make a major effort to do that.

As a matter of fact, we have some meetings set up for this week with the White House, we have some set up with the sugar people, and I think there is a chance to do something there. So, I just really believe it. We hear, do the right thing from my friend from Mississippi. I do not know of anybody who wants to do the wrong thing. I guess there are some differences in what we think the right thing is here. So, I have felt very strongly that we can fix this thing.

And sugar is not the biggest thing in the world, but it is a big thing for my State. It has now gotten very expensive for farmers to be in that because of the

equipment it takes. You cannot switch from one crop to another easily. They are also now the owners of the processing. It is the one agricultural product in our State where it is ready for the shelf when it leaves the State, and we do not do much of that. So, it is unique.

So, Mr. Chairman, I do not know exactly how we do this or how we withhold our votes, or how we send a message on this one. I know there are going to be, what, at least two more votes and we will be back for the committee for an up or down vote. I do not know whether we are satisfactorily sending the message on sugar. I hope so.

Then, of course, we will have a vote on the floor, so we have some time, I think, to fix this. Frankly, I am going to do everything I can to send the message that it needs to be fixed, and to help to work to fix it. I think it can be.

We hear, you cannot change the agreement. I do not argue with that. But there are lots of things we can do outside the agreement that will make a difference in terms of the future with the sugar people.

So, in any event, I think it is a real tough issue, and we can solve it if we will work towards finding resolution rather than just saying it is right or wrong.

Thank you.

OPENING STATEMENT OF HON. JOHN F. KERRY, A U.S. SENATOR FROM MASSACHUSETTS

Senator Kerry. Mr. Chairman, I appreciate that you are trying to move forward in a responsible way on this. I regret that we find ourselves sort of where we are at this moment on the CAFTA agreement for the following reasons.

I am not here specifically to make the argument about sugar, sugar beets. A lot of Senators on the committee have done that, and will do that. I think there is a larger set of issues that are represented by where we are in the negotiating process on trade.

We have warned this administration, and in fact the Clinton administration previously, was increasingly feeling the sensitivity to the transition in the trade relationship, and they had responded to it in the Jordan agreement and in the side agreements on the Vietnam trade agreement.

Let me preface what I am going to say by saying to you, Mr. Chairman, for 22 years now I have watched these agreements come to us in the Senate and we always hear the same argument: if this does not happen, this is going to be disastrous for X, Y or Z.

Everybody knows it is just not true. I mean, you

heard those arguments in Europe most recently; if they do not pass a constitution, the whole thing is going to fall apart. It is not going to fall apart. They are going to continue doing exactly what they are doing and they will work out some of the differences, and we will get where we are going.

The same thing here. I met with President Arrias the other day. I have known him for a long time, since way back in the 1980s when we were wrestling with what was happening in Central America. We had a long and hard conversation about this.

Obviously, there are people who want this, but there are problems with it. I do not think any member of this committee can sit here and sort of suggest you could just wipe those away. There are problems on both sides.

It is not just the deficit that Senator Conrad so passionately, and always articulately, points to, which is a serious concern. I mean, you have got to look at that and say, is this thing working the way we want it to? Is something out of whack here? He did not point out that that big red line started in 1992. That is a 13-year, 14-year transition. That is not over all the period that we have traded.

Central America is coming at us, saying, this is good for us. There is a serious divide in Central America

about what is good and not good in this and what will happen in many of their small industries. There is serious question about what happens to the Caribbean Basin Initiative countries that we have worked on to help develop for a long period of time.

Now, Mr. Chairman, I am not asking for anything protectionist, but I am asking for a fair playing field. I am asking for smart trade. Smart trade. Smart trade means that you do not give certain goods, certain corporate entities that are a fiction of the State. We create a corporation, we give it its being, we give it its protection. It is what we want it to be. It is not a human being.

We give it greater protection in CAFTA than we give to an American worker who may get displaced by this, and when displaced, we do not have the job training. We are cutting on that. We are cutting back on the health care availability.

All the things that matter to the American worker and American quality of life are affected by this agreement. We give a greater ability to be able to have a fair playing field to goods than we do to people.

Now, I think that is wrong. I have an amendment that is going to seek to simply do what we did in the Jordan agreement. It is working. It has been good for Jordan,

good for America, good for the trade relationship. Why are we going down and backwards? We wrote to the Trade Representative about this. We have put this on the table. For months, they have known that this was an issue.

So, if the Congress is going to mean anything, if this process is going to mean anything, this could be changed. It is possible for them to go back, do a side agreement, do another agreement, address this before the Congress votes, just as they could do something about sugar. All of these things can be dealt with.

So, I believe that over the last five years, what has been happening is there is an inequality building in the trade structure and we are willfully disadvantaging the playing field in a way that works to the disadvantage of American workers.

The consensus that the Clinton administration and others have always argued about trade, is all sides are going to be lifted, all parties are going to be lifted, this is a benefit for everybody. Well, it clearly is not working that way, on both sides. There are things we could do to tweak it in order to adjust. That is all we are asking for.

I think it is important, as we look at CAFTA, to recognize that it sort of has come at a moment in the

trade relationship where there is enough slippage and enough question mark that we just ought to sit back, not be ideologically rigid, and certainly not stiff-arm the process the way we have seen over the course of the last months. Reasonable people should be able to sit down and come to some agreement as to how we do get the rising tide lifting all boats on both sides.

The Chairman. Thank you, Senator Kerry.

Now, Senator Wyden, then Senator Kyl.

OPENING STATEMENT OF HON. RON WYDEN, A U.S. SENATOR FROM OREGON

Senator Wyden. Thank you, Mr. Chairman. I will be brief.

Mr. Chairman, a smart U.S. trade policy means make it and grow it here and sell it there. Because this agreement gives American workers the opportunity to do more of that, I intend to vote for the agreement this morning.

Now, I met with the president of Honduras yesterday and I asked him particularly about the opportunity to sell more products, for example, communications products, electronics products, medical equipment, software, these kinds of products in the region.

I just want to read a portion of the letter I received last night from the president of Honduras: "Regarding telecommunications, with the full liberalization scheduled for December, 2005 and the implementation of programs such as telephony for all, this sector is expected to grow at an unprecedented pace. In mobile voice communication, the number of subscribers is expected to increase by 1.5 million in the next three years, in comparison with the one million lines that were in place in 2004. A good number of the suppliers of

equipment are U.S. companies."

He also goes on to talk about the sales of hospital equipment, again, equipment made by American companies. The same is true of energy supplies. They are very interested in modernizing their energy infrastructure.

I have gotten the same sort of letters, Mr. Chairman and colleagues, from the presidents of Nicaragua and El Salvador, and I would ask unanimous consent that they be introduced into the record at this point.

The Chairman. Without objection, they will be entered.

[The letters appear in the appendix.]

Senator Wyden. Let me make just a couple of other points, very briefly. The first, is this is really the preliminary battle. I think everybody understands that there is going to be a bigger agreement that relates to the Americas generally. So, I think it is important that we make every effort to try to get this right.

I am quite sympathetic to the ideas and proposals of Senator Conrad. I am particularly sympathetic to what Senator Kerry is talking about. There is no question that there is a major disconnect now between the person on the shop floor who thinks that trade is going to export their job and what is being done in Washington, DC.

I am going to offer an amendment to expand assistance for training and skill development so that, when there are changes in an economic sector, workers have an opportunity to advance.

I just hope that we can make as much progress with respect to these amendments as we can so as to ensure that American workers see that globalization has something tangible in it for them, that they share the winnings. That is why I mentioned these areas of communications equipment.

I tell you, if we put those countries online and we sell our chips and our electronic supplies and our phone installation gear, that is the kind of thing that will help democratize the region and will also be good for American workers.

But a lot more has got to be done, and I hope we can start on that route with those amendments that will be offered this morning, Mr. Chairman. I look forward to working with colleagues in a bipartisan way, and I am going to support the agreement.

The Chairman. Senator Kyl?

OPENING STATEMENT OF HON. JON KYL, A U.S. SENATOR FROM ARIZONA

Senator Kyl. Thank you, Mr. Chairman. Thank you for having this meeting. I think it is important. Obviously, we need it to move the process forward, but all of our colleagues have presented interesting points of view.

At the end of the day, I do hope we move this agreement forward, and I would like to indicate four specific reasons why I think it is important that we do so.

First of all, a couple of our colleagues have made arguments that I think are directly contradictory. Obviously, both of them cannot be true. In one case, the expression of concern was that Central American farmers could be hurt if we end up exporting a lot more goods and replacing that Central American agriculture.

Yet, there was also an argument made that we have got a big trade deficit which is going to get even worse because we are not going to be selling as much, people are going to be selling more to us. Obviously, both of those things cannot be true. I think, in reality, probably neither of them are true.

With respect to the concern about the Central

Americas, all of the Central American business groups and leaders--specifically, the presidents of the countries--are very strongly committed to this agreement. They were up here lobbying very strongly for it, as we know.

I spent a fair amount of time in Central America. In fact, Easter before last I spent the week in El Salvador, just on a personal vacation, but I did meet with the leaders there.

The one thing that Tony Soque, who has been a very good friend of the United States, the former president of El Salvador, requested was, please get this agreement signed before I leave office. I have put a lot of effort and work into it for the Salvadoran people, and I would like to have it signed.

We got it signed, I think, three days before he left office. His successor, Paco Flores, was up here asking us that we continue on and approve the agreement for the folks in El Salvador.

The better those folks can do, the less likely they are going to want to come to America, either legally or illegally, and the better off it will be for them, as well as for us.

With respect to this argument about the trade deficit, I think there is some confusion here about what causes a trade deficit. The reality is, much of what is

characterized as trade is actually investment. The bulk of the trade deficit is an investment deficit.

The reason is because the United States is a great place in which to invest, and very few other places are. So, you have investment in the United States and you do not have investment in other countries.

As a matter of fact, the growth of the United States is really what is driving the trade deficit. We have got the economic strength to buy goods, so we are taking American dollars and sending them to other places because our people have a lot of wealth to buy a lot of goods, and we have the places to invest in as well.

It is interesting. Germany is the world's leading exporter, and yet growth in Germany was only 1.7 percent last year, compared to 4.5 percent in the United States. So, we have to understand what really creates a trade deficit.

In law, we have a saying, posto ergo perbterho, after this, therefore, because of this. That is a fallacy in logic, frequently. It is not the case that just because the sun came up, that is why I got a cold today. There are reasons why things happen. I think we need to look at those and not simply assume that, because we have had some trade agreements, that they have been the cause of a trade deficit.

Alan Greenspan has talked about the fact that the increased movement toward protectionism and less support for freer trade is "truly worrisome." He has really urged us to create more flexibility in the market by adopting agreements like the CAFTA agreement.

Relative to that point, the third point I am making here is, we have already talked about the fact that, under existing trade preferences, 80 percent of all Central American goods and 90 percent of agricultural products already come into the United States duty-free, while the average tariff imposed on our goods to those countries is 7 to 9 percent.

So, CAFTA will open markets to Americans, and yet it is not something that the Central Americans fear. They want it. There is a University of Michigan study that estimates that U.S. income will rise by $17 billion, and Central American income will rise by about $5 billion as a result of the agreement. So, it literally can be a win-win situation.

The U.S. International Trade Commission projects that U.S. exports under CAFTA are likely to increase by 15 percent, to about $2.7 billion annually.

The final point that I want to make is this, and it is something, frankly, that drives me personally to support this agreement very much. In the overall scheme

of things to the U.S. economy, it is not particularly significant, but it is very significant to the Central American countries, both economically and politically.

It sends a huge signal that we care about these countries, that we are willing to be supportive of them, we are trying to support their free enterprise system, that we want them to be able to compete, for example, with China, as was mentioned before with many of the lower-cost manufacturing processes, particularly in textiles and apparel.

China is coming into Central America in a big, big way. The question that a lot of folks are asking is, with all of the investment and schmoozing that the Chinese are doing, frankly, is who cares more about us? Is it the Chinese or is it the Americans? I really think that we have got to demonstrate a concern for our friends in Central America, friends that have been with us through an awful lot of the battles that we have had over the years.

That gets to the final point here. We will be supporting democracy in Central America. In many of the countries, it is fragile. You have got Hugo Chavez, Castro, and others in the region potentially creating a lot of problems in the region, and it is time for the United States to reengage with these countries in Central

America. They need us. We need to help them.

A lot of times, in the world, we wonder about why we do not have more friends, why we do not have more influence, and people talk about our arrogance. This is a way for the United States not to be arrogant, but to be helpful, to demonstrate commitment and concern to friends in our neighborhood who have stood with us. I think it is very, very important, for that reason, that we adopt CAFTA.

The Chairman. All right. Any other Senators want to speak before we go to the walk-through? Senator Snowe?

OPENING STATEMENT OF HON. OLYMPIA J. SNOWE, A U.S. SENATOR FROM VERMONT

Senator Snowe. Thank you, Mr. Chairman. I will include my statement for the record, but I do want to indicate my opposition to this agreement, which really does further expand my concerns about the inability of our government to uphold previous agreements that has resulted in thousands and thousands of job losses. Certainly, that is true in my State.

I think that our government and our country has a responsibility--indeed, an obligation--to demonstrate that we can uphold the agreements with which we enter with other countries.

I am deeply concerned that CAFTA will only aggravate the unprecedented trade deficit that we not only have with China, but with many other countries around the world. Indeed, this agreement will further expand our trade deficits with China.

It certainly will give them the opportunity to engage in transshipment with cutting and assembling of textiles and shipping them through Central American countries. That could be worth upwards of $900 million, further undercutting many of the textile manufacturers, the few that are remaining in my State and across this country.

My State has been the victim of previous trade agreements, and most notably NAFTA. We have lost approximately 20,000 manufacturing jobs since July of 2000. Twenty thousand. We have not seen the up side of these agreements.

Too often we talk about leveling the playing field and enforcing trade agreements and utilizing the laws that are available to do so, but, unfortunately and regrettably, our country has not done that, much to the detriment of our workers and industry that labor mightily to compete on a level playing field. But our government has not provided a level playing field.

We see that magnified, frankly, in the unprecedented trade deficit of $618 billion, and growing by the day, as we saw with the latest figures that were released last week, and increasing and expanding that trade deficit with China of upwards of 15 percent. So, it keeps on going. We have not held China accountable. We have not insisted on addressing the issues concerning the manipulation of currency.

How long is this going to go on? How many jobs are we going to lose before we step up to the plate and do what is expected and required--indeed, owed--to our workers and to our industry? So, for the few remaining textile manufacturers in my State and throughout this

country, and other industries, including small business, that will be at the detriment of this agreement, I have to register my opposition. Thank you.

[The prepared statement of Senator Snowe appears in the appendix.]

The Chairman. In regard to China, we are going to have a hearing next week on the currency.

Senator Kerry. Mr. Chairman, I notice there are only five Senators here. So, how are you planning to proceed?

The Chairman. We cannot take up amendments, but we are not at that point of taking up amendments. But if we do not have at least seven people here, we will not be able to proceed.

David Johanson will do the walk-through. We also have administration people who can answer questions for anybody: Peter Allgeier, Deputy U.S. Trade Representative, Jim Mendenhall from the General Counsel's Office, and our Chief Agricultural Negotiator, Allen Johnson. I thank you all for being here.

Would you proceed, David?

Mr. Johanson. Yes. Thank you, Chairman Grassley, Ranking Member Baucus, and members of the committee. I am pleased to have the opportunity to summarize the administration's proposed implementing bill for the

Dominican Republic-Central America-United States Free Trade Agreement Implementation Act.

I will begin by providing a general overview of the implementing bill, and I will next highlight specific provisions of the legislation.

First, an overview. The bill is divided into four titles. Title I approves the agreements and establishes the general proclamation authority for the President and the general regulatory authority for the administration to implement the agreement.

Title II authorizes the President to make changes to Customs laws that are necessary or appropriate to implement the agreement.

Title III implements the safeguard of Subtitle A of Title III, and the agreement's textile or apparel safeguard. Title III also implements provisions of the agreement related to the Global Safeguard and Trade Act of 1974.

Title IV implements miscellaneous provisions related to the agreement.

I will now turn to some specific provisions of the bill. Within Title I, Section 101 provides for congressional approval of the agreement and the accompanying Statement of Administrative Action.

Congressional approval of the agreement and statement

is necessary for the bill to qualify under trade promotion authority procedures.

Section 102 of the bill establishes the relationship of the agreement to Federal and State law.

Section 103 authorizes the President to issue regulations and to proclaim actions to implement the agreement.

Consultation and layover steps that must precede the President's implementation of any duty modification by proclamation are set forth in Section 104.

I will now turn to Title II and summarize the Customs provisions of the proposed bill. Section 201 authorizes the President to implement by proclamation the continuation or modification of tariffs as the President determines to be necessary or appropriate to carry out the terms of the agreement.

Section 202 of the bill implements the agreement's agricultural safeguard that covers certain agricultural products.

Other sections of Title II of the bill establish rules of origin for goods to qualify for preferential treatment under the agreement, authorizes action to be taken by the administration to enforce the textile and apparel rules of origin, and authorizes the Secretary of the Treasury to prescribe regulations as may be necessary

to carry out Customs-related provisions of the agreement.

Title III of the bill implements various safeguard provisions. Subtitle A of the Title III sets forth procedures for the conduct of safeguard investigations under this subtitle by the International Trade Commission. Petitions for the safeguard may be filed by an entity, including a trade association or union, that is representative of an industry.

Subtitle B of Title III sets forth procedures for the application of the agreement's textile and apparel safeguard. Determinations for relief under the textile and apparel safeguard will be made by the President, not the International Trade Commission.

Subtitle C of Title III authorizes the President, in granting global import relief under Section 201 of the Trade Act of 1974, to exclude imports of CAFTA-DR originating articles from relief when certain conditions are present.

Title IV implements miscellaneous provisions related to the agreement.

Mr. Chairman, that concludes my summary of the implementing bill. I would be pleased to answer any questions that you or other members of the committee might have. Thank you.

The Chairman. Any members have questions?

[No response]

The Chairman. First of all, the rules are, if we do not have at least seven people here, we cannot do business, even on amendments. We cannot vote a bill out without 11. So, I am going to wait until seven minutes to 12:00. If we do not have seven people here, we are going to adjourn to the fall of the gavel, which is obviously a time uncertain.

Well, as long as we have got five or so minutes, we will go to some of the issues that were brought up that I had previously said that I would like to have the administration address, particularly those that were raised by Senator Bingaman on labor, I think it was, and also raised by Senator Kerry.

I would like to have explanation from the administration, particularly as it was brought up comparing this agreement to the Jordan agreement. Then the concerns that Senator Bingaman brought up about textiles, and labor as well.

Mr. Allgeier, could you speak to those, please?

Mr. Allgeier. Yes, Mr. Chairman, I would be happy to.

First of all, with respect to the labor provisions, I can say without qualification that the labor package in the CAFTA is the strongest labor package in any U.S. free

trade agreement that we have had to date, including Jordan.

From the very start, we put a great deal of emphasis on addressing this issue. Both we and the leaders of these countries are dedicated to raising the living standards and the working standards of people in Central America.

So, first of all, these countries invited the ILO, the International Labor Organization, to examine the labor situation, the workers' situation in these countries.

The ILO did that and it found that, generally speaking, the laws on the books in these countries are consistent with the core labor standards that are in the major conventions of the ILO. In fact, five of the countries have ratified the eight core conventions of the ILO; one of them, El Salvador, has ratified six.

What the ILO found, however, is that enforcement was the weak link in the situation for protecting workers in these countries. The countries themselves, the labor ministers and the trade ministers, undertook a very comprehensive study of their own situations--and they had the support, by the way, of the Inter-American Development Bank--and came to a very candid analysis.

They presented a candid analysis publicly of their

situations and they identified weaknesses in their own enforcement, weaknesses in their institutional capacity to enforce their laws, and set forth the path for correcting that.

Both the ILO and the IDB, along with the U.S. Government, are committed to following through on these analyses and supporting the changes that these countries very much want. That is why we incorporated into the agreement a continuing process of capacity building.

We look forward to working with any Senators who would like to help us in working with these countries, the IDB, and the ILO to ensure that there is follow-through on these objectives of improving labor standards.

In terms of the agreement itself, it has an innovative--and we think the most effective--way of correcting institutional weaknesses, enforcement weaknesses in these countries, and that is the system of capacity building.

But if countries do fail to adequately enforce their own laws, which again are consistent with the ILO standards, there are trade sanctions or remedies within the agreement.

First and foremost, is a system of monetary fines which do not just go into their treasury or our treasury, but have to be used to address whatever shortcoming there

is in their enforcement, and we, the United States, have a say in how those funds are used.

The ILO has agreed to continue to work with these countries in monitoring the progress they make on a semi-annual basis. The IDB is strongly committed to continue to support these countries, and we will be working with the IDB to have a donor's conference later in the summer to identify what resources are needed and where the sources of those resources can be found.

One thing that I would like to really stress about this agreement, which is not in Jordan, is not in any of the other agreements. In the agreement itself are requirements for these countries to have certain procedural practices in place in their own countries when an individual or a group has a labor complaint.

These are the types of things that we take for granted here in terms of openness and accountability by government when someone has a grievance. These procedural elements are not in Jordan. They are not in any other labor agreement.

I think, frankly, if anybody looks at this with an open mind, they will see that this is, by far, the most robust labor package in any U.S. trade agreement--actually in any free trade agreement in the world.

The United States is way out ahead of other countries

in the way we incorporate labor protections into our free trade agreements, so the CAFTA agreement is a model in that regard.

Now, the other issue that was raised, is textiles. This also was an issue that, right from the start, we knew that we needed to pay special attention to because we have fostered, over several decades, the period of the CBI and some of the other textile programs that we have had, a very strong partnership, a very effective partnership between the textile industry in the U.S. and the garment industry in these countries.

The partnership takes the form of these countries using enormous volumes of inputs of U.S. textiles in their apparel, which then they transform, assemble, and send back to the United States. So, it has worked for both countries.

Now, since the beginning of the year, of course, the situation has been dramatically altered by the final step in implementing the Uruguay Round commitments, global commitments with respect to textiles, specifically, the ending of textile quotas.

What this has meant, is that countries outside the region, predominantly in Asia, most notably China, have been released from certain constraints and are competing extremely aggressively with the rest of the world.

So the question is, how can we best preserve this partnership between the United States and Central America, that has existed for these years, in the face of this intense competition?

The CAFTA, frankly, provides that answer. What it does, is it, of course, continues to give these countries duty-free treatment into the United States, provided they are using inputs from the United States.

The importance of this is demonstrated by the fact that, if you look at a typical garment--let us say a tee shirt--from Central America, about 70 percent of the value of that tee shirt is U.S. inputs. If you look at a comparable tee shirt from China or some other country in Asia, you will find practically no U.S. input.

So, in order to protect the jobs that we have in the United States in our textile industry and the jobs that have been generated over the years in Central America which are essential for their prosperity, we need to have the provisions of the CAFTA.

Now, one thing that has been very important, is for us to be sure that the only entities that benefit from this agreement, including the textile provisions, are those entities that are genuinely from the region. We do not want the region to become a transit point for illegal transshipment of products, textiles or otherwise, or

circumventing the agreement.

So, this agreement has in it very specific, very concrete provisions for Customs to monitor the situation and to take action, to take investigations as needed. Therefore, we are confident that this agreement will not be a source of transshipment.

The Chairman. We have, now, six. Senator Baucus is in the entry room with a constituent, so I would like to move to amendments, if there is no objection.

Senator Wyden. Mr. Chairman?

The Chairman. Yes?

Senator Wyden. I have an amendment, whenever it would be in order, Mr. Chairman.

The Chairman. Right now.

Senator Wyden. All right.

Mr. Chairman, this is my first amendment on trade adjustment assistance for service workers.

The Chairman. Proceed.

Senator Wyden. Thank you, Mr. Chairman. Mr. Chairman, this is essentially the amendment that I offered with Senator Coleman earlier that received 54 votes, not enough to deal with the budget point of order, but an amendment that I think embodies the essence of a good trade policy.

As I said earlier in expressing my support for the

agreement, I think there is a huge disconnect between what happens in Washington, DC and the person out on the shop floor who is very concerned about what free trade is going to mean for their future.

One of the reasons that they are so concerned, is that they have not had the opportunity for training and skill development and the extension of their health care benefits, and the essentials of simply surviving when they have been laid off as a result of trade.

And particularly with respect to the trade adjustment assistance program, there is a huge gap in that the program, which of course was created in 1962, helps displaced manufacturing workers, but it does not address the huge needs of service workers, that now account for 80 percent of the United States' workforce. There are four times as many service firms as there are manufacturing firms.

So, what I have tried to do, and do in a bipartisan way--I think many colleagues here on the committee on both sides have supported it, with Senator Coleman--is to say that we should not leave behind service workers when it comes to retraining, health care, and income support when they are essentially forced to deal with the changes that come about as a result of globalization.

So what my first amendment does, is it would simply

extend the trade adjustment assistance to include service workers and firms in the services category. I would hope that colleagues, in terms of the response to Senator Coleman and myself on the floor, I hope they would support it this morning.

Senator Rockefeller. Mr. Chairman?

The Chairman. Senator Rockefeller?

Senator Rockefeller. Mr. Chairman, I have supported this amendment in various forms on various occasions before in trade agreements, and I will support it now. I ask that my name be added as a co-sponsor.

Senator Snowe. Mr. Chairman?

The Chairman. Yes?

Senator Snowe. I, too, concur, and would like to be added as a co-sponsor. I want to commend Senator Wyden for offering this amendment. It is extremely crucial to ensure that we extend this assistance to those who are the victims and face the consequences of these trade agreements. It is the least our government can do, and I thank you for offering this amendment.

The Chairman. Yes.

I am going to make a request of Senator Wyden. I do this in light of the fact that I am sure that you probably have the votes for this amendment, and you have worked hard on it.

You and I have had at least two conversations on it. Obviously, it is not a whole new program. It is not appropriate for this particular bill, outside the parameters. It surely is associated with the problems for people that are affected by trade, I do not deny that at all, but outside the parameters of a new program.

I have expressed to you my willingness to work with you in private conversation. I have not said this publicly. But in private conversation, I have pledged to work with you, as I saw the problem being one of defining how far downstream this help would go, and putting some parameters on it that would not make it so costly, but have a direct relationship between those other jobs that are affected by trade as opposed to some way downstream that you would really have to stretch a point to say that somebody was losing their job because of trade.

So, I would only ask if there is any chance that we could work with you on this in a more appropriate forum where this would be something we could work out to reduce the costs, get a score. I have been told that this could cost $3.5 billion. Let us work something out that we could put into legislation where it is appropriate for it to be, and get the job done.

Senator Wyden. Mr. Chairman, your word is always good. I would be willing, on that basis, to withdraw it.

I will be very brief on this. I would ask, only, that we could begin the effort to produce a bipartisan bill immediately.

Senator Rockefeller has been very involved in this, particularly on the health care aspect of this. Senator Baucus has a great interest in this. Senator Snowe has been involved. Senator Coleman, of course, was the person who approached me on this from the very beginning.

I would like to have this up and running at the time the CAFTA program goes into effect, because the trade adjustment assistance is supposed to be, in effect, a trampoline so that workers who are adversely affected by trade have a chance to bounce back.

The problem is, four-fifths of American workers essentially do not get the spring offered by the one Federal program that is out there to let them make a come-back.

The Chairman. I invite you to tell me, as Chairman of this committee, what sort of a process I can put in place that would show my good faith effort to work with you. I am not telling you, I am asking you. What would you like to have me do?

Senator Wyden. Mr. Chairman, that is a very thoughtful offer. I would like us to begin the discussions immediately with yourself and Senator Baucus,

Senator Rockefeller, who has done so much, as I say, on the health care issue, Senator Snowe, who has got a great interest, and other colleagues, so that the committee, on a bipartisan basis, can start working this out immediately, with the idea that we could have this up and running by the time the CAFTA program went into effect.

The Chairman. And would it be appropriate that the members that you mentioned, their respective staffs could start initial discussion on it?

Senator Wyden. Absolutely. And I am sure other Senators are interested in it as well.

The Chairman. Senator Rockefeller?

Senator Rockefeller. Mr. Chairman, obviously it is the Senator from Oregon's decision to go ahead with this or not, but I would encourage that he not withdraw the amendment, for a very simple purpose.

The Chairman of this committee, who is somebody that I respect and have such have high regard for, will remember in an election year where I said things about him in the *Omaha, Nebraska*, whatever it is, that were so good, and I was only furious that they left out the really good part I said. So, I really trust him and I really like him, just like you do.

But the fact of the matter is, the administration wants this to go through without amendment. This is the

only amendment time. We will have staff meetings and my staff and all will work on this, but this program is crucial. It is symbolic of the balance in American trade policy, and I do not think you are going to see anything as a result of what you have suggested.

So, I would just hope that you would not withdraw the amendment, that being your decision exclusively, and that you would go ahead with it so we could have a vote on it.

Senator Snowe. Mr. Chairman?

The Chairman. Senator Snowe?

Senator Snowe. Obviously Senator Wyden can make the decision about whether or not to withdraw the amendment. I do think, in the final analysis, this does become a critical issue. It has often been deferred as to whether or not the trade adjustment assistance should apply to service workers. I think it is long overdue, consider the fact that they now represent about 80 percent of the workforce.

We are seeing what is happening with the manufacturing sector of our economy. It is only fair to say now that the service jobs should be covered under trade adjustment, because they are as much now, as well, being the direct victims of trade agreements, and the government has to live up to the implications and the consequences of these agreements.

One way to do that, of course, is through the trade adjustment assistance program. So, I hope we can reach a resolution, because this has often been raised as to whether or not to include the service workers. I think the time has come to reflect the realities in the economy of today.

The Chairman. Before you speak, to satisfy Senator Rockefeller, if you remember when you and I had a recent visit on this point, I think you could tell from things that my staff said at the meeting, we had been thinking about this issue coming up. Even before we visited with you, we had given it some thought.

I would just ask you to recall that, so maybe you can satisfy, Senator Rockefeller, that we had been thinking about this and was expressing to you some things that we could do.

I think we need to think in terms of the appropriate vehicle to do this. This is not the place to do it. We can get amendments adopted, but what I think Senator Rockefeller, Senator Wyden wants to do, Senator Snowe wants to do, you want policy, you want law. We ought to think in terms of the appropriate place to do it.

Senator Wyden?

Senator Wyden. Mr. Chairman, I think that my concern is that this program be up and running by the

time CAFTA goes into effect. I just think it is critically important that, as we take this next step with respect to expanding U.S. trade policy, what I think is a preliminary round in terms of a larger agreement with the Americas, that we get this in place.

If you could give us the assurance that we would have a program that would come out of this committee and be in effect by the time the CAFTA agreement went into effect, I would be willing, for example, to take a voice vote now.

I think the administration is going to resist further at this point, but I think Senator Rockefeller and Senator Snowe are making a good point. This is a symbolic issue. We have got to send a message to American workers that they are not being left behind.

Senator Baucus. Mr. Chairman?

Senator Wyden. I want to get this done and want to accommodate your concerns, but I want to get it done by the time this agreement goes into effect.

Senator Baucus. Mr. Chairman?

The Chairman. Senator Baucus?

Senator Baucus. Mr. Chairman, this is not unprecedented. We did this in NAFTA. The NAFTA agreement, it is my understanding, in this Congress, added in TAA. It seems to me that it should be added for

services, too. There is no doubt about this. There is no doubt about it. I mean, I have forgotten where it was.

I guess Senator Kerry mentioned the point about, 75 percent, or a large percentage of the American workforce was in the manufacturing center many years ago, and we have a large number, whatever it is, today in services. The big problem is the services jobs. So many of them are going offshore.

Let me just give you a stunning little story I heard the other day. There is an accounting firm in Montana, a very small firm, that does my taxes. Guess what? They are going offshore. They got a T-1 line and they send it all offshore. It goes to India. India calculates the tax returns, and it is all computerized.

When it comes back to the firm, they look at the results afterwards. If a firm in Bozeman, Montana is sending its stuff overseas to India to be processed, clearly, how much more is being sent overseas on account of trade?

Now, of course, we are talking about TAA. I might ask the staff, is TAA given on account of dislocations because of trade agreements or on account of trade? I think it is on account of trade, not trade agreements, necessarily. I urge, frankly, my colleague from Oregon

to proceed much more aggressively, because this has got to be addressed. I have the highest regard for my colleague from Oregon, but we all know what happens around here. We talk about a lot of things, nothing gets done.

This town only operates under the concept of leverage. You have got to have leverage, you have got to push for amendments, and you have got to get them passed. Otherwise, it is just talk. The talk is to work things out, but I do not know what the workout is going to be on this because of this strange Never-Never Land, Pretend Land, of offering amendments that do not really amount to much.

But it seems to me you should offer this amendment. We should get it passed. Then let the administration deal with it as they send up the final implementing language. If we do not pass it, I do not expect a lot to happen.

I am just being candid and forthright about this. You have got to pass amendments to make things happen around here, or they do not happen. That is, frankly, I think, what is bothering a lot of American people. We do a lot of talk in Congress, we do not do a lot of action. We do not really get things done for people.

The esteem of Congress is very low right now. It is

extremely low. Extremely low. I think it is, in part, because we just do not address people's concerns.

The Chairman. Senator Thomas?

Senator Thomas. Mr. Chairman, I have a question. You are talking about, this is an amendment, but what we are doing here is sending a message back to the administration.

Senator Wyden. Correct.

Senator Thomas. It does not have anything to do with the amendment to be before the Congress. It does not seem like it is an appropriate process.

Senator Baucus. Well, we did it in NAFTA.

Senator Thomas. Well, this is a totally different thing.

Senator Baucus. No, it is not.

Senator Thomas. I think you are outside of the operations.

Senator Baucus. No, we are not.

Senator Thomas. Well, I disagree with that. I agree with the Chairman. I think he has got the right approach.

Senator Baucus. Well, the right approach is to do something, not just talk about it.

Senator Thomas. Absolutely. But you do not do the wrong thing.

Senator Baucus. This is not the wrong thing.

Senator Kerry. Why would this be the wrong thing?

Senator Baucus. Yes. Why is this the wrong thing?

Senator Kerry. Why is giving advice, which they most likely will not follow and do not have any requirement to follow, the wrong thing?

Senator Thomas. What do they have to do with establishing this as part of the law?

Senator Kerry. Listen to it. Reflect the view of the committee.

Senator Thomas. We are the ones that make the law.

The Chairman. Does the Senator from Wyoming yield to the Senator from Massachusetts?

Senator Thomas. No, absolutely not. [Laughter].

Senator Snowe. Mr. Chairman?

Senator Wyden. Mr. Chairman?

Senator Snowe. Mr. Chairman?

The Chairman. Can I remind you, to put in perspective a little bit here, we are setting up a whole new program, contrary to the process. Remember that Congress resented very much in one of these trade agreements where the administration negotiated something on immigration.

So if we start down this process of Congress doing things outside the parameters of the process that we set

up, as this would be the case, what right do we have to complain for the administration negotiating whole new programs that we do not want them to negotiate in the first place?

Senator Snowe?

Senator Snowe. Thank you, Mr. Chairman. Just to follow up on some of the points that have been made, I just think that we do have to face the realities of today's globalization and what has happened to many of the workers in America who have lost their jobs through outsourcing, as we have seen with call centers in India and elsewhere around the world.

It all comes under the category of service workers, and they do not enjoy the benefits of the trade adjustment assistance program. If you think about it, there were 750,000 jobs lost in the technology sector in 2001-2003, and an additional 3.3 million will be lost in the next decade.

Any time an agreement is going to aggravate and exacerbate the loss of jobs, clearly, we have an obligation to step up to the plate. One way of doing that is reflected in this program, however it would work, in conjunction or in tandem.

But certainly we should reflect the cause and effect of passing this agreement that ultimately could impact on

thousands and thousands of workers in this country, including service workers. That is the reality. So, the last time we passed a trade agreement we were not talking about outsourcing.

Today we are talking about outsourcing. We are talking about call centers. We have lost the ability to compete for call centers in the State of Maine as well, as is true around the country. So, I think we have to reflect that. However we do it logistically and mechanically, it can be done, and it should be done. I just want to again commend Senator Wyden for offering this amendment.

Senator Wyden. Mr. Chairman?

The Chairman. Senator Wyden?

Senator Wyden. My colleagues might not believe it, but I really did not twist everybody's arm to come here to say all this. I would just propose the following. Why do we not, Mr. Chairman, have a voice vote on this proposal.

The Chairman. All right.

Those in favor, say aye.

Senator Baucus. Wait a minute. Let him finish. He has not finished.

The Chairman. Well, all right. He wanted a voice vote and I was offering it. [Laughter].

Senator Wyden. Mr. Chairman?

The Chairman. The Chairman stands corrected.

Senator Wyden. I hope this will be seen as conciliatory. Why do we not have a voice vote now? It clearly will not be binding, and both sides will have the chance to do just as you have said, which is to go to work on the details.

But we will have a chance to accelerate, to in effect send a message of how urgent this is, by having a vote on it this morning. So, I would ask, consistent with my desire to work with you as we go forward, that we have a voice vote at this time.

The Chairman. Those in favor, say aye.

[A chorus of ayes]

The Chairman. Opposed, say no.

[A chorus of nays]

The Chairman. The ayes have it. The amendment is adopted.

Next amendment, Senator Kerry?

Senator Kerry. Mr. Chairman, thank you. I think, to some degree, Senator Snowe just made my argument about what we need to do to try to help some of these workers who are affected.

So, I have an amendment, Mr. Chairman, which Senator Schumer is joining with me and sponsoring in offering to

the committee. It is aimed at trying to stand up and provide American entities, workers, the right to be able to have the law enforced in an appropriate way with respect to the CAFTA agreement.

I mentioned earlier, and I am not going to go through the long record of it, but this is the first time that I have found myself in this position on a trade agreement in front of the Senate.

I continue to believe that open markets and robust trade do benefit America's workers and our consumers, and ultimately our security. Most members on this committee have a pretty strong record of supporting trade in that regard.

But Chapter 16 of CAFTA contains worker right protections. It is in Chapter 16. But "only a nation's commitment to enforce their own laws is subject to dispute resolution."

The Chairman. Senator, can I interrupt you? Are you offering #1 or #2?

Senator Kerry. Number one.

The Chairman. Number one. Proceed, please.

Senator Kerry. In Chapter 16, "only a nation's commitment to enforce its own laws is subject to dispute resolution." That is different from the Jordan agreement in which all of the agreed-upon rights are subject to the

dispute resolution clause.

Now, it is a start, but it is just not sufficient. The agreement makes no stipulation as to what those laws include, and enforcement is purely symbolic because any penalty that might be paid by an offending country is returned to the offending country, supposedly to address the offense for which they were penalized.

In short, this is a standard that is not going to stand up for American workers or protect their interests against any of the well-documented labor problems that exist in the region. I have pages of those documents for each country.

The remainder of CAFTA's labor chapter, that which is laid out in CAFTA, is unenforceable on its face. By admission, unenforceable. Instead, it is subject to a non-binding consultation process. We agree to talk, not to correct. So it can be talked about and no penalty will ensure. No leverage exists to try to provide for a remedy.

Now, CAFTA commits countries not to denigrate their own laws, their own labor laws. But all of us have seen situations where a country where will change its law because another country does not have a law and they are trying to compete. We have seen that with China, we see it with other countries, now.

So there is nothing to prevent them from changing their current law and even backsliding so that they get out from under whatever requirement there is to protect, and there is nothing to require them to stand up for the rest of what is set out in CAFTA.

CAFTA makes also what is little more than request. I will use the language of CAFTA. You are supposed to "strive to comply with core international workers' rights standards." There is no obligation to basic standards. All you have to do is strive to do it. So, even that standard of striving, which is subject to anybody's interpretation, is not enforceable under agreement.

The "strive to" language covers such basic rights as: the right to prohibit the worst forms of child labor; basic worker health and safety conditions; the right even to be able to have your rights represented.

In short, we are talking about striving, merely striving, with no enforceable standard, no ability to have a dispute resolution for child labor law violations. That is just wrong. That is not where we ought to be in 2005. That is just wrong.

So, if you are going to prevent a sweat shop and allow American workers in anybody's State that is sitting here to compete on an equal basis, you ought to have an enforceable standard to be able to do so.

CAFTA, Chapter 16.3, provides basic procedural guarantees. It is meant to ensure that our trading partners have fair tribunals, that they have hearings that are held in public, to ensure that workers are going to prevent employer or employee abuse. These are rights that we take for granted here in the United States, but they are unenforceable under the agreement.

On the other hand, while we do not allow those to be enforced for worker infractions, CAFTA provides an elaborate and very thorough process of rules, investigation, dispute, appeal, enforcement, and punishment to protect, let us say, patent rights or copyright infringement.

They get stronger rights, stronger process, stronger enforcement than you would for the violation of child labor law. That is just wrong. So, the fundamental question is, why does CAFTA not provide the same protection for America's workers as it does for those economic rights and interests?

Why do citizens, or entities that represent them, or the government itself, not have the ability to ask for a fair playing field and see it enforced? I believe the administration could have secured that enforcement standard; we have previously. We failed to do it here because we did not try. We secured them in the Jordan

agreement, and many of us wrote the USTR and asked him to pursue it in this agreement.

So, our concern over CAFTA is to try to get a good agreement, an acceptable agreement, just as we set out months ago was the goal, in order to be able to vote for this in good faith. The amendment is very simple. We should subject violations of the labor chapter to the same dispute resolution mechanism as the other violations of disagreement.

I would just say to my colleagues, doing so does not violate fast track. It is consistent with the fast track requirements. It is not currently covered by the strong laws under CAFTA because we have ample examples of the flaws in enforcement and the labor laws. So, I would hope colleagues could vote for this.

I think we cannot sit here and talk about standing up for American workers to have a fair playing field to compete on and not ask the administration, where it has the opportunity, to put real enforcement mechanisms in place that require that to happen. I hope my colleagues will support it.

Senator Schumer. Mr. Chairman?

The Chairman. Senator Schumer?

Senator Schumer. Thank you, Mr. Chairman. I want to praise my colleague from Massachusetts for his

amendment. I am proud to be a co-sponsor of it.

The bottom line is very simple here. That is, unless the American people are convinced that free trade is done on some kind of fair basis, the tenuous Coalition for Free Trade is not going to last. The agreement is an example of where that lack of even-handedness, that unfairness, stands out.

As Senator Kerry said, we go through elaborate provisions to protect intellectual property. That is good. Those are the crown jewels of our U.S. economy. We do not do that enough with China and other places. But when it comes to labor, and we are not saying that every worker in the CAFTA countries has to be treated the same, or even close to American workers.

We are not saying that they have to minimum wage of $5.15, or the same standards. We are just saying, when they have some labor standards, make sure they are enforceable. This does not even do that. To strive for? Well, one person's striving is another person's stonewalling. So, I just do not think it works.

I debated in my own mind whether to be for this entire bill. Unlike some or most of my colleagues here, I support the stuff on sugar. But how can we take a step back from CBI, which we all supported and have that bipartisan nature, when we do not have any sort of labor

protections in here? We go backward from CBI.

It is not that there is a regime of no enforcement in general. It is just, enforce all of the things that help business, do not enforce the things that help labor. It is not balanced, it is not even-handed. The Kerry amendment, which I am proud to co-sponsor, would go a long way to creating some degree of even-handedness in this proposal, and I hope we will vote for it.

The Chairman. If you want to speak, go ahead. Then I will speak, and then we will have a roll call vote.

Senator Rockefeller. Mr. Chairman, I was just going to ask to be added as a co-sponsor.

The Chairman. All right.

Senator Kerry, I am going to ask the committee to oppose your amendment. I think you have raised issues that need to be discussed, but I think on clarification, to satisfy people that, number one, this is not the place for this amendment to be.

If you do not like the CAFTA agreement, I think the proper thing is to vote against it. But the main thing here, is these issues that are coming up can be appropriate, but they need to be in the environment of where we can amend an agreement and influence the negotiations of it prior to the agreement being signed.

Senator Rockefeller. Mr. Chairman?

The Chairman. Yes?

Senator Rockefeller. Just this comment. In supporting the Kerry-Schumer amendment and the one prior to that, the phrase that drives me more crazy than any other that I hear virtually on a weekly basis in the U.S. Senate, is "wait for an appropriate vehicle." That is like saying, we do not want it, we know nobody else is going to touch it because it will have to get votes all on its own.

We can discuss this with Mr. Kerry and his staff, and all the rest of it. But to be quite honest, we have leverage now. We are the Finance Committee of the U.S. Senate. Trade was the first thing that was given to the U.S. Congress to oversee, the very, very first item.

I do not think we should put this off to another day. I do not think we should wait for an appropriate vehicle. I think this is the appropriate vehicle because it forces the hand of some people.

Senator Kerry. Mr. Chairman, can I just respond to what he said? There is no substantive change here. This is procedural. This is achievable by the administration. We can come in and vote for this agreement. I would love to. But this is not a substantive change. All we are asking for is that those things already agreed on in CAFTA be enforceable in the same way as the other things

that are agreed on in CAFTA. It is very simple.

The Chairman. I think I will ask the administration to respond to that, for the simple reason that I did not see it as necessary and appropriation. Then I will call on Senator Bunning.

Would one of the people from the administration respond to the statement that Senator Kerry has just made?

Mr. Mendenhall. Sure. It is the administration's view that the amendment is not necessary or appropriate to implement the agreement. In fact, it does not implement the agreement. It would require the administration to go back and re-negotiate parts of it by amending the dispute settlement provision in the FTA.

In line with that, I think it is not only not necessary and appropriate, but in a sense, it would be contrary to the spirit of TPA, the purpose of which is to allow the administration, in close consultation with Congress throughout the negotiation process, to negotiate trade agreements and bring them back for a vote without reopening the text of the underlying FTA.

Senator Kerry. Mr. Chairman?

The Chairman. I am going to call on everybody. He was responding to Senator Kerry. If Senator Kerry wants a discussion, we need to finalize this. Then I will go

to Senator Bunning, then Senator Bingaman.

Senator Kerry?

Senator Kerry. Thanks, Mr. Chairman.

I almost recoil when you say "in close consultation with the Congress." I do not know what that means anymore. I mean, we gave you a suggestion that you negotiate this in the beginning. There has been no consultation at all. You are here and now you are telling us it is not necessary.

Now, how can you substantiate that it is not necessary when you cannot enforce components of what is in the agreement? They are unenforceable. You are going to consult, is that correct, Mr. Mendenhall? You will consult, under the terms of this agreement, with an offending country. Is that correct?

Mr. Mendenhall. They are in this agreement, as there was in Jordan. The core standard of enforcing labor laws is subject to dispute settlement.

Senator Kerry. Core standard only. The domestic laws only. Is that not correct? Only the domestic laws are enforceable. Those provisions which you have agreed on that are outside of domestic law cannot be enforced. That is correct, is it not? It is yes or no. Is that correct?

Mr. Mendenhall. The standards set forth in CAFTA,

as Ambassador Allgeier noted earlier in his comments, go well beyond not only what was in Jordan, but well beyond what is in any trade agreement negotiated to date anywhere in the world.

Senator Kerry. Not with respect to labor, they do not. In the Jordan agreement, everything within the four corners of the agreement is subject to dispute resolution. That is not true of CAFTA, correct? You still have not answered my question. That is not true?

Mr. Mendenhall. It is important to look at what, in fact, the obligations were in Jordan. On all of those, with the exception of the obligation to enforce domestic laws, all of those were strive-to commitments.

With CAFTA, in fact, many of the commitments go beyond strive-to, and in fact impose binding obligations, for exmaple, to take certain procedural safeguards, such as ensuring fair, equitable, and transparent domestic procedures.

Senator Kerry. I know. But you are describing to me what I already know, which is not what we are trying to get at here, which is the difference of opinion about what is enforceable and what is not.

The fact remains that what is in the four corners of the agreement is not entirely enforceable. There is a separation as to what is enforceable and what is not. It

is your plan to "consult," to enter into consultations, if there is an infringement on any of those. I mean, that is the process.

Mr. Mendenhall. Well, it is more comprehensive than consultation. We also have engaged, and will continue to engage, in a rigorous program of working with these countries to develop capacity, to ensure that, in fact, their labor standards will be strengthened and enforced.

The underlying provision of enforcing domestic laws, subject to the potential penalty of up to $15 million, which will then be channeled back into capacity building for labor enforcement.

It is a comprehensive program to help ensure that the labor standards in these countries are, in fact, raised and enforced over time. It is a program with continuing cooperation and consultation with them.

Senator Kerry. Well, Mr. Chairman, my observation stands. It is correct what he says, that there is a $15 million levy, at max, if, at the end of that process. But that is paid back into the country.

The fact remains that the fundamentals that are enforceable within the Jordan Trade Agreement are not enforceable here, number one, and number two, to the degree there is an enforcement mechanism is completely separate, at a lower tier and of a different nature and

procedure from those that are afforded to the economic interests and rights.

I think most workers in America are losing their jobs, who see dislocation taking place without adequate adjustment that our colleague from Oregon wanted to address. This is where they do not see the fair playing field.

Senator Schumer. Would my colleague yield just for one other comment?

The Chairman. I have got to call on Senator Bunning.

Senator Bunning. Thank you. I appreciate that very much.

It is my understanding, what is in CAFTA, is that the domestic laws of each and every country are honored as far as labor is concerned.

Senator Kerry. That is correct.

Senator Bunning. Is that a misunderstanding, Mr. Chairman?

The Chairman. That is correct.

Senator Bunning. Then when we enter into other trade agreements, say with China, say with other countries, do the Chinese insist that we adhere to their domestic labor laws here in the United States or do we adhere to our own domestic labor laws in trade agreements

with other countries? Mr. Chairman or staff?

The Chairman. We abide by our own laws. This amendment would have an impact upon us if this were re-negotiated. Would we want to subject our labor laws to a process of the ILO and all that stuff that you have to do?

Senator Bunning. Thank you.

Senator Kerry. If I could comment.

Senator Bunning. Let me finish, then you can go ahead. The reason I opposed NAFTA, the North American Free Trade Agreement, was exactly under this circumstance. We were going to have to enforce some of the Mexican labor laws and we expected Mexico, in return, to take our labor laws into Mexico. That is not what free trade is all about.

If we are going to negotiate labor negotiations and environment negotiations and all of the side agreements that went into NAFTA after the fact, then why have a fast track procedure at all?

Senator Kerry. May I answer the Senator?

Senator Bunning. Go ahead.

Senator Kerry. The Senator's observation does not apply to my amendment at all. That is not what is occurring here. Both sides agree that we will enforce our existing labor laws. We are not seeking to put our

labor laws on top of them, they are not seeking to put theirs on top of us.

My amendment does nothing to change that. But within this agreement already agreed on by the parties are a set of additional labor requirements, but they are not enforceable. For instance, the worst forms of child labor are not enforceable.

Now, I believe, and Senator Schumer believes, a number of us believe, that if you are going to have a fair, competitive playing field, not asking to tilt it one way or the other, just fair, American workers have a right to know that they are not being asked to lose their job or compete against somebody who has got the worst forms of child labor practices that are producing goods that compete at a much lower price, and therefore they are run out of business. All I want is for it to be enforceable.

Senator Bunning. Then, Senator Kerry, you are going to try to put our child labor laws --

Senator Kerry. No, sir.

Senator Bunning. Yes, you are.

Senator Kerry. No. They have agreed --

Senator Bunning. The Dominican Republic, El Salvador, Honduras, Nicaragua, and all the countries that are signatories to this agreement.

Senator Kerry. They have already agreed to a set of standards, the International Labor Organization standards and international standards with respect to child labor.

Senator Bunning. I agree with you on that.

Senator Kerry. All right. I am not seeking to put anything new on it. I am seeking to have enforced what they have agreed to already. This is in the agreement, but it is just words. It is unenforceable.

Senator Bunning. In other words, the administration is not telling us the truth.

Senator Kerry. It is not enforceable. What the administration is going to do, as they say, is they will "engage in a consultation." I get the language from the agreement.

The agreement says that, in the event there is a violation, the parties will then sit down together and start to talk about the violation. There is a side sort of process where they can have a finding, but it is not given the same rights as --

Senator Bunning. There are no fines involved?

Senator Kerry. Yes, there are, up to $15 million worth of fines under a separate process. But not for that, only for the other. Not for the violation of the domestic labor laws. There is a separate process with a separate standard, no fine on the other.

The Chairman. There are two Senators that have asked to speak. When they get done speaking, I would like to vote.

Senator Bingaman and Senator Schumer?

Senator Bingaman. Thank you, Mr. Chairman. Let me just ask the administration to clarify. I am unclear. In some of my discussions and my staff's discussions with Ambassador Portman, we have raised the concern about these labor standards and the enforcement.

I hear two things. First, I hear that the standards are the best we have ever had, and that therefore there is no need to strengthen them. Separately, I have heard that there may be things that can be done to deal with these concerns about the labor standards and that the administration is willing to work with us between now and when the CAFTA comes up for consideration on the floor to deal with those.

I guess I am trying to figure out which one it is. Is it the administration's position that these provisions should remain as they are, and there is nothing that is appropriate or possible that should be done to change them?

Or is it the administration's position that something can be done to address these concerns that you are hearing around the table, and you are willing to do

some things, but just not all that Senator Kerry wants to do?

Mr. Allgeier. Thank you, Senator. I will try to clarify that. We are not prepared to re-negotiate the agreement.

Senator Bingaman. Right.

Mr. Allgeier. In order to implement the amendment that Senators Kerry and Schumer are putting forward, as we understand it, would require us to re-negotiate the agreement.

However, there are parts of the agreement, the package, I should say, of addressing labor rights that have flexibility. That is specifically the trade capacity building, which all of us I think agree that these countries most need to strengthen the institutions of enforcement in their country.

On that, in terms of working with the countries and members of the Senate and the House on setting priorities for how we provide support, financial support, technical assistance, we are happy to work with you and others on that.

Also, in the process that the ILO has promised to do, which is to monitor these countries' own progress, we are happy to work with you on that process. But we are not prepared to re-negotiate the agreement, which is what

this amendment would require.

Senator Bingaman. But I am right, am I not--and I think Senator Kerry made this point, too--the ILO standards are currently applicable in these countries under the Caribbean Basin Initiative, which is currently operating. They will not be applicable once CAFTA is in place. Is that right, or no?

Mr. Allgeier. No, that is not correct. In the CBI and the GSP, the requirement is that they be "taking steps to implement ILO standards." Now, five of these countries have already ratified eight of the ILO conventions and they are embodied in their law. One of them, El Salvador, has ratified six. All of them have ratified more of these than the United States, by the way. So they are part of their law, or part of their legal system and obligations.

So they, in effect, have gone further than CBI in terms of taking steps to implement these. They have ratified them and now they are in this program with us that will improve the enforcement of these.

The Chairman. All right.

Senator Schumer? Then we will vote.

Senator Schumer. Yes. Here is my understanding. Let me just see if we get agreement there. Under CBI, the countries agreed to move towards ILO standards, and

did.

But under CBI, if for some reason they did not move forward, they regressed, they did not enforce them at all, they said, all right, we are going to have no child labor laws, but the worst kind of child labor was there, we, the United States, under CBI, could impose trade sanctions.

Now if that happens, they pass CBI, but you have all these companies employing 8-year-olds for 80 hours a week, and the government, whoever it may be, of one of these countries says, we are not going to enforce it, we are powerless to do anything about it.

That is what the amendment we have is all about. It is not imposing different standards. They have adopted ILO standards. It is how you enforce it. We have virtually no enforcement mechanism. We have regressed.

Under CBI, we did have our own enforcement mechanism that we could do something about if they totally abnegated what they said they were doing, something hardly unheard of in many of these countries where their constitution and what happens are quite different. But now we would lose that ability to impose our own sanctions. Is that not correct?

Mr. Allgeier. No.

Senator Schumer. Why not?

Mr. Allgeier. Because, if they do not effectively enforce their labor laws, we can initiate a dispute settlement process under the CAFTA, and it is more than consultation. If the panel determines that they are not effectively enforcing their labor laws, then fines can be imposed. These fines must be --

Senator Kerry. Not outside of domestic law.

Mr. Allgeier. Pardon me?

Senator Kerry. Not outside of domestic law.

Senator Schumer. Not the ILO standards.

Senator Kerry. They cannot do that.

Mr. Allgeier. They have adopted the ILO conventions, more conventions than we have.

Senator Schumer. And let us say tomorrow they repeal them.

Mr. Allgeier. They are part of their legal system. Some of these have --

Senator Schumer. No. Look, sir, could they repeal them? Yes or no?

Mr. Allgeier. These are processes under the ILO that I suppose you can withdraw from conventions.

Senator Schumer. Yes. All right. Then what would we have as a recourse? Anything, if we passed CAFTA?

Mr. Allgeier. Yes, we would.

Senator Kerry. Here is the problem.

Senator Baucus. Mr. Chairman?

Senator Kerry. If I could simply point out to the administration, the distinction is, the problem is, that while, yes, some of them have "adopted" the standards, they have not put them in the civil code of their countries. They are not codified.

Therefore, they do not qualify as the domestic law of the country, so, in effect, they are outside of the enforcement mechanism. The fact is--and everybody has written about this. There is not a critical analysis of CAFTA that does not make it clear--that GSP and CBI go out once CAFTA comes in. So the Senator from New York is absolutely correct. We lose that enforcement mechanism.

I would say to the Senator from Kentucky, again, I come to this having voted for every single trade agreement. I am looking at this, though, and seeing countless numbers of workers across America, in your State and a lot of States, who just do not feel that this thing is fair.

When they see that a company can come in and have all kinds of procedures available to them to get patent rights enforced, which I am all for, intellectual property rights enforced, which I am all for, I have got a lot of those companies in Massachusetts, but they also see that there is a completely lower tier, second tier

process which is not even comprehensive, to be able to deal with workers who are competing against children who are being abused.

Now, if you want to talk about values, the value system of our country should not embrace something that allows children to be abused to take jobs away from Americans. That is what this is about. Are you going to have a fair playing field in which you have an equal process? Now, the administration says, we do not want to go back and do it. Well, tough. They ought to go back and do it.

Senator Schumer. Exactly.

Senator Kerry. They ought to go back and negotiate the fair process on both levels, and that is what this is about.

Senator Schumer. Hear, hear.

Senator Kerry. Is the Finance Committee going to stand up and say, yes, go back and try to get something? Because I will tell you, the people I have talked to down there, they are perfectly prepared to put this on a fair and equal footing, and I think we ought to do it.

Senator Schumer. Mr. Chairman, one other point.

The Chairman. All right. Quickly.

Senator Schumer. If we do not do this, they will do it again and again. Of course we should send them back.

This is a mock mark-up, obviously, but we should say that certain rudimentary standards in terms of child labor and other types of things should be part of these agreements. This administration, in their negotiations, took not the provisions out, but the ability to enforce them out.

This $15 million fine. You know what that says? Small companies are susceptible to this and large companies that do it, it is just the cost of doing business. I mean, that does not make any sense either. So, of course we ought to send it back.

To me, again, I would like to support this. As I said, I do not have problems with a lot of the other provisions that some people do, but not with this. When you go backward from CBI, and we were all promised in CBI that one of the linchpins of CBI was that there would be enforcement, that we could enforce if the ILO standards were not met.

You take a step back on that. Well, you are not taking a step back, you are going forward on all these other types of enforcement provisions. It creates an imbalance, an unfairness. I think if we voted for this provision, maybe they would strike it so they would not have to go back and negotiate, but at least we would send a message: do not do it on the next one.

Senator Bunning. Mr. Chairman, I just want to

respond. It will take me two minutes.

The Chairman. Senator Baucus wanted the floor, too.

Senator Bunning. Go ahead, Senator Baucus.

Senator Baucus. Well, Mr. Chairman, I am going to support the amendment. The sad part of all this is, we have been going backwards since the Jordan agreement. When we negotiated the Jordan agreement, we took on the big, tough challenge of labor rights and environmental rights and worked with the administration and got some good, solid provisions in it.

The understanding then was that that was going to be the floor. They were going to begin work in subsequent agreements to try to raise the floor reasonably. In some ways, it seemed to make the most sense, but at least not go backwards.

Regrettably, in subsequent agreements, in Australia and Chile, we, on labor rights, have gone backwards, that is, not saying that all the labor provisions should be subject to enforcement. I think we did that for various reasons. I was not wild about it, but I did not fight it at the time. I think it is happening, to be honest, because the administration, frankly, does not want to enforce labor provisions and agreements. They just do not want to do that.

I think there is a certain segment in this country

that has been very vocal, particularly in recent days, who is opposed to moving that direction. That is why we have not done it and that is why we are going backwards here on this agreement with CAFTA compared with Jordan.

I say that the administration really should work with Congress and work with those in labor who want to do something meaningful on labor. Nobody is asking for the moon here. They are just asking to do something that is appropriate.

There are all kinds of ways to deal with labor provisions with a little bit of labor provisions with a little bit of creativity and a little bit of imagination, but in good faith. It is sad that the administration has not dealt, at least in my view, in good faith on the labor provisions. I

support the Kerry amendment because I think it is important to, A) address the substance, and B) make it clear that Congress is going to rightfully play a co-equal role in drafting these trade agreements, exercising our constitutional responsibility.

Otherwise, administrations--I do not care who it is--are going to basically going to just barely tolerate Congress and go their own way. I think they are doing so at the peril of American support for trade.

When the TPA comes up for renewal not too long from

now, unless this administration really does try to deal in a good-faith way with labor provisions--with provisions generally, but in this case especially with labor--I think they are going to find that the so-called trade fatigue some of us have been talking about is just going to get worse and worse and they are going to have a hard time getting TPA passed.

I just think it is a good amendment, and I support it.

The Chairman. What did you want to follow up on, Senator Bunning? I would like to vote.

Senator Bunning. I wanted to follow up on our inconsistency here. For those of us who objected to most favored nation status for China for so long and for so many reasons, most of them I understand that China has very strong child labor laws and never enforces them. Never. They probably do not even ever go into a shop to inspect anything that is going on. We have allowed, through our cooperation, China to get into the WTO.

My gut feeling is, the inconsistency here on this particular trade agreement, where already we are accepting 85 percent of their goods without tariffs now, the inconsistency to insist that there may be a small portion of the labor law that we cannot insist that the other countries follow in regards to our labor law, I

think, is highly unusual and should not be done.

There is no one who would not like to see child labor laws strengthened around the world, but the United States does not have that power. If you need any verification, just take your trip to China and go into some kind of sweat shop over there that is making shoes for America's feet. I think you would agree with me. Thank you, Mr. Chairman.

The Chairman. Senator Kerry, I would like to vote. We can carry this discussion on for a long time, and we have not even dealt with sugar yet.

Senator Kerry. I know that, Mr. Chairman. [Laughter]. But it is an important topic.

The Chairman. Could you respond in 60 seconds, please?

Senator Kerry. You bet. I am very familiar with the China situation. I serve as Ranking Member of the China Subcommittee. I have been there a number of times. I have had them try to sell disks to me right around the corner from our own embassy, where they selling them for 20 cents, or whatever it is. So, I understand. I am screaming about that, too.

I think what has happened is, we have not been strong enough in enforcing our own agreements and in demanding that playing field, so the currency manipulations, the

intellectual property theft, some $24 billion a year. Now, the question is, when are you going to say enough is enough? We have got to stand up and fight for that playing field.

For five years now, I have been talking about the increasing problem of enforcement and the diminishing consensus for trade, not just in out country, but around the world. I believe in trade. I think what I am proposing is the way you reestablish credibility so we can continue to trade. But we are fracturing it and we are fraying it at the edges, and that is what I think we have to fight.

The Chairman. Now, the vote is on the Kerry amendment. The Clerk will call the roll.

The Clerk. Mr. Hatch?

The Chairman. No, by proxy.

The Clerk. Mr. Lott?

Senator Lott. No.

The Clerk. Ms. Snowe?

Senator Snowe. Aye.

The Clerk. Mr. Kyl?

The Chairman. No, by proxy.

The Clerk. Mr. Thomas?

Senator Thomas. No.

The Clerk. Mr. Santorum?

The Chairman. No, by proxy.
The Clerk. Mr. Frist?
The Chairman. No, by proxy.
The Clerk. Mr. Smith?
The Chairman. No, by proxy.
The Clerk. Mr. Bunning?
Senator Bunning. No.
The Clerk. Mr. Crapo?
Senator Crapo. No.
The Clerk. Mr. Baucus?
Senator Baucus. Aye.
The Clerk. Mr. Rockefeller?
Senator Rockefeller. Aye.
The Clerk. Mr. Conrad?
Senator Conrad. Aye.
The Clerk. Mr. Jeffords?
Senator Baucus. Aye, by proxy.
The Clerk. Mr. Bingaman?
Senator Bingaman. Aye.
The Clerk. Mr. Kerry?
Senator Kerry. Aye.
The Clerk. Mrs. Lincoln?
Senator Lincoln. Aye.
The Clerk. Mr. Wyden?
Senator Wyden. Aye.

The Clerk. Mr. Schumer?

Senator Schumer. Aye.

The Clerk. Mr. Chairman?

The Chairman. Aye. No. No, no, no. [Laughter]. Just seeing if we were alert. [Laughter].

The Clerk. Mr. Chairman, the tally is 10 ayes, 10 nays.

The Chairman. All right. By that vote, the Kerry amendment is defeated.

Next amendment? Next amendment?

[No response]

The Chairman. All right. Then we are ready for a roll call vote. Those in favor of this bill being reported to the administration, say aye. Those opposed, say no. The Clerk will call the roll.

The Clerk. Mr. Hatch?

The Chairman. Aye, by proxy.

The Clerk. Mr. Lott?

Senator Lott. Aye.

The Clerk. Ms. Snowe?

Senator Snowe. No.

The Clerk. Mr. Kyl?

The Chairman. Aye, by proxy.

The Clerk. Mr. Thomas?

Senator Thomas. Pass for a minute.

The Clerk. Mr. Santorum?
The Chairman. Aye, by proxy.
The Clerk. Mr. Frist?
The Chairman. Aye, by proxy.
The Clerk. Mr. Smith?
The Chairman. Aye, by proxy.
The Clerk. Mr. Bunning?
Senator Bunning. Aye.
The Clerk. Mr. Crapo?
Senator Crapo. No.
The Clerk. Mr. Baucus?
Senator Baucus. No.
The Clerk. Mr. Rockefeller?
Senator Rockefeller. No.
The Clerk. Mr. Conrad?
Senator Conrad. No.
The Clerk. Mr. Jeffords?
Senator Jeffords. Pass.
The Clerk. Mr. Bingaman?
Senator Bingaman. Mr. Chairman, could I just ask, are we coming back to do another vote on reporting this after we get this implementing language back from the administration?
The Chairman. I think we had that discussion earlier in the meeting, and this does come before the

committee for final reporting before it goes to the floor.

Senator Bingaman. So there will be another vote.

The Chairman. Yes.

Senator Bingaman. I vote no.

The Clerk. Mr. Kerry?

Senator Kerry. No.

The Clerk. Mrs. Lincoln?

Senator Lincoln. Aye.

The Clerk. Mr. Wyden?

Senator Wyden. Aye.

The Clerk. Mr. Schumer?

Senator Schumer. No.

The Clerk. Mr. Chairman?

The Chairman. Aye.

Senator Baucus. Mr. Chairman? This affects the tally.

The Chairman. What does?

Senator Baucus. What I am going to announce.

The Chairman. All right. Go ahead.

Senator Baucus. Mr. Chairman, Senator Jeffords votes "no" by proxy.

The Clerk. Mr. Jeffords, no by proxy.

Senator Thomas. Mr. Chairman, I am going to vote "aye." I am looking for this meeting. I have got a

promise from the administration, there will be other votes. I vote "aye."

The Chairman. All right.

The Clerk. Mr. Thomas votes aye.

Mr. Chairman, the tally is 11 ayes, 9 nays.

The Chairman. All right. The recommendations are reported to the administration.

Senator Conrad. Mr. Chairman, can you count proxies in this?

The Chairman. The next step we have, we cannot use proxies.

Senator Conrad. But you can use proxies here today?

The Chairman. Yes.

Senator Conrad. Mr. Chairman, might I just review that? Because we were told, at least at a staff level, that proxies would not count, that people could make a proxy vote, but that proxies would not count.

Senator Thomas. If they are good any other time, why not now?

Senator Conrad. We are told that proxies, for the purpose of reporting this, do not count.

The Chairman. In consultation, the reason I ruled the way I did, is because this bill obviously comes back when it is presented to the Congress by the administration. This committee will vote on it, and that

is the vote of the committee for reporting the bill to the Senate. These are recommendations to the administration.

But in consultation with the Ranking Member, we will disregard the vote we had now and we will recess the committee until we can vote off the floor and have everybody present and not have proxies.

Senator Baucus. If I might, Mr. Chairman.

The Chairman. Go ahead.

Senator Baucus. I would say, Mr. Chairman, the point being, the Senator from North Dakota is correct as to the rules of the Senate. We just think it is appropriate that the same rules apply here, and we will have a subsequent vote. We know what the outcome will be, but we should follow the rules.

[Whereupon, at 1:06 p.m. the meeting was recessed.]

AFTER RECESS

[Whereupon, at 5:37 p.m. the meeting was reconvened in Room 211, The Capitol.]

The Chairman. I would like to convene this meeting of today's executive session.

Earlier today there was some confusion regarding the vote on approving the committee's recommendations, as amended.

Committee rules do not permit proxy votes to report a measure or a matter. Because the committee is engaged in informal consideration of draft implementing legislation and not actually reporting a measure, I felt at that time proxy votes should count.

However, other members of the committee disagreed, so I want to accommodate everybody. So, I am reconvening this meeting in order to re-vote our recommendations.

I now move that the committee approve the committee's recommendations for the proposed implementing bill for the U.S.-Central America Free Trade Agreement, as amended. A quorum being present, I ask the Clerk to call the roll.

We can record proxy votes.

The Clerk. Mr. Hatch?

The Chairman. Put Hatch down as "aye."

The Clerk. Mr. Lott?

Senator Lott. Aye.

The Clerk. Ms. Snowe?

The Chairman. I do not have her recent vote or proxy.

Senator Snowe. No..

The Clerk. Mr. Kyl?

Senator Kyl. Aye.

The Clerk. Mr. Thomas?

Senator Thomas. Do I have to say "aye" again? [Laughter].

The Clerk. Mr. Santorum?

Senator Santorum. Aye.

The Clerk. Mr. Frist?

Senator Frist. Aye.

The Clerk. Mr. Smith?

Senator Smith. Aye.

The Clerk. Mr. Bunning?

Senator Bunning. Aye.

The Clerk. Mr. Crapo?

The Chairman. I do not have permission to vote Mr. Crapo's proxy, unless someone on the staff can tell me. We have had agreement with the Democratic Leader that we can have a rolling quorum, so if Mr. Hatch or Mr. Crapo comes in, they will be able to cast their votes.

The Clerk. Mr. Baucus?

Senator Baucus. No.

The Clerk. Mr. Rockefeller?

Senator Rockefeller. No.

The Clerk. Mr. Conrad?

Senator Conrad. No.

The Clerk. Mr. Jeffords?

Senator Jeffords. No.

The Clerk. Mr. Bingaman?

Senator Baucus. No, by proxy.

The Clerk. Mr. Kerry?

Senator Kerry. No.

The Clerk. Mrs. Lincoln?

Senator Lincoln. Aye.

The Clerk. Mr. Wyden?

Senator Wyden. Aye.

The Clerk. Mr. Schumer?

Senator Schumer. No.

The Clerk. Mr. Chairman?

The Chairman. Aye.

Mr. Crapo?

Senator Crapo. No.

Senator Lott. Could I clarify, again? A rolling vote has been agreed to?

The Chairman. Yes. So we need to get every member in here to vote. You guys can go.

The Clerk. Mr. Chairman, the tally, including the proxies, is 11 ayes, 9 nays. The tally of members present is 11 ayes, 8 nays.

The Chairman. All right. The results are positive.

I want to thank Senator Baucus and all the Democrats that worked with us to bring this to finality. I appreciate it very much. Thank you.

We are adjourned.

[Whereupon, at 5:53 p.m. the meeting was concluded.]

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UNITED STATES SENATE
COMMITTEE ON FINANCE

Charles E. Grassley, Chairman

Tuesday, June 14, 2005

628 Dirksen Senate Office Building

Agenda for Business Meeting

Proposed legislation implementing the U.S.-Central America-Dominican Republic Free Trade Agreement

PRE-DECISIONAL – FOR INTERNAL USG USE ONLY
DRAFT 6/8/05

THE DOMINICAN REPUBLIC – CENTRAL AMERICA – UNITED STATES FREE TRADE AGREEMENT IMPLEMENTATION ACT

STATEMENT OF ADMINISTRATIVE ACTION

This Statement of Administrative Action ("Statement") is submitted to the Congress in compliance with section 2105(a)(1)(C)(ii) of the Bipartisan Trade Promotion Authority Act of 2002 ("TPA Act") and accompanies the implementing bill for the free trade agreement that the United States has concluded with Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua (collectively "Central America" or "Central American countries") and the Dominican Republic ("Agreement" or "CAFTA-DR"). The bill approves and makes statutory changes necessary or appropriate to implement the Agreement, which the United States Trade Representative signed on August 5, 2004.

This Statement describes significant administrative actions proposed to implement U.S. obligations under the Agreement.

In addition, incorporated into this Statement are two other statements required under section 2105(a) of the TPA Act: (1) an explanation of how the implementing bill and proposed administrative action will change or affect existing law; and (2) a statement setting forth the reasons why the implementing bill and proposed administrative action are necessary or appropriate to carry out the Agreement. The Agreement does not change the provisions of any agreement the United States has previously negotiated with the other parties to the Agreement.

For ease of reference, this Statement generally follows the organization of the Agreement, with the exception of grouping the general provisions of the Agreement (Chapters One, Two, and Eighteen through Twenty-Two) at the beginning of the discussion.

For each chapter of the Agreement, the Statement describes the pertinent provisions of the implementing bill, explaining how the bill changes or affects existing law, and stating why those provisions are necessary or appropriate to implement the Agreement. The Statement then describes the administrative action proposed to implement the particular chapter of the Agreement, explaining how the proposed action changes existing administrative practice or authorizes further action and stating why such actions are necessary or appropriate to implement the Agreement.

It should be noted that this Statement does not, for the most part, discuss those many instances in which U.S. law or administrative practice will remain unchanged under the Agreement. In many cases, U.S. laws and regulations are already in conformity with the obligations assumed under the Agreement.

Finally, references in this Statement to particular sections of U.S. statutes are based on

those statutes in effect as of the date this Statement was submitted to the Congress.

Chapters:
One (Initial Provisions)
Two (General Definitions)
Eighteen (Transparency)
Nineteen (Administration of the Agreement and Trade Capacity Building)
Twenty (Dispute Settlement)
Twenty-One (Exceptions)
Twenty-Two (Final Provisions)

1. Implementing Bill

a. Congressional Approval

Section 101(a) of the implementing bill provides Congressional approval for the Agreement and this Statement, as required by sections 2103(b)(3) and 2105(a)(1) of the TPA Act.

b. Entry into Force

Under Article 22.5, the Agreement will enter into force once the United States and at least one other country that has signed the Agreement notify the General Secretariat of the Organization of American States ("OAS"), which serves as the depositary for the Agreement, that they have fulfilled their internal procedures needed to implement the Agreement. Thereafter, the Agreement will enter into force between the United States and any remaining countries 90 days after they provide their notifications to the OAS.

Section 101(b) of the implementing bill provides that when the President determines that other countries that have signed the Agreement have taken measures necessary to comply with those obligations that are to take effect at the time the Agreement enters into force, the President is authorized to provide for the Agreement to enter into force with respect to those countries that provide for the Agreement to enter into force for them.

Certain provisions of the agreement become effective after the Agreement enters into force. For example, certain provisions relating to customs administration become effective with respect to the Central American countries and the Dominican Republic no later than three years after the Agreement enters into force. Certain procedural obligations relating to government procurement become effective with respect to the Central American countries and the Dominican Republic two years after the Agreement enters into force. For Costa Rica, certain commitments on insurance and telecommunications become effective at specified times after the Agreement enters into force. Certain provisions relating to intellectual property rights become effective with respect to the Central American countries and the Dominican Republic following transition periods ranging from six months to four years after the Agreement enters into force. In addition,

obligations regarding the ratification of certain international agreements governing intellectual property rights take effect at prescribed times after the Agreement enters into force.

c. Relationship to Federal Law

Section 102(a) of the bill establishes the relationship between the Agreement and U.S. law. The implementing bill, including the authority granted to federal agencies to promulgate implementing regulations, is intended to bring U.S. law fully into compliance with U.S. obligations under the Agreement. The bill accomplishes that objective with respect to federal legislation by amending existing federal statutes that would otherwise be inconsistent with the Agreement and, in certain instances, by creating entirely new provisions of law.

Section 102(a) clarifies that no provision of the Agreement will be given effect under domestic law if it is inconsistent with federal law, including provisions of federal law enacted or amended by the bill. Section 102(a) will not prevent implementation of federal statutes consistent with the Agreement, where permissible under the terms of such statutes. Rather, the section reflects the Congressional view that necessary changes in federal statutes should be specifically enacted rather than provided for in a blanket preemption of federal statutes by the Agreement.

The Administration has made every effort to include all laws in the implementing bill and to identify all administrative actions in this Statement that must be changed in order to conform with the new U.S. rights and obligations arising from the Agreement. Those include both regulations resulting from statutory changes in the bill itself and changes in laws, regulations, rules, and orders that can be implemented without a change in the underlying U.S. statute.

Accordingly, at this time it is the expectation of the Administration that no changes in existing federal law, rules, regulations, or orders other than those specifically indicated in the implementing bill and this Statement will be required to implement the new international obligations that the United States will assume under the Agreement. This is without prejudice to the President's continuing responsibility and authority to carry out U.S. law and agreements. As experience under the Agreement is gained over time, other or different administrative actions may be taken in accordance with applicable law to implement the Agreement. If additional action is called for, the Administration will seek legislation from Congress or, if a change in regulation is required, follow normal agency procedures for amending regulations.

d. Relationship to State Law

The Agreement's rules generally cover state and local laws and regulations, as well as those at the federal level. There are a number of exceptions to, or limitations on, this general rule, however, particularly in the areas of government procurement, labor and environment, investment, and cross-border trade in services and financial services.

The Agreement does not automatically "preempt" or invalidate state laws that do not conform to the Agreement's rules, even if a dispute settlement panel were to find a state measure inconsistent with the Agreement. The United States is free under the Agreement to determine how it will conform with the Agreement's rules at the federal and non-federal level. The Administration is committed to carrying out U.S. obligations under the Agreement, as they apply to the states, through the greatest possible degree of state-federal consultation and cooperation.

Section 102(b)(1) of the bill makes clear that only the United States is entitled to bring an action in court in the event that there is an unresolved conflict between a state law, or the application of a state law, and the Agreement. The authority conferred on the United States under this paragraph is intended to be used only as a "last resort," in the unlikely event that efforts to achieve consistency through consultations have not succeeded.

The reference in section 102(b)(2) of the bill to the business of insurance is required by virtue of section 2 of the McCarran-Ferguson Act (15 U.S.C. 1012). That section states that no federal statute shall be construed to supersede any state law regulating or taxing the business of insurance unless the federal statute "specifically relates to the business of insurance." Certain provisions of the Agreement (for example, Chapter Twelve, relating to financial services) do apply to state measures regulating the insurance business, although "grandfathering" provisions in Chapter Twelve exempt existing inconsistent (*i.e.*, "non-conforming") measures.

Given the provision of the McCarran-Ferguson Act, the implementing act must make specific reference to the business of insurance in order for the Agreement's provisions covering the insurance business to be given effect with respect to state insurance law. Insurance is otherwise treated in the same manner under the Agreement and the implementing bill as other financial services under the Agreement.

e. Private Lawsuits

Section 102(c) of the implementing bill precludes any private right of action or remedy against a federal, state, or local government, or against a private party, based on the provisions of the Agreement. A private party thus could not sue (or defend a suit against) the United States, a state, or a private party on grounds of consistency (or inconsistency) with the Agreement. The provision also precludes a private right of action attempting to require, preclude, or modify federal or state action on grounds such as an allegation that the government is required to exercise discretionary authority or general "public interest" authority under other provisions of law in conformity with the Agreement.

With respect to the states, section 102(c) represents a determination by the Congress and the Administration that private lawsuits are not an appropriate means for ensuring state compliance with the Agreement. Suits of this nature may interfere with the Administration's conduct of trade and foreign relations and with suitable resolution of disagreements or disputes under the Agreement.

Section 102(c) does not preclude a private party from submitting a claim against the United States to arbitration under Chapter Ten (Investment) of the Agreement or seeking to enforce an award against the United States issued pursuant to such arbitration. The provision also would not preclude any agency of government from considering, or entertaining argument on, whether its action or proposed action is consistent with the Agreement, although any change in agency action would have to be consistent with domestic law.

f. Implementing Regulations

Section 103(a) of the bill provides the authority for new or amended regulations to be issued, and for the President to proclaim actions implementing the provisions of the Agreement, as of the date the Agreement enters into force. Section 103(b) of the bill requires that, whenever possible, all federal regulations required or authorized under the bill and those proposed in this Statement as necessary or appropriate to implement immediately applicable U.S. obligations under the Agreement are to be developed and promulgated within one year of the Agreement's entry into force. In practice, the Administration intends, wherever possible, to amend or issue the other regulations required to implement U.S. obligations under the Agreement at the time the Agreement enters into force. The process for issuing regulations pursuant to this authority will comply with the requirements of the Administrative Procedures Act, including requirements to provide notice of and an opportunity for public comment on such regulations. If issuance of any regulation will occur more than one year after the date provided in section 103(b), the officer responsible for issuing such regulation will notify the relevant committees of both Houses of Congress of the delay, the reasons for such delay, and the expected date for issuance of the regulation. Such notice will be provided at least 30 days prior to the end of the one-year period.

g. Dispute Settlement

Section 105(a) of the bill authorizes the President to establish within the Department of Commerce an office responsible for providing administrative assistance to dispute settlement panels established under Chapter Twenty of the Agreement. This provision enables the United States to implement its obligations under Article 19.3.1 of the Agreement. This office will not be an "agency" within the meaning of 5 U.S.C. 552, consistent with treatment provided under other U.S. free trade agreements, including the North American Free Trade Agreement ("NAFTA") and free trade agreements with Australia, Chile, and Singapore. Thus, for example, the office will not be subject to the Freedom of Information Act or the Government in the Sunshine Act. Since they are international bodies, panels established under Chapter Twenty are not subject to those acts.

Section 105(b) of the bill authorizes the appropriation of funds to support the office established pursuant to section 105(a).

h. Effective Dates

Section 107(b) of the bill provides that the first three sections of the bill as well as Title I of the bill go into effect when the bill is enacted into law.

Section 107(a) provides that the other provisions of the bill and the amendments to other statutes made by the bill take effect on the date on which the Agreement enters into force. Section 107(c) provides that the provisions of the bill (other than section 107(c) itself) and the amendments to other statutes made by the bill will cease to have effect with respect to a country during any period in which it ceases to be an Agreement country. (Note: for purposes of this statement, the term "Agreement country" refers to a Party to the Agreement other than the United States.) Section 107(d) provides that the provisions of the bill (other than section 107(d) itself) and the amendments to other statutes made by the bill will cease to be effective if the United States withdraws from the Agreement or it terminates.

2. Administrative Action

No administrative changes will be necessary to implement Chapters One, Two, Nineteen, Twenty-One, and Twenty-Two.

Article 18.1.1 of the Agreement requires each government to designate a contact point to facilitate communications regarding the Agreement. The Office of the United States Trade Representative ("USTR") will serve as the U.S. contact point for this purpose.

The Agreement calls for the United States and the other Agreement countries to develop rosters of independent experts willing to serve as panelists to settle disputes between the parties that may arise under the Agreement. One roster will be available for most types of disputes, while specialized rosters will be established to address disputes regarding the Agreement's financial services, labor, and environmental provisions. USTR will consult with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate ("Trade Committees") as it develops rosters of panelists.

Chapter Three (National Treatment and Market Access for Goods)

1. Implementing Bill

a. Proclamation Authority

Section 201(a)(1) of the bill grants the President authority to implement by proclamation U.S. rights and obligations under Chapter Three of the Agreement through the application or elimination of customs duties and tariff-rate quotas ("TRQs"). Section 201(a)(1) authorizes the President to:

- modify or continue any duty;
- keep in place duty-free or excise treatment; or
- impose any duty

that the President determines to be necessary or appropriate to carry out or apply Articles 3.3, 3.5, 3.6, 3.21, 3.26, 3.27, and 3.28, and Annexes 3.3, 3.27, and 3.28 of the Agreement.

The proclamation authority with respect to Article 3.3 authorizes the President to provide for the continuation, phase-out, and elimination, according to the Schedule of the United States to Annex 3.3 of the Agreement, of customs duties on imports from the other Agreement countries that meet the Agreement's rules of origin.

The proclamation authority with respect to Articles 3.5 and 3.6 authorizes the President to provide for the elimination of duties on particular categories of imports from the other Agreement countries. Article 3.5 pertains to the temporary admission of certain goods, such as commercial samples, goods intended for display at an exhibition, and goods necessary for carrying out the business activity of a person who qualifies for temporary entry into the United States. Article 3.6 pertains to the importation of goods: (i) returned to the United States after undergoing repair or alteration in another Agreement country; or (ii) sent from another Agreement country for repair or alteration in the United States.

The proclamation authority with respect to Article 3.21 authorizes the President to provide duty-free treatment for textile or apparel articles that the United States and another Agreement country agree are handloomed, handmade, or folklore articles, and are certified as such by that country's competent authority.

The proclamation authority with respect to Article 3.26 of the Agreement authorizes the President to reduce the amount of duty imposed on certain textile or apparel goods that are not "originating goods" for purposes of the Agreement, but that contain U.S.-origin components. The President is authorized to proclaim a duty rate equal to the applicable normal trade relations (most-favored-nation) ("NTR (MFN)") rate of duty applied to the value of the good minus the value of U.S. components (*e.g.*, fabric). To qualify for this duty treatment the good must be made with U.S. fabric or knit-to-shape components and assembled in an Agreement country with U.S. thread. The U.S. fabric may be cut in one or more Agreement countries.

The proclamation authority with respect to Articles 3.27 and 3.28 and Annexes 3.27 and 3.28 of the Agreement authorizes the President to provide preferential tariff treatment to certain apparel goods of Costa Rica and Nicaragua, respectively, that do not satisfy the Agreement's rules of origin. This treatment is limited to annual quantities specified in the annexes.

Sections 201(a)(2) and (3) of the bill address the status of Agreement countries as designated beneficiary countries under the following U.S. trade preference programs: (i) the Generalized System of Preferences; (ii) the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701 *et seq.*) ("CBERA"); and (iii) the United States – Caribbean Basin Trade Partnership Act, Pub. Law 106-200 ("CBTPA"), which amended the CBERA to provide additional tariff preferences to beneficiary countries for certain goods, including certain textile and apparel goods.

Section 201(a)(2) of the bill requires the President to withdraw beneficiary country status under the Generalized System of Preferences from Agreement countries once the Agreement takes effect for them.

Section 201(a)(3) of the bill requires the President to withdraw beneficiary country status under the CBERA from Agreement countries once the Agreement takes effect for them. The requirement to terminate CBERA beneficiary status is subject to three exceptions, however, which are set out in section 201(a)(3)(B).

The first exception implements Article 8.8.1 of the Agreement, which provides that the United States will continue to treat Agreement countries as CBERA beneficiary countries for purposes of Sections 771(7)(G)(ii)(III) and 771(7)(H) of the Tariff Act of 1930 (19 U.S.C. 1677(7)(G)(ii)(III) and 1677(7)(H)). Those provisions preclude the U.S. International Trade Commission ("ITC") from aggregating (or "cumulating") imports from CBERA beneficiary countries with imports from non-beneficiary countries in determining in antidumping and countervailing duty investigations whether a U.S. industry is materially injured or threatened with material injury by reason of dumped or subsidized imports of a particular product from such beneficiary countries.

The second exception will permit the President to implement the duty free treatment provided under paragraph 12 of Appendix I of the General Notes to the Schedule of the United States to Annex 3.3 of the Agreement.

The third exception provides that the Agreement countries will continue to be considered CBERA beneficiary countries for purposes of section 274(h)(6)(B) of the Internal Revenue Code (26 U.S.C. 274(h)(6)(B)). Section 274(h) limits taxpayer deductions for expenses incurred in attending conventions, seminars, or similar meetings abroad. The rule does not apply with respect to conventions, seminars, or similar meetings held in CBERA beneficiary countries if the countries meet certain tests. This third exception would maintain the status quo with respect to this tax provision, thereby preserving an existing benefit for the Agreement countries.

Section 213(b)(5)(D) of the CBERA, as amended by the CBTPA, provides that CBTPA benefits terminate with respect to any CBTPA beneficiary country on entry into force of a free trade agreement between that country and the United States. The President's proclamation implementing the Agreement will reflect the termination of CBTPA benefits for Agreement

countries.

Section 402 of the bill makes several amendments to the CBERA in light of the fact that the Agreement countries will no longer be beneficiary countries for purposes of the CBERA or the CBTPA once the Agreement takes effect for them. Consistent with the commitment that the United States made during the course of the Agreement negotiations, the purpose of the amendments is to ensure, to the extent possible, that the remaining beneficiary countries under these preference programs are not adversely impacted as a consequence of the removal of the Agreement countries from the CBERA and CBTPA programs. To this end, the amendments generally will ensure that goods produced through a combination of operations in a beneficiary country and an Agreement country that would have qualified for preferential treatment under the CBERA or CBTPA before the Agreement took effect will continue to qualify for this treatment after the Agreement takes effect. The amendments do not provide new benefits for the remaining beneficiary countries or the Agreement countries; rather the amendments preserve benefits the remaining beneficiary countries already have under the CBERA and CBTPA.

CBERA Program: Subsection 402(b) of the bill amends section 212(b) of the CBERA to delete the Agreement countries from the list of countries that the President may designate as beneficiary countries. The amendment takes effect with respect to each country on the date on which the President terminates the country's designation as a beneficiary country pursuant to section 201(a)(3) of the bill. Section 402(a) of the bill amends section 212(a)(1) of the CBERA to define the term "former beneficiary country" to mean a country that has ceased to be designated as a beneficiary country by reason of its becoming a party to a free trade agreement with the United States.

Section 213(a)(1) of the CBERA provides that for a good to qualify for duty-free treatment, the sum of the cost or value of materials produced in one or more beneficiary countries and the direct costs of processing operations performed in one or more beneficiary countries must be at least 35 percent of the appraised value of the good at the time of entry into the United States. Puerto Rico and the U.S. Virgin Islands are included within the term "beneficiary country" for purposes of satisfying the 35 percent valued added requirement. Section 402(c) of the bill amends section 213(a)(1) of the CBERA to provide that the term "beneficiary country" also includes "former beneficiary countries" for purposes of determining whether the 35 percent value added test has been satisfied. This amendment will ensure that producers and exporters in the remaining CBERA beneficiary countries will be able to continue to use materials of and processing performed in the Agreement countries to satisfy the 35 percent value added test for establishing the eligibility of their goods for duty-free treatment under the CBERA.

CBTPA Program: Section 402(d) of the bill adds subparagraphs (G) and (H) to 213(b)(5) of the CBERA. Subparagraph (G) defines the term "former CBTPA beneficiary country" to mean a country that has ceased to be designated as a CBTPA beneficiary country by reason of its becoming a party to a free trade agreement with the United States. Subparagraph (H) provides

that a "former CBTPA beneficiary country" will be considered a CBTPA beneficiary country for purposes of determining the eligibility of a good for preferential treatment under section 213(b)(2) of the CBERA (for certain textile and apparel articles) and section 213(b)(3) of the CBERA (for certain other goods, including footwear, tuna, petroleum, watches and watch parts, and certain leather goods), provided that the good undergoes some production in one of the remaining beneficiary countries. This amendment ensures that the remaining CBTPA beneficiary countries may continue to obtain preferential treatment for their goods even if the goods contain inputs of an Agreement country or the goods undergo processing in an Agreement country. Subparagraph (H) also provides that a good that meets the requirements of the subparagraph will not be ineligible for preferential treatment under section 213(b)(2) or (3) because the good was imported directly from a former CBTPA beneficiary country. However, in light of the fact that the Agreement countries will no longer be CBTPA beneficiary countries, subparagraph (H) provides that a good that is a good of an Agreement country under U.S. non-preferential rules of origin ("marking rules") is not eligible for preferential treatment pursuant to subparagraph (H). (This limitation does not apply to goods of the Dominican Republic that undergo production in Haiti, in order to maintain the status quo with respect to integrated production operations between those two countries.) See 19 U.S.C. 1304; 19 U.S.C. 3592; 19 C.F.R. 102.21; 19 C.F.R. 134.

Section 201(b) of the bill authorizes the President, subject to the consultation and layover provisions of section 104 of the bill, to:

- modify or continue any duty;
- modify the staging of any duty elimination under the Agreement pursuant to an agreement under Annex 3.3 with one or more Agreement countries;
- keep in place duty-free or excise treatment; or
- impose any duty

by proclamation whenever the President determines it to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to other Agreement countries provided by the Agreement.

Section 104 of the bill sets forth consultation and layover steps that must precede the President's implementation of any duty modification by proclamation. This would include, for example, modifications of duties under section 201(b) of the bill. Under the consultation and layover provisions, the President must obtain the advice of the appropriate private sector advisory committees (pursuant to section 135 of the Trade Act of 1974) and the ITC on the proposed action. The President must submit a report to the Trade Committees setting forth the action proposed, the reasons for the proposed action, and the advice of the private sector and the ITC. The bill sets aside a 60-day period following the date of transmittal of the report for the

President to consult with the Trade Committees on the action. Following the expiration of the 60-day period, the President may proclaim the action.

The President may initiate the consultation and layover process under section 104 of the bill on enactment of the bill. However, under section 103(a), any modifying proclamation cannot take effect until the Agreement enters into force. In addition to modifications of customs duties, these provisions apply to other Presidential proclamation authority provided in the bill that is subject to consultation and layover, such as authority to implement a proposal to modify the Agreement's specific rules of origin pursuant to an agreement with the other Agreement countries under Article 4.14 of the Agreement.

Section 201(c) of the bill provides for the conversion of existing specific or compound rates of duty for various goods to *ad valorem* rates for purposes of implementing the Agreement's customs duty reductions. (A compound rate of duty for a good would be a rate of duty stated, for example, as the sum of X dollars per kilogram plus Y percent of the value of the good.)

b. Agricultural Safeguard

Section 202 of the bill implements the agricultural safeguard provisions of Article 3.15 and Annex 3.15 of the Agreement. Article 3.15 permits the United States to impose an "agricultural safeguard measure," in the form of additional duties, on imports of certain goods of Agreement countries specified in the Schedule of the United States to Annex 3.15 of the Agreement that exceed the volume thresholds set out in that annex.

Section 202(a) of the bill provides the overall contour of the agricultural safeguard rules, including definitions of terms used in the agricultural safeguard provisions. Section 202(a)(2) defines the applicable NTR (MFN) rate of duty for purposes of the agricultural safeguard. Under the Agreement, the sum of the duties assessed under an agricultural safeguard and the applicable rate of duty in the Schedule of the United States to Annex 3.3 of the Agreement may not exceed the general NTR (MFN) rate of duty.

Section 202(a)(3) of the bill defines the "schedule rate of duty" for purposes of the agricultural safeguard as the rate of duty for a good set out in the Schedule of the United States to Annex 3.3 of the Agreement.

Section 202(a)(4) of the bill specifies the products that may be subject to an agricultural safeguard measure. These goods must qualify as originating goods under section 203, except that operations performed in or material obtained from the United States will be considered as if the operations were performed in, and the material was obtained from, a country that is not a party to the Agreement.

Section 202(a)(5) of the bill implements Article 3.15.4 of the Agreement by establishing that no additional duty may be applied on a good if, at the time of entry, the good is subject to a safeguard measure under the procedures set out in Subtitle A of Title III of the bill or under the safeguard procedures set out in chapter 1 of Title II of the Trade Act of 1974.

Section 202(a)(6) of the bill provides that the agricultural safeguard provision ceases to apply with respect to a good on the date on which duty-free treatment must be provided to that good under the Schedule of the United States to Annex 3.3 of the Agreement.

Section 202(a)(7) of the bill implements Article 3.15.6 of the Agreement by directing the Secretary of the Treasury (the "Secretary") within 60 days of the date on which the Secretary first assesses an agricultural safeguard duty on a good to notify the country whose good is subject to the measure and provide that country with supporting data.

Section 202(b) of the bill provides for the Secretary to impose agricultural safeguard duties and explains how the additional duties are to be calculated. The additional duties are triggered in any year when the volume of imports of the good from an Agreement country exceeds 130 percent of the in-quota quantity allocated to that country for the good in that calendar year in the Schedule of the United States to Annex 3.3 of the Agreement. (The in-quota quantities for goods are set out in the Schedule of the United States to Annex 3.3 of the Agreement on a calendar-year basis beginning with "year one." Year one refers to the calendar year in which the Agreement enters into force, even with respect to any country that has signed the Agreement that becomes a Party in a subsequent calendar year.) The additional duties remain in effect only until the end of the calendar year in which they are imposed.

c. Customs User Fees

Section 204 of the bill implements U.S. commitments under Article 3.10.4 of the Agreement, regarding customs user fees on originating goods, by amending section 13031(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)). The amendment provides for the immediate elimination of the merchandise processing fee for goods qualifying as originating goods under Chapter Four of the Agreement. Processing of goods qualifying as originating goods under the Agreement will be financed by money from the General Fund of the Treasury. This is necessary to ensure that the United States complies with obligations under the General Agreement on Tariffs and Trade 1994 by limiting fees charged for the processing of non-originating imports to amounts commensurate with the processing services provided. That is, fees charged on such non-originating imports will not be used to finance the processing of originating imports.

d. Refund of Duties on Textile or Apparel Goods

Article 3.20.1 of the Agreement establishes rules requiring each government to refund customs duties paid on textile or apparel goods imported prior to the entry into force of the

Agreement. Specifically, Article 3.20.1 requires each government to refund customs duties paid on textile or apparel goods of an Agreement country that were imported between January 1, 2004 and the date of entry into force of the Agreement for that country, provided that the goods would have been considered originating goods if the Agreement had been in force when the goods were imported. The refund applies to the extent that the duties paid on the good exceed the applicable duty set out in that country's Schedule to Annex 3.3 of the Agreement. Article 3.20.4 clarifies that the obligation to refund customs duties does not apply with respect to goods that qualify for preferential tariff treatment under Article 3.21, Article 3.27, or Article 3.28 of the Agreement.

Some Agreement countries may not have legal authority to refund duties retroactively. Hence, this obligation does not apply to any Agreement country, or to goods of any Agreement country, that notifies the other governments 90 days before the Agreement enters into force for that country that it will not refund duties under Article 3.20.1. However, Article 3.20.3 establishes an exception if the country agrees to provide benefits to imported textile or apparel goods that the exporting country agrees are equivalent to a refund of excess customs duties.

Section 205 of the bill implements Article 3.20 for the United States. Section 205(a) provides that, notwithstanding section 514 of the Tariff Act of 1930, the Secretary must liquidate or reliquidate entries of textile or apparel goods of an eligible Agreement country made between January 1, 2004, and the date the Agreement enters into force with respect to that country, provided that the goods would have been considered originating goods if the Agreement had been in force at that time. Such liquidations or reliquidations must be at the applicable rate of duty under the Schedule of the United States to Annex 3.3 of the Agreement, and the Secretary will refund any excess customs duties paid on such entries. Section 205(b) provides that the United States Trade Representative will determine, in accordance with Article 3.20, which Agreement countries' goods are eligible for retroactive tariff treatment and will publish a list of such countries in the *Federal Register*. Section 205(c) provides that requests for liquidation or reliquidation under subsection (a) must be filed with the Bureau of Customs and Border Protection ("CBP") and must provide information sufficient for CBP to locate or reconstruct the entry and determine whether the goods in question are eligible for a duty refund.

e. Textile or Apparel Safeguard

Article 3.23 of the Agreement makes remedies available to domestic textile and apparel industries that have sustained or are threatened by serious damage from imports of textile or apparel goods for which duties have been reduced or eliminated under the Agreement. It also sets forth procedures for obtaining such remedies. The Administration does not anticipate that the Agreement will result in injurious increases in textile or apparel imports from the other Agreement countries. Nevertheless, the Agreement's textile or apparel safeguard procedure will ensure that relief is available if needed.

The safeguard mechanism applies when, as a result of the reduction or elimination of a customs duty under the Agreement, textile or apparel goods of an Agreement country are being

imported into the United States in such increased quantities, in absolute or relative terms, and under such conditions as to cause serious damage or actual threat thereof to a U.S. industry producing like or directly competitive goods. In these circumstances, Article 3.23 permits the United States to increase duties on the imported goods to a level that does not exceed the lesser of the prevailing U.S. NTR (MFN) duty rate for the good or the U.S. NTR (MFN) duty rate in effect at the time the Agreement entered into force.

Subtitle B of Title III of the bill (sections 321 through 328) implements the Agreement's textile or apparel safeguard.

Section 321(a) establishes that an interested party may file a request for a textile or apparel safeguard measure with the President, who must review the request to determine whether to commence consideration of the request on its merits. Under section 321(b), if the President determines that the request contains information necessary to warrant consideration on the merits, the President must provide notice in the *Federal Register* stating that the request will be considered and seeking public comments on the request. The notice will contain a summary of the request itself and the dates by which comments and rebuttals must be received. Subject to protection of confidential business information, if any, the full text of the request will be made available on the Department of Commerce, International Trade Administration's website.

Section 322 sets out the procedures to be followed in considering the request. Section 322(a)(1) of the bill provides for the President to determine whether, as a result of the reduction or elimination of a duty provided for under the Agreement, a "CAFTA-DR textile or apparel article" of an Agreement country is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions that imports of the article cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article. Section 301(2) of the bill defines "CAFTA-DR textile or apparel article" to mean an article listed in the Annex to the World Trade Organization ("WTO") Agreement on Textiles and Clothing (other than a good listed in Annex 3.29 of the Agreement) that qualifies as an originating good under section 203(b) of the bill. The President's determination corresponds to the determination required under Article 3.23.1 of the Agreement. Section 322(a)(2) of the bill includes criteria for determining serious damage or actual threat thereof, consistent with Article 3.23.2 of the Agreement. Section 322(a)(3) provides that the President must make his determination no later than 30 days after the conclusion of any consultations with the country that may be subject to the measure.

Section 322(b) of the bill identifies the relief that the President may provide to a U.S. industry that the President determines is facing serious damage or actual threat thereof. Such relief may consist of an increase in tariffs to the lesser of: (i) the NTR (MFN) duty rate in place for the textile or apparel article at the time the relief is granted; or (ii) the NTR (MFN) duty rate for that article on the day before the Agreement entered into force.

Section 323 of the bill provides that the maximum period of relief under the textile or apparel safeguard shall be three years. However, if the initial period of import relief is less than three years, the President may extend the relief (to a maximum of three years) if the President determines that continuation is necessary to remedy or prevent serious damage and to facilitate adjustment, and that the domestic industry is, in fact, adjusting to import competition.

Section 324 of the bill provides that relief may not be granted to an article under the textile or apparel safeguard if: (i) relief previously has been granted to that article under the textile or apparel safeguard; or (ii) the article is subject, or becomes subject, to a safeguard measure under (a) Chapter Eight of the Agreement (corresponding to Subtitle A of Title III of the bill), or (b) chapter 1 of Title II of the Trade Act of 1974.

Section 325 of the bill provides that on the date import relief terminates, imports of the textile or apparel article that was subject to the safeguard action will be subject to the rate of duty that would have been in effect on that date in the absence of the relief.

Section 326 of the bill provides that authority to provide relief under the textile or apparel safeguard will expire five years after the date on which the Agreement enters into force.

Under Article 3.23.6 of the Agreement, if the United States provides relief to a domestic industry under the textile or apparel safeguard, it must provide the country whose good is subject to the measure "mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the [safeguard]." If the United States and the pertinent country are unable to agree on trade liberalizing compensation, that country may increase tariffs equivalently on U.S. goods. The obligation to provide compensation (and the right to increase tariffs absent agreement on compensation) terminates when the safeguard relief ends.

Section 123 of the Trade Act of 1974 (19 U.S.C. 2133), as amended, authorizes the President to provide trade compensation for global safeguard measures taken pursuant to chapter 1 of title II of the Trade Act of 1974. Section 327 of the implementing bill extends that authority to measures taken pursuant to the Agreement's textile or apparel safeguard provisions.

Finally, section 328 of the bill provides that confidential business information submitted in the course of consideration of a request for a textile or apparel safeguard may not be released absent the consent of the party providing the information. It also provides that a party submitting confidential business information in a textile or apparel safeguard proceeding must submit a non-confidential version of the information or a summary of the information.

f. Enforcement of Textile and Apparel Rules of Origin

In addition to lowering barriers to trade in textile and apparel goods, the Agreement includes anti-circumvention provisions designed to ensure the accuracy of claims of origin and to

prevent circumvention of laws, regulations, and procedures affecting such trade. Article 3.24 of the Agreement provides for verifications to determine the accuracy of claims of origin for textile or apparel goods, and to determine that exporters and producers are complying with applicable laws, regulations, and procedures regarding trade in textile or apparel goods.

Under Articles 3.24.2 and 3.24.3 of the Agreement, at the request of the United States, the government of an Agreement country must conduct a verification. The object of a verification under Article 3.24.2(a)(i) is to determine whether a claim of origin for a textile or apparel good is accurate. The object of a verification under Article 3.24.2(a)(ii) is to determine whether an exporter or producer is complying with applicable customs laws, regulations, and procedures regarding trade in textile or apparel goods, including those implementing international agreements. The United States may assist in the verification or, at the request of the other government, conduct the verification itself. A verification may entail visits by officials of the other government and the United States to the premises of a textile or apparel exporter or producer in that country.

Pursuant to Article 3.24.6 of the Agreement, the United States may take appropriate action during and after a verification, including, depending on the nature of the verification, by suspending or denying preferential tariff treatment for textile or apparel goods exported or produced by the person subject to the verification, detaining the goods, or denying them entry into the United States.

Section 209 of the bill implements Article 3.24 of the Agreement. Under section 209(a), the President may direct the Secretary to take "appropriate action" while a verification that the Secretary has requested is being conducted. Section 209(b) provides that, depending on the nature of the verification, the action may include: (i) suspending preferential tariff treatment for textile or apparel goods that the person subject to the verification has produced or exported if the Secretary believes there is insufficient information to sustain a claim for such treatment; (ii) denying preferential tariff treatment to such goods if the Secretary decides that a person has provided incorrect information to support a claim for such treatment; (iii) detaining such goods if the Secretary considers there is not enough information to determine their country of origin; and (iv) denying entry to such goods if the Secretary determines that a person has provided erroneous information on their origin.

Under section 209(c), the President may also direct the Secretary to take "appropriate action" after a verification has been completed. Under section 209(d), depending on the nature of the verification, the action may include: (i) denying preferential tariff treatment under the Agreement to textile or apparel goods that the person subject to the verification has exported or produced if the Secretary considers there is insufficient information to support a claim for such treatment or determines that a person has provided incorrect information to support a claim for such treatment; and (ii) denying entry to such goods if the Secretary decides that a person has provided erroneous information regarding their origin or that there is insufficient information to determine their origin. Unless the President sets an earlier date, any such action may remain in

place until the Secretary obtains enough information to decide whether the exporter or producer that was subject to the verification is complying with applicable customs rules or whether a claim that the goods qualify for preferential tariff treatment or originate in an Agreement country is accurate.

Under section 209(e), the Secretary may publish the name of person that the Secretary has determined: (i) is engaged in intentional circumvention of applicable laws, regulations, or procedures affecting trade in textile or apparel goods; or (ii) has failed to demonstrate that it produces, or is capable of producing, textile or apparel goods.

g. Fabrics, Yarns, or Fibers Not Available in Commercial Quantities

Under the specific rules of origin for textile and apparel goods set out in Annex 4.1 of the Agreement, fabrics, yarns, or fibers that are not available in commercial quantities in a timely manner in the United States, Central America, and the Dominican Republic are treated as if they originate in an Agreement country, regardless of their actual origin, when used as inputs in the production of textile or apparel goods. Annex 3.25 lists certain fabrics, yarns, and fibers that the CAFTA-DR governments have collectively agreed are unavailable in the region.

In addition, Article 3.25.4 of the Agreement provides that the United States will add fabrics, yarns, or fibers to the list in certain circumstances. First, Article 3.25.4(e) of the Agreement provides that the United States will add any fabrics or yarns that it has determined under its regional trade preference programs prior to the Agreement's entry into force are unavailable in the United States in commercial quantities in a timely manner. These regional trade preference program provisions are set out in: section 112(b)(5)(B) of the African Growth and Opportunity Act (19 U.S.C. § 3721(b)), section 204(b)(3)(B)(ii) of the Andean Trade Preference Act (19 U.S.C. § 3203(b)(3)(B)(ii)), and section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act (19 U.S.C. § 2703(b)(2)(A)(v)(II)).

Second, if the United States determines, at the request of an "interested entity" (a potential or actual purchaser or seller, or another CAFTA-DR government), that a fabric, yarn, or fiber is unavailable in commercial quantities in a timely manner in the CAFTA-DR region (i.e., in the territories of the Parties to the Agreement, collectively), or if it determines that no interested entity objects to the request, the United States will add the material to the list – in a restricted or unrestricted quantity. In addition, within six months of adding a material to the list in Annex 3.25, the United States may remove any restriction it has imposed on the product.

Article 3.25.5 authorizes the United States, in response to a request from an interested entity, either to remove a material from the list or impose a restriction on any material it has added to the list in an unrestricted quantity. The United States may take this action beginning six months after it determines, in response to a request, that the material has become commercially available in the CAFTA-DR region.

Section 203(o)(2) of the bill provides authority for the President to carry out the provision in Article 3.25.4(e) of the Agreement pursuant to which the United States will add materials to the list that it has determined are unavailable in commercial quantities in a timely manner in the United States under its regional trade preference programs (the African Growth and Opportunity Act, the Andean Trade Preference Act, and the Caribbean Basin Economic Recovery Act) before the Agreement enters into force.

Section 203(o)(4) of the bill implements those provisions of Article 3.25 that provide for the United States to modify the list of materials in Annex 3.25 after the Agreement enters into force.

Specifically, subparagraph (C) provides that an interested entity may request the President to determine that a fabric, yarn, or fiber is not available in commercial quantities in the CAFTA-DR region and to proclaim that the material is included in the list in Annex 3.25.

Subparagraph (C)(ii) authorizes the President to determine whether the material is commercially available in a timely manner in the CAFTA-DR region. Subparagraph (C)(iii) provides that if the President determines that the material is not commercially available in a timely manner in the region, or if no interested entity has objected, he may issue a proclamation adding the fabric, yarn, or fiber to the Annex 3.25 list in a restricted or unrestricted quantity. The President normally must issue the proclamation within 30 business days of receiving a request. However, subparagraph (C)(iv) provides that the President may take up to 44 business days if the President decides he lacks sufficient information to make the determination within 30 business days. Subparagraph (C)(v) provides for proclamations to take effect when published in the *Federal Register*.

Subparagraph (C)(vi) provides that within six months after adding a fabric, yarn, or fiber to the list in Annex 3.25 in a restricted quantity, the President may eliminate the restriction if he determines that the fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the CAFTA-DR region.

Subparagraph (D) implements Article 3.25.4(c) of the Agreement. It provides that in the unlikely event that the President takes no action in response to a request to add a material to the list, the material is automatically added in an unrestricted quantity beginning 45 business days after the request was submitted, or 60 days after the request was submitted if the President has determined under subparagraph (C)(iv) that he lacks sufficient information to make the determination within 30 business days.

Under subparagraph (E)(i), an interested entity may request the President to limit the amount of any fabric, yarn, or fiber that the United States has included on the list in Annex 3.25 in an unrestricted quantity, or to remove such a material from the list entirely. Under subparagraph (E)(ii), an interested entity may submit such a request beginning six months after the product was placed on the list in an unrestricted amount. Subparagraph (E)(iii) provides for

the President to issue a proclamation carrying out a request if he determines within 30 business days after the request is submitted that the material is available in commercial quantities in a timely manner in the CAFTA-DR region. Subparagraph (E)(iv) provides that this type of proclamation may take effect no earlier than six months after it is published in the *Federal Register*.

Subparagraph (F) calls for the President to establish procedures for interested entities to submit requests for changes in the Annex 3.25 list and to submit comments and supporting evidence before the President determines whether to change the list.

2. Administrative Action

a. Temporary Admission of Goods and Goods Entered After Repair or Alteration

As discussed above, section 201(a)(1) of the bill authorizes the President to proclaim duty-free treatment for certain goods to carry out Article 3.5 (temporary admission of certain goods) and Article 3.6 (repair or alteration of certain goods) of the Agreement. The Secretary will issue regulations to carry out this portion of the proclamation.

b. Handloomed, Handmade, or Folklore Articles

The President will authorize the Committee for the Implementation of Textile Agreements ("CITA"), to consult with Agreement countries to determine which, if any, textile or apparel goods from Agreement countries will be treated as handloomed, handmade, or folklore articles. CITA is an interagency entity created by Executive Order 11651 that carries out U.S. textile trade policies, as directed by the President. The President will delegate to CITA his authority under the bill to provide duty-free treatment for these articles.

c. Agricultural Safeguard

The Secretary will issue regulations implementing the agricultural safeguard provisions of section 202. It is the Administration's intent that agricultural safeguard measures will be applied whenever the volume thresholds specified in the Agreement have been met. As discussed below, the Administration expects that in determining the country of origin of goods for purposes of applying agricultural safeguard measures under the bill, CBP will apply the rules of origin that the United States applies in the normal course of trade. (See item 2 of Chapter Four, below.)

d. Textile or Apparel Safeguard

CITA will perform the function of receiving requests for textile or apparel safeguard measures under section 321 of the bill, making determinations of serious damage or actual threat

thereof under section 322(a), and providing relief under section 322(b). CITA will issue procedures for requesting such safeguard measures, for making its determinations under section 322(a), and for providing relief under section 322(b). CITA will perform these functions pursuant to a delegation of the President's authority under the bill.

e. Enforcement of Textile and Apparel Rules of Origin

Section 209 of the bill provides that CBP officials may request Agreement countries to initiate verifications in order to determine whether claims of origin for textile or apparel goods are accurate or whether exporters and producers are complying with applicable laws, regulations, and procedures regarding trade in textile or apparel goods. The President will delegate to CITA his authority under the bill to direct appropriate U.S. officials to take an action described in section 209(b) of the bill while such a verification is being conducted. The President will also authorize CITA to direct pertinent U.S. officials to take an action described in section 209(d) after a verification is completed. If CITA decides that is appropriate to deny preferential tariff treatment or deny entry to particular goods, CITA will issue an appropriate directive to CBP.

Section 209 of the bill provides the exclusive basis in U.S. law for CITA to direct appropriate action implementing Article 3.24 of the Agreement.

f. Fabrics, Yarns, or Fibers Not Available in Commercial Quantities

The President will delegate to CITA his authority under section 203(o)(4) of the bill, which establishes procedures for changing the list of fabrics, yarns, or fibers not available in commercial quantities in a timely manner in Agreement countries set out in Annex 3.25 of the Agreement.

CITA will publish procedures under which interested entities may request that CITA: (i) add a fabric, yarn, or fiber to the list in Annex 3.25; (ii) eliminate a restriction on a fabric, yarn, or fiber within six months after the item was added to the list in a restricted quantity; (iii) remove a fabric, yarn, or fiber from the list; or (iv) restrict the quantity of a fabric, yarn, or fiber that was added to the list in an unrestricted quantity or with respect to which CITA previously eliminated a restriction. These procedures will set out the information required to be submitted with a request. CITA will publish notice of requests that meet these requirements. CITA will provide an opportunity for interested entities to submit comments and evidence regarding a request, and to rebut evidence that other interested entities have submitted, before CITA makes a determination.

CITA will make determinations under section 203(o)(4) on a case-by-case basis taking into account factors relevant to the request. Such factors ordinarily would include the physical and technical specifications of the fabric, yarn, or fiber that is the subject of the request, as well as evidence demonstrating the extent to which regional manufacturers are able to supply the item

in commercial quantities in a timely manner. CITA will provide public notice of its determinations.

Chapter Four (Rules of Origin)

1. Implementing Bill

a. General

Section 203 of the implementing bill codifies the general rules of origin set forth in Chapter Four of the Agreement. These rules apply only for the purposes of this bill and for the purposes of implementing the customs duty treatment provided under the Agreement. An originating good for the purposes of this bill would not necessarily be a good of or import from an Agreement country for the purposes of other U.S. laws or regulations.

Under the general rules, there are three basic ways for a good of an Agreement country to qualify as an "originating" good, and therefore be eligible for preferential treatment when it is imported into the United States. First, a good is originating if it is "wholly obtained or produced entirely in the territory of one or more of the CAFTA-DR countries." The term "goods wholly obtained or produced entirely in the territory of one or more of the CAFTA-DR countries" is defined in section 203(n)(6) of the bill and includes, for example, minerals extracted in one or more of the CAFTA-DR countries, animals born and raised in one or more of the CAFTA-DR countries, and waste and scrap derived from production of goods that takes place in the territory of one or more of the CAFTA-DR countries. For purposes of section 203, the United States is defined (in section 203(n)(2) of the bill) as a "CAFTA-DR country."

The term "goods wholly obtained or produced entirely in the territory of one or more of the CAFTA-DR countries" includes "recovered goods." These are parts resulting from the disassembly of used goods that are brought into good working condition in order to be combined with other recovered goods and other materials to form a "remanufactured good." The term "remanufactured good" is separately defined in section 203(n)(21) to mean an industrial good assembled in the territory of one or more of the CAFTA-DR countries and falling within Chapter 84, 85, or 87 of the HTS or heading 9026, 9031, or 9032 (with the exception of goods under heading 8418 or 8516) that: (i) is entirely or partially comprised of recovered goods; and (ii) has a similar life expectancy and enjoys a factory warranty similar to such a new good.

Second, the general rules of origin provide that a good is "originating" if the good is produced in one or more of the CAFTA-DR countries, and the materials used to produce the good that are not themselves originating goods are transformed in such a way as to cause their tariff classification to change and to meet other requirements, as specified in Annex 4.1 of the Agreement. Such additional requirements include, for example, performing certain processes or operations related to textile or apparel goods in one or more of the CAFTA-DR countries or

meeting regional value content requirements, sometimes in conjunction with changes in tariff classification.

Third, the general rules of origin provide that a good is "originating" if the good is produced entirely in the territory of one or more of the CAFTA-DR countries exclusively from materials that themselves qualify as originating goods.

The remainder of section 203 of the implementing bill sets forth specific rules related to determining whether a good meets the Agreement's specific requirements to qualify as an originating good. For example, section 203(c) implements provisions in Annex 4.1 of the Agreement that require certain goods to have at least a specified percentage of "regional value content" to qualify as originating goods. It prescribes alternative methods for calculating regional value content, as well as a specific method that may be used in the case of certain automotive goods. Section 203(f) provides that a good is not disqualified as an originating good if it contains *de minimis* quantities of non-originating materials that do not undergo a change in tariff classification. Other provisions in section 203 address how materials are to be valued, how to determine whether fungible goods and materials qualify as originating or non-originating, as well as a variety of other matters.

b. Proclamation Authority

Section 203(o)(1) of the bill authorizes the President to proclaim the specific rules of origin in Annex 4.1 of the Agreement, as well as any additional subordinate rules necessary to carry out the customs duty provisions of the bill consistent with the Agreement. In addition, section 203(o)(3) gives authority to the President to modify certain of the Agreement's specific origin rules by proclamation, subject to the consultation and layover provisions of section 104 of the bill. (See item 1.a of Chapter Three, above.)

Various provisions of the Agreement expressly contemplate that the CAFTA-DR governments may agree to modify the Agreement's rules of origin. Article 4.14 calls for the CAFTA-DR governments to consult regularly after the Agreement's entry into force to discuss proposed modifications to Annex 4.1. Article 19.1.3(b)(ii) of the Agreement authorizes the Free Trade Commission to approve proposed modifications to any of the Agreement's origin rules. Such modifications are to be implemented in accordance with each country's applicable legal procedures. In addition, Article 3.25.1 of the Agreement calls for the Parties to consult at the request of any Party to consider whether rules of origin for particular textile or apparel goods should be modified.

Section 203(o)(3) of the bill expressly limits the President's authority to modify by proclamation specific rules of origin pertaining to textile or apparel goods (listed in Chapters 50 through 63 of the HTS and identified in Annex 4.1 of the Agreement). Those rules of origin may be modified by proclamation within one year of enactment of the implementing bill, to correct typographical, clerical, or other non-substantive technical errors.

c. Disclosure of Incorrect Information and Denial of Preferential Treatment

Article 4.15.3 of the Agreement provides that a Party may not impose a penalty on an importer who makes an invalid claim for preferential tariff treatment under the Agreement if the importer did not engage in negligence, gross negligence, or fraud in making the claim and, after discovering that the claim is invalid, promptly and voluntarily corrects the claim and pays any customs duty owing. Article 4.20.5 of the Agreement provides if an importing country determines through verification that an importer, exporter, or producer has provided false or unsupported certifications or other representations that a good qualifies as originating, it may suspend preferential tariff treatment under the Agreement for identical goods covered by any subsequent certifications or other representations that that person may make. The suspension may continue until the importing country determines that the importer, exporter, or producer is in compliance with applicable laws and regulations governing claims for preferential tariff treatment under the Agreement.

Section 206(a) of the bill implements Article 4.15.3 for the United States by amending section 592(c) of the Tariff Act of 1930 (19 U.S.C. 1592(c)). Section 206(b) of the bill implements Article 4.20.5 for the United States by amending section 514 of the Tariff Act of 1930 (19 U.S.C. 1514).

d. Claims for Preferential Tariff Treatment

Article 4.15.5 of the Agreement provides that an importer may claim preferential tariff treatment for an originating good within one year of importation, even if no such claim was made at the time of importation. In seeking a refund for excess duties paid, the importer must provide to the customs authorities information substantiating that the good was in fact an originating good at the time of importation.

Section 207 of the bill implements U.S. obligations under Article 4.15.5 of the Agreement by amending section 520(d) of the Tariff Act of 1930 (19 U.S.C. 1520(d)) to allow an importer to claim preferential tariff treatment for originating goods within one year of their importation.

e. Exporter and Producer Certifications

Article 4.16 of the Agreement provides that an importer may base a claim for preferential tariff treatment on either (i) a written or electronic certification by the importer, exporter, or producer, or (ii) the importer's knowledge that the good is an originating good, including through reasonable reliance on information in the importer's possession that the good is an originating good. (The Agreement allows certain exceptions, for example, for goods with a customs value less than or equal to $1,500.) If an exporter issues a certification, it must either be based on the

person's knowledge that the good is originating or supported by a separate certification issued by the producer.

Article 4.18 of the Agreement sets out rules governing incorrect certifications of origin issued by exporters or producers. Where an exporter or producer becomes aware that a certification of origin contains or is based on incorrect information, it must promptly and voluntarily notify in writing every person to whom the exporter or producer issued the certification of any change that could affect the accuracy or validity of the certification. If it does so, no Agreement country may impose a penalty.

Section 206(a) of the bill implements U.S. obligations under Article 4.18 by amending section 592 of the Tariff Act of 1930 (19 U.S.C. 1592). New subsection (h) of section 592, as added by section 206(a), imposes penalties on exporters and producers that issue false CAFTA-DR certifications of origin through fraud, gross negligence, or negligence. These penalties do not apply where an exporter or producer corrects an error in the manner described above.

f. Recordkeeping Requirements

Article 4.19 of the Agreement sets forth record keeping requirements that each government must apply to its importers. U.S. obligations under Article 4.19 regarding importers are satisfied by current law, including the record keeping provisions in section 508 of the Tariff Act of 1930 (19 U.S.C. 1508).

Article 4.19 also sets forth record keeping requirements that each government must apply to exporters and producers issuing certifications of origin for goods exported under the Agreement. Section 208 of the bill implements Article 4.19 for the United States by amending the customs record keeping statute (section 508 of the Tariff Act of 1930).

As added by section 208 of the bill, subsection (g) of section 508 of the Tariff Act of 1930 defines the terms "CAFTA-DR certification of origin" and "records and supporting documents." It then provides that a U.S. exporter or producer that issues a CAFTA-DR certification of origin must make, keep, and, if requested pursuant to rules and regulations promulgated by the Secretary, render for examination and inspection a copy of the certification and such records and supporting documents. The exporter or producer must keep these records and supporting documents for five years from the date it issues the certification. New subsection (h) of section 508 of the Tariff Act of 1930 sets forth penalties for violations of this record keeping requirement.

2. Administrative Action

The rules of origin in Chapter Four of the Agreement are intended to direct the benefits of customs duty elimination under the Agreement principally to firms producing or manufacturing goods in CAFTA-DR countries. For this reason, the rules ensure that, in general, a good is

eligible for benefits under the Agreement only if it is: (i) wholly produced or obtained in one or more of the CAFTA-DR countries; or (ii) undergoes substantial processing in one or more of the CAFTA-DR countries.

The Agreement's rules of origin do not establish (or require identification of) the specific country of origin of originating goods or goods that otherwise qualify for preferential treatment. However, various provisions of the Agreement may require U.S. authorities to determine the specific country of origin of such goods. These provisions include, for example, those relating to: (i) the application of TRQs on agricultural goods; (ii) the application of agricultural safeguard measures; (iii) the retroactive refund of customs duties on textile or apparel goods pursuant to Article 3.20 of the Agreement; and (iv) the application of textile or apparel safeguard measures. The Administration intends that, where necessary, U.S. authorities will rely on the rules of origin that the United States applies in the normal course of trade to determine the country of origin identity of originating goods. See 19 U.S.C. 1304; 19 U.S.C. 3592; 19 C.F.R. 102.21; 19 C.F.R. 134.

a. Claims for Preferential Treatment

Section 210 of the bill authorizes the Secretary to prescribe regulations necessary to carry out the tariff-related provisions of the bill, including the rules of origin and customs user fee provisions. The Secretary will use this authority in part to promulgate any regulations necessary to implement the Agreement's provisions governing claims for preferential treatment. Under Article 4.16 of the Agreement, an importer may claim preferential treatment for a good based on either (i) a written or electronic certification by the importer, exporter, or producer, or (ii) the importer's knowledge, including through reasonable reliance on information in the importer's possession, that the good is originating. A certification need not be in a prescribed format, but must include the elements set out in Article 4.16.2 of the Agreement. Under Article 4.15 of the Agreement, an importing Party must grant a claim for preferential tariff treatment unless its customs officials issue a written determination that the claim is invalid as a matter of law or fact.

b. Verification

Under Article 4.20 of the Agreement, customs officials may use a variety of methods to verify claims that goods imported from other Agreement countries satisfy the Agreement's rules of origin. Article 3.24 sets out special procedures for verifying claims that textile or apparel goods imported from Agreement countries meet the Agreement's origin rules. (See item 1.f of Chapter Three, above.) U.S. officials will carry out verifications under Articles 4.20 and 3.24 of the Agreement pursuant to authorities under current law. For example, section 509 of the Tariff Act of 1930 (19 U.S.C. 1509) provides authority to examine records and issue summonses to determine liability for duty and ensure compliance with U.S. customs laws.

Chapter Five (Customs Administration and Trade Facilitation)

1. Implementing Bill

No statutory changes will be required to implement Chapter Five.

2. Administrative Action

a. Inquiry Point

Article 5.1.2 of the Agreement requires each government to designate an inquiry point for inquiries from interested persons on customs matters. CBP will serve as the U.S. inquiry point for this purpose. Consistent with Article 5.1.2, CBP will post information on the Internet at "www.cbp.gov" on how interested persons can make customs-related inquiries.

b. Advance Rulings

Treasury regulations for advance rulings under Article 5.10 of the Agreement (including on classification, valuation, origin, and qualification as an originating good) will parallel in most respects existing regulations in Part 177 of the Customs Regulations for obtaining advance rulings. For example, a ruling may be relied on provided that the facts and circumstances represented in the ruling are complete and do not change. The regulations will make provision for modifications and revocations as well as for delaying the effective date of a modification where the firm in question has relied on an existing ruling. Advance rulings under the Agreement will be issued within 150 days of receipt of all information reasonably required to process the application for the ruling.

Chapter Six (Sanitary and Phytosanitary Measures)

No statutory or administrative changes will be required to implement Chapter Six.

Chapter Seven (Technical Barriers to Trade)

1. Implementing Bill

No statutory changes will be required to implement Chapter Seven.

2. Administrative Action

Article 7.8 of the Agreement establishes an inter-governmental Committee on Technical

Barriers to Trade ("TBT"). A USTR official responsible for TBT matters or trade relations with the Agreement countries will serve as the U.S. coordinator for the committee.

Chapter Eight (Trade Remedies)

1. Implementing Bill

Subtitle A of Title III of the bill implements in U.S. law the safeguard provisions set out in Chapter Eight of the Agreement. Subtitle C of Title III of the bill implements the global safeguard provisions set out in Chapter Eight of the Agreement. (As discussed under Chapter Three, above, Subtitle B of Title III of the bill implements the textile or apparel safeguard provisions of the Agreement.)

a. Safeguard Measures

Subtitle A of Title III of the bill, Sections 311 through 316, authorizes the President, after an investigation and affirmative determination by the ITC (or a determination that the President may consider to be an affirmative determination), to suspend duty reductions or impose duties temporarily up to NTR (MFN) rates on a "CAFTA-DR article" when, as a result of the reduction or elimination of a duty under the Agreement, the article is being imported into the United States in such increased quantities and under such conditions as to be a substantial cause of serious injury or threat of serious injury to a domestic industry that produces a like or directly competitive good. The standards and procedures set out in these provisions closely parallel the procedures set forth in sections 201 through 204 of the Trade Act of 1974 (19 U.S.C. 2251 – 2254).

Section 301(1) defines the term "CAFTA-DR article" to mean a good that qualifies as an originating good under section 203(b) of the bill, and section 301(4) defines the term "relevant CAFTA-DR article" to mean the CAFTA-DR article with respect to which a petition has been filed under section 311(a).

Section 301(3) defines the term "de minimis supplying country" as an Agreement country whose share of imports of a CAFTA-DR article into the United States does not exceed three percent of the aggregate volume of imports of the CAFTA-DR article in the most recent 12-month period for which data are available. However, the definition makes an exception in cases where the aggregate import share of all such Agreement countries exceeds nine percent of U.S. imports of the CAFTA-DR article during the applicable 12-month period. Unlike agricultural and textile or apparel safeguard measures, which will apply on a country-specific basis, general safeguard measures under Chapter Eight of the Agreement will apply with respect to all imports of an originating CAFTA-DR article, other than imports from de minimis supplying countries.

Section 311 of the bill provides for the filing of petitions with the ITC and for the ITC to conduct safeguard investigations initiated under Subtitle A. Section 311(a)(1) provides that a petition requesting a safeguard action may be filed with the ITC by an entity that is "representative of an industry." As under section 202(a)(1) of the Trade Act of 1974, the term "entity" is defined to include a trade association, firm, certified or recognized union, or a group of workers.

Section 311(b) sets out the standard to be used by the ITC in undertaking an investigation and making a determination in Subtitle A safeguard proceedings.

Section 311(c) makes applicable by reference several provisions of the Trade Act of 1974. These are the definition of "substantial cause" in section 202(b)(1)(B), the factors listed in section 202(c) applied in making determinations, the hearing requirement of section 202(b)(3), and the provisions of section 202(i) permitting confidential business information to be made available under protective order to authorized representatives of parties to a safeguard investigation.

Section 311(d) exempts from investigation under this section CAFTA-DR articles that have previously been the basis for according relief under Subtitle A to a domestic industry.

Section 312(a) establishes deadlines for ITC determinations following an investigation under section 311(b). The ITC must make its injury determination within 120 days of the date on which it initiates an investigation. If the ITC makes an affirmative injury determination it will determine at the same time whether any Agreement country is a de minimis supplying country.

Section 312(b) makes applicable the provisions of section 330(d) of the Tariff Act of 1930, which will apply when the ITC Commissioners are equally divided on the question of injury or remedy.

Under section 312(c), if the ITC makes an affirmative determination, or a determination that the President may consider to be an affirmative determination, under section 312(a), it must find and recommend to the President the amount of import relief that is necessary to remedy or prevent the serious injury and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. The relief that the ITC may recommend is limited to that authorized in section 313(c). Similar to procedures under the global safeguards provisions in current law, section 312(c) of the bill provides that only those members of the ITC who agreed to the affirmative determination under section 312(a) may vote on the recommendation of relief under section 312(c).

Under section 312(d), the ITC is required to transmit a report to the President not later than 30 days after making its injury determination. The ITC's report must include: (i) the ITC's determination(s) under section 312(a) and the reasons supporting the determination(s); (ii) if the

determination under section 312(a) is affirmative or may be considered to be affirmative by the President, any findings and recommendations for import relief and an explanation of the basis for each recommendation; and (iii) any dissenting or separate views of ITC Commissioners. Section 312(e) requires the ITC to publish its report promptly and to publish a summary of the report in the *Federal Register*.

Section 313(a) of the bill directs the President, subject to section 313(b), to take action not later than 30 days after receiving a report from the ITC containing an affirmative determination or a determination that the President may consider to be an affirmative determination. The President must provide import relief to the extent that the President determines is necessary to remedy or prevent the injury the ITC has found and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. Under section 313(b), the President is not required to provide import relief if the President determines that the relief will not provide greater economic and social benefits than costs.

Section 313(c)(1) sets forth the nature of the relief that the President may provide. In general, the President may take action in the form of:

- a suspension of further reductions in the rate of duty to be applied to the articles in question; or

- an increase in the rate of duty on the articles in question to a level that does not exceed the lesser of the existing NTR (MFN) rate or the NTR (MFN) rate of duty imposed on the day before the Agreement entered into force.

Under section 313(c)(2), if the relief the President provides has a duration greater than one year, the relief must be subject to progressive liberalization at regular intervals over the course of its application.

Section 313(d) provides that the period for import relief under a Subtitle A safeguard may not exceed four years. However, if the initial period of import relief is less than four years, the President may extend the period of import relief (to a maximum aggregate period of four years) if the President determines that continuation of relief is necessary to remedy or prevent serious injury and to facilitate adjustment to import competition, and that there is evidence that the industry is making a positive adjustment to import competition. That determination must follow an affirmative determination (or a determination that the President may consider to be an affirmative determination) by the ITC to the same effect.

Section 313(e) specifies the duty rate to be applied to CAFTA-DR articles after termination of a safeguard action. On the termination of relief, the rate of duty for the remainder of the calendar year is to be the rate that was scheduled to have been in effect one year after the

initial provision of import relief. For the rest of the duty phase-out period, the President may set the duty:

- at the rate called for under the Schedule of the United States to Annex 3.3 of the Agreement; or
- in a manner that eliminates the duty in equal annual stages ending on the date set out in that Schedule.

Section 313(f) exempts from relief any article that is: (i) subject to import relief under the global safeguard provisions in U.S. law (chapter 1 of Title II of the Trade Act of 1974); or (ii) the product of a de minimis supplying country.

Section 314 provides that the President's authority to take action under Subtitle A expires ten years after the date on which the Agreement enters into force, unless the period for elimination of duties on a good exceeds ten years. In such case, relief may be provided until the expiration of the period for elimination of duties.

Section 315 allows the President to provide trade compensation to Agreement countries, as required under Article 8.5 of the Agreement, when the United States imposes relief through a Subtitle A safeguard action. Section 315 provides that for purposes of section 123 of the Trade Act of 1974, which allows the President to provide compensation for global safeguards, any relief provided under section 313 will be treated as an action taken under the global safeguard provisions of U.S. law (sections 201 through 204 of the Trade Act of 1974).

Section 316 amends section 202(a) of the Trade Act of 1974 to provide that the procedures in section 332(g) of the Tariff Act of 1930 with respect to the release of confidential business information are to apply to Subtitle A safeguard investigations.

The Administration has not provided classified information to the ITC in past safeguard proceedings and does not expect to provide such information in future proceedings. In the unlikely event that the Administration provides classified information to the ITC in such proceedings, that information would be protected from publication in accordance with Executive Order 12958.

b. Global Safeguard Measures

Section 331 of the bill implements the global safeguard provisions of Article 8.6.2 of the Agreement. It authorizes the President, in granting global import relief under sections 201 through 204 of the Trade Act of 1974, to exclude imports of originating articles from the relief when certain conditions are present.

Specifically, section 331(a) provides that if the ITC makes an affirmative determination, or a determination that the President may consider to be an affirmative determination, in a global safeguard investigation under section 202(b) of the Trade Act of 1974, the ITC must find and report to the President whether imports of the article of each Agreement country considered individually that qualify as originating goods under section 203(b) are a substantial cause of serious injury or threat thereof. Under section 331(b), if the ITC makes a negative finding under section 331(a) the President may exclude any imports that are covered by the ITC's finding from the global safeguard action.

2. Administrative Action

No administrative changes will be required to implement Chapter Eight.

Chapter Nine (Government Procurement)

1. Implementing Bill

Chapter Nine of the Agreement establishes rules that certain government entities, listed in Annex 9.1.2(b)(i) of the Agreement, must follow in procuring goods and services. The Chapter's rules will apply whenever these entities undertake procurements valued above thresholds specified in Annex 9.1.2(b)(i).

In order to comply with its obligations under Chapter Nine, the United States must waive the application of certain federal laws, regulations, procedures and practices that ordinarily treat foreign goods and services and suppliers of such goods and services less favorably than U.S. goods, services, and suppliers. Section 301(a) of the Trade Agreements Act of 1979 (19 U.S.C. 2511(a)) authorizes the President to waive the application of such laws, regulations, procedures, and practices with respect to "eligible products" of a foreign country designated under section 301(b) of that Act. By virtue of taking on the procurement-related obligations in Chapter Nine, Agreement countries are eligible to be designated under section 301(b) of the Trade Agreements Act and will be so designated.

The term "eligible product" in section 301(a) of the Trade Agreements Act is defined in section 308(4)(A) of that Act for goods and services of countries and instrumentalities that are parties to the WTO Agreement on Government Procurement and countries that are parties to the NAFTA and other recent free trade agreements. Section 401 of the bill amends the definition of "eligible product" in section 308(4)(A) of the Trade Agreements Act. As amended, section 308(4)(A) will provide that, for an Agreement country, an "eligible product" means a product or service of that country that is covered under the Agreement for procurement by the United States. This amended definition, coupled with the President's exercise of his authority under section 301(a) of the Trade Agreements Act, will allow U.S. government entities covered by the Agreement to purchase products and services from other Agreement countries.

2. **Administrative Action**

As noted above, Annex 9.1.2(b)(i) of the Agreement provides that U.S. government entities subject to Chapter Nine must apply the Chapter's rules to goods and services from other Agreement countries when they make purchases valued above certain dollar thresholds. USTR will notify the Federal Acquisition Regulatory Council ("FAR Council") of the thresholds that pertain to Agreement countries under the Agreement. The FAR Council will then incorporate those thresholds into the Federal Acquisition Regulation in accordance with applicable procedures under the Office of Federal Procurement Policy Act.

Chapter Ten (Investment)

1. **Implementing Bill**

Section 106 of the bill authorizes the United States to use binding arbitration to resolve claims by investors of Agreement countries under Article 10.16.1(a)(i)(C) or Article 10.16.1(b)(i)(C) of the Agreement. Those articles concern disputes over certain types of government contracts, and section 106 of the bill clarifies that the United States consents to the arbitration of such disputes. No statutory authorization is required for the United States to engage in binding arbitration for other claims covered by Article 10.16. Provisions allowing arbitration of contract claims have regularly been included in U.S. bilateral investment treaties over recent decades, and were included in the free trade agreements with Chile, Singapore, and Morocco.

2. **Administrative Action**

No administrative changes will be required to implement Chapter Ten.

Chapter Eleven (Cross-Border Trade in Services)

No statutory or administrative changes will be required to implement Chapter Eleven.

Chapter Twelve (Financial Services)

No statutory or administrative changes will be required to implement Chapter Twelve.

Chapter Thirteen (Telecommunications)

No statutory or administrative changes will be required to implement Chapter Thirteen.

Chapter Fourteen (Electronic Commerce)

No statutory or administrative changes will be required to implement Chapter Fourteen.

Chapter Fifteen (Intellectual Property Rights)

No statutory or administrative changes will be required to implement Chapter Fifteen.

Chapter Sixteen (Labor)

1. Implementing Bill

No statutory changes will be required to implement Chapter Sixteen.

2. Administrative Action

Article 16.4.3 of the Agreement calls for each government to designate an office to serve as the contact point for implementing the Agreement's labor provisions. The Department of Labor's Office of International Agreement Implementation will serve as the U.S. contact point for this purpose.

Chapter Seventeen (Environment)

1. Implementing Bill

No statutory or administrative changes will be required to implement Chapter Seventeen.

2. Administrative Action

Article 17.5.1 of the Agreement establishes an Environmental Affairs Council, comprising cabinet-level officials from each country, and provides that each government will designate a contact point for carrying out the Council's work. USTR's Office of Environment and Natural Resources will serve as the U.S. contact point for this purpose.

109TH CONGRESS
1ST SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

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

A BILL

To implement the Dominican Republic-Central America-United States Free Trade Agreement.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION. 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Dominican Republic-Central America-United States Free Trade Agreement Implementation Act".

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

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to approve and implement the Free Trade Agreement between the United States, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua entered into under the authority of section 2103(b) of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3803(b));

(2) to strengthen and develop economic relations between the United States, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua for their mutual benefit;

(3) to establish free trade between the United States, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua through the reduction and elimination of barriers to trade in goods and services and to investment; and

(4) to lay the foundation for further cooperation to expand and enhance the benefits of the Agreement.

SEC. 3. DEFINITIONS.

In this Act:

(1) AGREEMENT.—The term "Agreement" means the Dominican Republic-Central America-

United States Free Trade Agreement approved by the Congress under section 101(a)(1).

(2) CAFTA–DR COUNTRY.—Except as provided in section 203, the term "CAFTA–DR country" means—

(A) Costa Rica, for such time as the Agreement is in force between the United States and Costa Rica;

(B) the Dominican Republic, for such time as the Agreement is in force between the United States and the Dominican Republic;

(C) El Salvador, for such time as the Agreement is in force between the United States and El Salvador;

(D) Guatemala, for such time as the Agreement is in force between the United States and Guatemala;

(E) Honduras, for such time as the Agreement is in force between the United States and Honduras; and

(F) Nicaragua, for such time as the Agreement is in force between the United States and Nicaragua.

(3) COMMISSION.—The term "Commission" means the United States International Trade Commission.

(4) HTS.—The term "HTS" means the Harmonized Tariff Schedule of the United States.

(5) TEXTILE OR APPAREL GOOD.—The term "textile or apparel good" means a good listed in the Annex to the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(4)), other than a good listed in Annex 3.29 of the Agreement.

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

SEC. 101. APPROVAL AND ENTRY INTO FORCE OF THE AGREEMENT.

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

(1) the Dominican Republic-Central America-United States Free Trade Agreement entered into on August 5, 2004, with the Governments of Costa

Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua, and submitted to the Congress on [____, 2005]; and

(2) the statement of administrative action proposed to implement the Agreement that was submitted to the Congress on [____, 2005].

(b) CONDITIONS FOR ENTRY INTO FORCE OF THE AGREEMENT.—At such time as the President determines that other countries that have signed the Agreement have taken measures necessary to comply with those provisions of the Agreement that are to take effect on the date on which the Agreement enters into force, the President is authorized to provide for the Agreement to enter into force with respect to those countries that provide for the Agreement to enter into force for them.

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

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

(1) UNITED STATES LAW TO PREVAIL IN CONFLICT.—No provision of the Agreement, nor the application of any such provision to any person or circumstance, which is inconsistent with any law of the United States shall have effect.

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

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

(B) to limit any authority conferred under any law of the United States,

unless specifically provided for in this Act.

(b) RELATIONSHIP OF AGREEMENT TO STATE LAW.—

(1) LEGAL CHALLENGE.—No State law, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement, except in an action brought by the United States for the purpose of declaring such law or application invalid.

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

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

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

(c) EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.—No person other than the United States—

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

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

SEC. 103. IMPLEMENTING ACTIONS IN ANTICIPATION OF ENTRY INTO FORCE AND INITIAL REGULATIONS.

(a) IMPLEMENTING ACTIONS.—

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

(A) the President may proclaim such actions, and

(B) other appropriate officers of the United States Government may issue such regulations,

as may be necessary to ensure that any provision of this Act, or amendment made by this Act, that takes effect on the date the Agreement enters into force is appropriately implemented on such date, but no such proclamation or regulation may have an effec-

tive date earlier than the date the Agreement enters into force.

(2) EFFECTIVE DATE OF CERTAIN PROCLAIMED ACTIONS.—Any action proclaimed by the President under the authority of this Act that is not subject to the consultation and layover provisions under section 104 may not take effect before the 15th day after the date on which the text of the proclamation is published in the Federal Register.

(3) WAIVER OF 15-DAY RESTRICTION.—The 15-day restriction contained in paragraph (2) on the taking effect of proclaimed actions is waived to the extent that the application of such restriction would prevent the taking effect on the date the Agreement enters into force of any action proclaimed under this section.

(b) INITIAL REGULATIONS.—Initial regulations necessary or appropriate to carry out the actions required by or authorized under this Act or proposed in the statement of administrative action submitted under section 101(a)(2) to implement the Agreement shall, to the maximum extent feasible, be issued within 1 year after the date on which the Agreement enters into force. In the case of any implementing action that takes effect on a date after the date on which the Agreement enters into force,

initial regulations to carry out that action shall, to the maximum extent feasible, be issued within 1 year after such effective date.

SEC. 104. CONSULTATION AND LAYOVER PROVISIONS FOR, AND EFFECTIVE DATE OF, PROCLAIMED ACTIONS.

If a provision of this Act provides that the implementation of an action by the President by proclamation is subject to the consultation and layover requirements of this section, such action may be proclaimed only if—

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

(A) the appropriate advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155); and

(B) the Commission;

(2) the President has submitted to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report that sets forth—

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

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

(3) a period of 60 calendar days, beginning on the first day on which the requirements set forth in paragraphs (1) and (2) have been met has expired; and

(4) the President has consulted with such Committees regarding the proposed action during the period referred to in paragraph (3).

SEC. 105. ADMINISTRATION OF DISPUTE SETTLEMENT PROCEEDINGS.

(a) ESTABLISHMENT OR DESIGNATION OF OFFICE.—The President is authorized to establish or designate within the Department of Commerce an office that shall be responsible for providing administrative assistance to panels established under chapter 20 of the Agreement. The office may not be considered to be an agency for purposes of section 552 of title 5, United States Code.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each fiscal year after fiscal year [2005] to the Department of Commerce such sums as may be necessary for the establishment and operations of the office established or designated under subsection (a) and for the payment of the United States share of the expenses of panels established under chapter 20 of the Agreement.

SEC. 106. ARBITRATION OF CLAIMS.

The United States is authorized to resolve any claim against the United States covered by article 10.16.1(a)(i)(C) or article 10.16.1(b)(i)(C) of the Agreement, pursuant to the Investor-State Dispute Settlement procedures set forth in section B of chapter 10 of the Agreement.

SEC. 107. EFFECTIVE DATES; EFFECT OF TERMINATION.

(a) EFFECTIVE DATES.—Except as provided in subsection (b), the provisions of this Act and the amendments made by this Act take effect on the date the Agreement enters into force.

(b) EXCEPTIONS.—Sections 1 through 3 and this title take effect on the date of the enactment of this Act.

(c) TERMINATION OF CAFTA–DR STATUS.—During any period in which a country ceases to be a CAFTA–DR country, the provisions of this Act (other than this subsection) and the amendments made by this Act shall cease to have effect with respect to that country.

(d) TERMINATION OF THE AGREEMENT.—On the date on which the Agreement ceases to be in force with respect to the United States, the provisions of this Act (other than this subsection) and the amendments made by this Act shall cease to have effect.

TITLE II—CUSTOMS PROVISIONS

SEC. 201. TARIFF MODIFICATIONS.

(a) TARIFF MODIFICATIONS PROVIDED FOR IN THE AGREEMENT.—

(1) PROCLAMATION AUTHORITY.—The President may proclaim—

(A) such modifications or continuation of any duty,

(B) such continuation of duty-free or excise treatment, or

(C) such additional duties,

as the President determines to be necessary or appropriate to carry out or apply articles 3.3, 3.5, 3.6, 3.21, 3.26, 3.27, and 3.28, and Annexes 3.3, 3.27, and 3.28 of the Agreement.

(2) EFFECT ON GSP STATUS.—Notwithstanding section 502(a)(1) of the Trade Act of 1974 (19 U.S.C. 2462(a)(1)), the President shall terminate the designation of each CAFTA–DR country as a beneficiary developing country for purposes of title V of the Trade Act of 1974 on the date the Agreement enters into force with respect to that country.

(3) EFFECT ON CBERA STATUS.—

(A) IN GENERAL.—Notwithstanding section 212(a) of the Caribbean Basin Economic

Recovery Act (19 U.S.C. 2702(a)), the President shall terminate the designation of each CAFTA–DR country as a beneficiary country for purposes of that Act on the date the Agreement enters into force with respect to that country.

(B) EXCEPTION.—Notwithstanding subparagraph (A), each such country shall be considered a beneficiary country under section 212(a) of the Caribbean Basin Economic Recovery Act, for purposes of—

(i) sections 771(7)(G)(ii)(III) and 771(7)(H) of the Tariff Act of 1930 (19 U.S.C. 1677(7)(G)(ii)(III) and 1677(7)(H));

(ii) the duty-free treatment provided under paragraph 12 of Appendix I of the General Notes to the Schedule of the United States to Annex 3.3 of the Agreement; and

(iii) section 274(h)(6)(B) of the Internal Revenue Code of 1986.

(b) OTHER TARIFF MODIFICATIONS.—Subject to the consultation and layover provisions of section 104, the President may proclaim—

(1) such modifications or continuation of any duty,

(2) such modifications as the United States may agree to with a CAFTA–DR country regarding the staging of any duty treatment set forth in Annex 3.3 of the Agreement,

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

(4) such additional duties,

as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions provided for by the Agreement.

(c) CONVERSION TO AD VALOREM RATES.—For purposes of subsections (a) and (b), with respect to any good for which the base rate in the Schedule of the United States to Annex 3.3 of the Agreement is a specific or compound rate of duty, the President may substitute for the base rate an ad valorem rate that the President determines to be equivalent to the base rate.

SEC. 202. ADDITIONAL DUTIES ON CERTAIN AGRICULTURAL GOODS.

(a) GENERAL PROVISIONS.—

(1) APPLICABILITY OF SUBSECTION.—This subsection applies to additional duties assessed under subsection (b).

(2) APPLICABLE NTR (MFN) RATE OF DUTY.—For purposes of subsection (b), the term "applicable NTR (MFN) rate of duty" means, with respect to a safeguard good, a rate of duty that is the lesser of—

(A) the column 1 general rate of duty that would, at the time the additional duty is imposed under subsection (b), apply to a good classifiable in the same 8-digit subheading of the HTS as the safeguard good; or

(B) the column 1 general rate of duty that would, on the day before the date on which the Agreement enters into force, apply to a good classifiable in the same 8-digit subheading of the HTS as the safeguard good.

(3) SCHEDULE RATE OF DUTY.—For purposes of subsection (b), the term "schedule rate of duty" means, with respect to a safeguard good, the rate of duty for that good that is set out in the Schedule of the United States to Annex 3.3 of the Agreement.

(4) SAFEGUARD GOOD.—In this section, the term "safeguard good" means a good—

(A) that is included in the Schedule of the United States to Annex 3.15 of the Agreement;

(B) that qualifies as an originating good under section 203, except that operations performed in or material obtained from the United States shall be considered as if the operations were performed in, and the material was obtained from, a country that is not a party to the Agreement; and

(C) for which a claim for preferential tariff treatment under the Agreement has been made.

(5) EXCEPTIONS.—No additional duty shall be assessed on a good under subsection (b) if, at the time of entry, the good is subject to import relief under—

(A) subtitle A of title III of this Act; or

(B) chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.).

(6) TERMINATION.—The assessment of an additional duty on a good under subsection (b) shall cease to apply to that good on the date on which duty-free treatment must be provided to that good under the Schedule of the United States to Annex 3.3 of the Agreement.

(7) NOTICE.—Not later than 60 days after the Secretary of the Treasury first assesses an additional duty in a calendar year on a good under sub-

section (b), the Secretary shall notify the country whose good is subject to the additional duty in writing of such action and shall provide to that country data supporting the assessment of the additional duty.

(b) ADDITIONAL DUTIES ON SAFEGUARD GOODS.—

(1) IN GENERAL.—In addition to any duty proclaimed under subsection (a) or (b) of section 201, and subject to subsection (a), the Secretary of the Treasury shall assess a duty, in the amount determined under paragraph (2), on a safeguard good of a CAFTA–DR country imported into the United States in a calendar year if the Secretary determines that, prior to such importation, the total volume of that safeguard good of such country that is imported into the United States in that calendar year exceeds 130 percent of the volume that is set out for that safeguard good in the corresponding year in the table for that country contained in Appendix I of the General Notes to the Schedule of the United States to Annex 3.3 of the Agreement. For purposes of this subsection, year 1 in that table corresponds to the calendar year in which the Agreement enters into force.

(2) CALCULATION OF ADDITIONAL DUTY.—The additional duty on a safeguard good under this subsection shall be—

(A) in the case of a good classified under subheading 1202.10.80, 1202.20.80, 2008.11.15, 2008.11.35, or 2008.11.60 of the HTS—

(i) in years 1 through 5, an amount equal to 100 percent of the excess of the applicable NTR (MFN) rate of duty over the schedule rate of duty;

(ii) in years 6 through 10, an amount equal to 75 percent of the excess of the applicable NTR (MFN) rate of duty over the schedule rate of duty; and

(iii) in years 11 through 14, an amount equal to 50 percent of the excess of the applicable NTR (MFN) rate of duty over the schedule rate of duty; and

(B) in the case of any other safeguard good—

(i) in years 1 through 14, an amount equal to 100 percent of the excess of the applicable NTR (MFN) rate of duty over the schedule rate of duty;

(ii) in years 15 through 17, an amount equal to 75 percent of the excess of the applicable NTR (MFN) rate of duty over the schedule rate of duty; and

(iii) in years 18 and 19, an amount equal to 50 percent of the excess of the applicable NTR (MFN) rate of duty over the schedule rate of duty.

SEC. 203. RULES OF ORIGIN.

(a) APPLICATION AND INTERPRETATION.—In this section:

(1) TARIFF CLASSIFICATION.—The basis for any tariff classification is the HTS.

(2) REFERENCE TO HTS.—Whenever in this section there is a reference to a chapter, heading, or subheading, such reference shall be a reference to a chapter, heading, or subheading of the HTS.

(3) COST OR VALUE.—Any cost or value referred to in this section shall be recorded and maintained in accordance with the generally accepted accounting principles applicable in the territory of the country in which the good is produced (whether the United States or another CAFTA–DR country).

(b) ORIGINATING GOODS.—For purposes of this Act and for purposes of implementing the preferential tariff

treatment provided for under the Agreement, except as otherwise provided in this section, a good is an originating good if—

(1) the good is a good wholly obtained or produced entirely in the territory of one or more of the CAFTA–DR countries;

(2) the good—

(A) is produced entirely in the territory of one or more of the CAFTA–DR countries, and—

(i) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in Annex 4.1 of the Agreement; or

(ii) the good otherwise satisfies any applicable regional value-content or other requirements specified in Annex 4.1 of the Agreement; and

(B) satisfies all other applicable requirements of this section; or

(3) the good is produced entirely in the territory of one or more of the CAFTA–DR countries, exclusively from materials described in paragraph (1) or (2).

(c) REGIONAL VALUE-CONTENT.—

(1) IN GENERAL.—For purposes of subsection (b)(2), the regional value-content of a good referred to in Annex 4.1 of the Agreement, except for goods to which paragraph (4) applies, shall be calculated by the importer, exporter, or producer of the good, on the basis of the build-down method described in paragraph (2) or the build-up method described in paragraph (3).

(2) BUILD-DOWN METHOD.—

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

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

(B) DEFINITIONS.—In subparagraph (A):

(i) RVC.—The term "RVC" means the regional value-content of the good, expressed as a percentage.

(ii) AV.—The term "AV" means the adjusted value of the good.

(iii) VNM.—The term "VNM" means the value of nonoriginating materials that are acquired and used by the producer in the production of the good, but does not

include the value of a material that is self-produced.

(3) BUILD-UP METHOD.—

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

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

(B) DEFINITIONS.—In subparagraph (A):

(i) RVC.—The term "RVC" means the regional value-content of the good, expressed as a percentage.

(ii) AV.—The term "AV" means the adjusted value of the good.

(iii) VOM.—The term "VOM" means the value of originating materials that are acquired or self-produced, and used by the producer in the production of the good.

(4) SPECIAL RULE FOR CERTAIN AUTOMOTIVE GOODS.—

(A) IN GENERAL.—For purposes of subsection (b)(2), the regional value-content of an automotive good referred to in Annex 4.1 of the Agreement may be calculated by the importer, exporter, or producer of the good, on the basis of the following net cost method:

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

(B) DEFINITIONS.—In subparagraph (A):

(i) AUTOMOTIVE GOOD.—The term "automotive good" means a good provided for in any of subheadings 8407.31 through 8407.34, subheading 8408.20, heading 8409, or in any of headings 8701 through 8708.

(ii) RVC.—The term "RVC" means the regional value-content of the automotive good, expressed as a percentage.

(iii) NC.—The term "NC" means the net cost of the automotive good.

(iv) VNM.—The term "VNM" means the value of nonoriginating materials that are acquired and used by the producer in the production of the automotive good, but does not include the value of a material that is self-produced.

(C) MOTOR VEHICLES.—

(i) BASIS OF CALCULATION.—For purposes of determining the regional value-content under subparagraph (A) for an automotive good that is a motor vehicle provided for in any of headings 8701

through 8705, an importer, exporter, or producer may average the amounts calculated under the formula contained in subparagraph (A), over the producer's fiscal year—

(I) with respect to all motor vehicles in any 1 of the categories described in clause (ii); or

(II) with respect to all motor vehicles in any such category that are exported to the territory of one or more of the CAFTA–DR countries.

(ii) CATEGORIES.—A category is described in this clause if it—

(I) is the same model line of motor vehicles, is in the same class of vehicles, and is produced in the same plant in the territory of a CAFTA–DR country, as the good described in clause (i) for which regional value-content is being calculated;

(II) is the same class of motor vehicles, and is produced in the same plant in the territory of a CAFTA–DR country, as the good described in

clause (i) for which regional value-content is being calculated; or

(III) is the same model line of motor vehicles produced in the territory of a CAFTA–DR country as the good described in clause (i) for which regional value-content is being calculated.

(D) OTHER AUTOMOTIVE GOODS.—For purposes of determining the regional value-content under subparagraph (A) for automotive goods provided for in any of subheadings 8407.31 through 8407.34, in subheading 8408.20, or in heading 8409, 8706, 8707, or 8708, that are produced in the same plant, an importer, exporter, or producer may—

(i) average the amounts calculated under the formula contained in subparagraph (A) over—

(I) the fiscal year of the motor vehicle producer to whom the automotive goods are sold,

(II) any quarter or month, or

(III) its own fiscal year,

if the goods were produced during the fiscal year, quarter, or month that is the basis for the calculation;

(ii) determine the average referred to in clause (i) separately for such goods sold to 1 or more motor vehicle producers; or

(iii) make a separate determination under clause (i) or (ii) for automotive goods that are exported to the territory of one or more of the CAFTA–DR countries.

(E) CALCULATING NET COST.—The importer, exporter, or producer shall, consistent with the provisions regarding allocation of costs set out in generally accepted accounting principles, determine the net cost of an automotive good under subparagraph (B) by—

(i) calculating the total cost incurred with respect to all goods produced by the producer of the automotive good, subtracting any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and nonallowable interest costs that are included in the total cost of all such goods, and then rea-

sonably allocating the resulting net cost of those goods to the automotive good;

(ii) calculating the total cost incurred with respect to all goods produced by that producer, reasonably allocating the total cost to the automotive good, and then subtracting any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and nonallowable interest costs that are included in the portion of the total cost allocated to the automotive good; or

(iii) reasonably allocating each cost that forms part of the total cost incurred with respect to the automotive good so that the aggregate of all such costs does not include any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, or nonallowable interest costs.

(d) VALUE OF MATERIALS.—

(1) IN GENERAL.—For the purpose of calculating the regional value-content of a good under subsection (c), and for purposes of applying the de

minimis rules under subsection (f), the value of a material is—

(A) in the case of a material that is imported by the producer of the good, the adjusted value of the material;

(B) in the case of a material acquired in the territory in which the good is produced, the value, determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretive notes of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 referred to in section 101(d)(8) of the Uruguay Round Agreements Act, as set forth in regulations promulgated by the Secretary of the Treasury providing for the application of such Articles in the absence of an importation; or

(C) in the case of a material that is self-produced, the sum of—

(i) all expenses incurred in the production of the material, including general expenses; and

(ii) an amount for profit equivalent to the profit added in the normal course of trade.

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

(A) ORIGINATING MATERIAL.—The following expenses, if not included in the value of an originating material calculated under paragraph (1), may be added to the value of the originating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of one or more of the CAFTA–DR countries to the location of the producer.

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of one or more of the CAFTA–DR countries, other than duties or taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable.

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or byproducts.

(B) NONORIGINATING MATERIAL.—The following expenses, if included in the value of a nonoriginating material calculated under paragraph (1), may be deducted from the value of the nonoriginating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of one or more of the CAFTA–DR countries to the location of the producer.

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of one or more of the CAFTA–DR countries, other than duties or taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable.

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or byproducts.

(iv) The cost of originating materials used in the production of the nonorigi-

nating material in the territory of one or more of the CAFTA–DR countries.

(e) ACCUMULATION.—

(1) ORIGINATING MATERIALS USED IN PRODUCTION OF GOODS OF ANOTHER COUNTRY.—Originating materials from the territory of one or more of the CAFTA–DR countries that are used in the production of a good in the territory of another CAFTA–DR country shall be considered to originate in the territory of that other country.

(2) MULTIPLE PROCEDURES.—A good that is produced in the territory of one or more of the CAFTA–DR countries by 1 or more producers is an originating good if the good satisfies the requirements of subsection (b) and all other applicable requirements of this section.

(f) DE MINIMIS AMOUNTS OF NONORIGINATING MATERIALS.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), a good that does not undergo a change in tariff classification pursuant to Annex 4.1 of the Agreement is an originating good if—

(A) the value of all nonoriginating materials that—

(i) are used in the production of the good, and

(ii) do not undergo the applicable change in tariff classification (set out in Annex 4.1 of the Agreement),

does not exceed 10 percent of the adjusted value of the good;

(B) the good meets all other applicable requirements of this section; and

(C) the value of such nonoriginating materials is included in the value of nonoriginating materials for any applicable regional value-content requirement for the good.

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

(A) A nonoriginating material provided for in chapter 4, or a nonoriginating dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90 or 2106.90, that is used in the production of a good provided for in chapter 4.

(B) A nonoriginating material provided for in chapter 4, or a nonoriginating dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90,

that is used in the production of the following goods:

(i) Infant preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.10.

(ii) Mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale, provided for in subheading 1901.20.

(iii) Dairy preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.90 or 2106.90.

(iv) Goods provided for in heading 2105.

(v) Beverages containing milk provided for in subheading 2202.90.

(vi) Animal feeds containing over 10 percent by weight of milk solids provided for in subheading 2309.90.

(C) A nonoriginating material provided for in heading 0805, or any of subheadings 2009.11 through 2009.39, that is used in the production of a good provided for in any of subheadings 2009.11 through 2009.39, or in fruit

or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins, concentrated or unconcentrated, provided for in subheading 2106.90 or 2202.90.

(D) A nonoriginating material provided for in heading 0901 or 2101 that is used in the production of a good provided for in heading 0901 or 2101.

(E) A nonoriginating material provided for in heading 1006 that is used in the production of a good provided for in heading 1102 or 1103 or subheading 1904.90.

(F) A nonoriginating material provided for in chapter 15 that is used in the production of a good provided for in chapter 15.

(G) A nonoriginating material provided for in heading 1701 that is used in the production of a good provided for in any of headings 1701 through 1703.

(H) A nonoriginating material provided for in chapter 17 that is used in the production of a good provided for in subheading 1806.10.

(I) Except as provided in subparagraphs (A) through (H) and Annex 4.1 of the Agreement, a nonoriginating material used in the

production of a good provided for in any of chapters 1 through 24, unless the nonoriginating material is provided for in a different subheading than the good for which origin is being determined under this section.

(3) TEXTILE OR APPAREL GOODS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), a textile or apparel good that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification, set out in Annex 4.1 of the Agreement, shall be considered to be an originating good if—

(i) the total weight of all such fibers or yarns in that component is not more than 10 percent of the total weight of that component; or

(ii) the yarns are those described in section 204(b)(3)(B)(vi)(IV) of the Andean Trade Preference Act (19 U.S.C. 3203(b)(3)(B)(vi)(IV))(as in effect on the date of enactment of this Act).

(B) CERTAIN TEXTILE OR APPAREL GOODS.—A textile or apparel good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed in the territory of a CAFTA–DR country.

(C) YARN, FABRIC, OR FIBER.—For purposes of this paragraph, in the case of a good that is a yarn, fabric, or fiber, the term "component of the good that determines the tariff classification of the good" means all of the fibers in the good.

(g) FUNGIBLE GOODS AND MATERIALS.—

(1) IN GENERAL.—

(A) CLAIM FOR PREFERENTIAL TARIFF TREATMENT.—A person claiming that a fungible good or fungible material is an originating good may base the claim either on the physical segregation of the fungible good or fungible material or by using an inventory management method with respect to the fungible good or fungible material.

(B) INVENTORY MANAGEMENT METHOD.—In this subsection, the term "inventory management method" means—

(i) averaging;

(ii) "last-in, first-out";

(iii) "first-in, first-out"; or

(iv) any other method—

(I) recognized in the generally accepted accounting principles of the CAFTA–DR country in which the production is performed; or

(II) otherwise accepted by that country.

(2) ELECTION OF INVENTORY METHOD.—A person selecting an inventory management method under paragraph (1) for a particular fungible good or fungible material shall continue to use that method for that fungible good or fungible material throughout the fiscal year of that person.

(h) ACCESSORIES, SPARE PARTS, OR TOOLS.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), accessories, spare parts, or tools delivered with a good that form part of the good's standard accessories, spare parts, or tools shall—

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

(B) be disregarded in determining whether all the nonoriginating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 4.1 of the Agreement.

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

(A) the accessories, spare parts, or tools are classified with and not invoiced separately from the good, regardless of whether they appear specified or separately identified in the invoice for the good; and

(B) the quantities and value of the accessories, spare parts, or tools are customary for the good.

(3) REGIONAL VALUE-CONTENT.—If the good is subject to a regional value-content requirement, the value of the accessories, spare parts, or tools shall be taken into account as originating or nonoriginating materials, as the case may be, in calculating the regional value-content of the good.

(i) PACKAGING MATERIALS AND CONTAINERS FOR RETAIL SALE.—Packaging materials and containers in

which a good is packaged for retail sale, if classified with the good, shall be disregarded in determining whether all the nonoriginating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 4.1 of the Agreement, and, if the good is subject to a regional value-content requirement, the value of such packaging materials and containers shall be taken into account as originating or nonoriginating materials, as the case may be, in calculating the regional value-content of the good.

(j) PACKING MATERIALS AND CONTAINERS FOR SHIPMENT.—Packing materials and containers for shipment shall be disregarded in determining whether a good is an originating good.

(k) INDIRECT MATERIALS.—An indirect material shall be treated as an originating material without regard to where it is produced.

(l) TRANSIT AND TRANSHIPMENT.—A good that has undergone production necessary to qualify as an originating good under subsection (b) shall not be considered to be an originating good if, subsequent to that production, the good—

(1) undergoes further production or any other operation outside the territories of the CAFTA–DR countries, other than unloading, reloading, or any

other operation necessary to preserve the good in good condition or to transport the good to the territory of a CAFTA–DR country; or

(2) does not remain under the control of customs authorities in the territory of a country other than a CAFTA–DR country.

(m) GOODS CLASSIFIABLE AS GOODS PUT UP IN SETS.—Notwithstanding the rules set forth in Annex 4.1 of the Agreement, goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3 of the HTS shall not be considered to be originating goods unless—

(1) each of the goods in the set is an originating good; or

(2) the total value of the nonoriginating goods in the set does not exceed—

(A) in the case of textile or apparel goods, 10 percent of the adjusted value of the set; or

(B) in the case of a good, other than a textile or apparel good, 15 percent of the adjusted value of the set.

(n) DEFINITIONS.—In this section:

(1) ADJUSTED VALUE.—The term "adjusted value" means the value determined in accordance with Articles 1 through 8, Article 15, and the cor-

responding interpretive notes of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 referred to in section 101(d)(8) of the Uruguay Round Agreements Act, adjusted, if necessary, to exclude any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation.

(2) CAFTA–DR COUNTRY.—The term "CAFTA–DR country" means—

(A) the United States; and

(B) Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, or Nicaragua, for such time as the Agreement is in force between the United States and that country.

(3) CLASS OF MOTOR VEHICLES.—The term "class of motor vehicles" means any one of the following categories of motor vehicles:

(A) Motor vehicles provided for in subheading 8701.20, 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 8705 or 8706, or motor vehicles for the transport of 16 or

more persons provided for in subheading 8702.10 or 8702.90.

(B) Motor vehicles provided for in subheading 8701.10 or any of subheadings 8701.30 through 8701.90.

(C) Motor vehicles for the transport of 15 or fewer persons provided for in subheading 8702.10 or 8702.90, or motor vehicles provided for in subheading 8704.21 or 8704.31.

(D) Motor vehicles provided for in any of subheadings 8703.21 through 8703.90.

(4) FUNGIBLE GOOD OR FUNGIBLE MATERIAL.—The term "fungible good" or "fungible material" means a good or material, as the case may be, that is interchangeable with another good or material for commercial purposes and the properties of which are essentially identical to such other good or material.

(5) GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.—The term "generally accepted accounting principles" means the recognized consensus or substantial authoritative support in the territory of a CAFTA–DR country with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of

financial statements. The principles may encompass broad guidelines of general application as well as detailed standards, practices, and procedures.

(6) GOODS WHOLLY OBTAINED OR PRODUCED ENTIRELY IN THE TERRITORY OF ONE OR MORE OF THE CAFTA–DR COUNTRIES.—The term "goods wholly obtained or produced entirely in the territory of one or more of the CAFTA–DR countries" means—

(A) plants and plant products harvested or gathered in the territory of one or more of the CAFTA–DR countries;

(B) live animals born and raised in the territory of one or more of the CAFTA–DR countries;

(C) goods obtained in the territory of one or more of the CAFTA–DR countries from live animals;

(D) goods obtained from hunting, trapping, fishing or aquaculture conducted in the territory of one or more of the CAFTA–DR countries;

(E) minerals and other natural resources not included in subparagraphs (A) through (D)

that are extracted or taken in the territory of one or more of the CAFTA–DR countries;

(F) fish, shellfish, and other marine life taken from the sea, seabed, or subsoil outside the territory of one or more of the CAFTA–DR countries by vessels registered or recorded with a CAFTA–DR country and flying the flag of that country;

(G) goods produced on board factory ships from the goods referred to in subparagraph (F), if such factory ships are registered or recorded with that CAFTA–DR country and fly the flag of that country;

(H) goods taken by a CAFTA–DR country or a person of a CAFTA–DR country from the seabed or subsoil outside territorial waters, if a CAFTA–DR country has rights to exploit such seabed or subsoil;

(I) goods taken from outer space, if the goods are obtained by a CAFTA–DR country or a person of a CAFTA–DR country and not processed in the territory of a country other than a CAFTA–DR country;

(J) waste and scrap derived from—

(i) manufacturing or processing operations in the territory of one or more of the CAFTA–DR countries; or

(ii) used goods collected in the territory of one or more of the CAFTA–DR countries, if such goods are fit only for the recovery of raw materials;

(K) recovered goods derived in the territory of one or more of the CAFTA–DR countries from used goods, and used in the territory of a CAFTA–DR country in the production of remanufactured goods; and

(L) goods produced in the territory of one or more of the CAFTA–DR countries exclusively from—

(i) goods referred to in any of subparagraphs (A) through (J), or

(ii) the derivatives of goods referred to in clause (i),

at any stage of production.

(7) IDENTICAL GOODS.—The term "identical goods" means identical goods as defined in the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 re-

ferred to in section 101(d)(8) of the Uruguay Round Agreements Act;

(8) INDIRECT MATERIAL.—The term "indirect material" means a good used in the production, testing, or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good, including—

(A) fuel and energy;

(B) tools, dies, and molds;

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

(D) lubricants, greases, compounding materials, and other materials used in production or used to operate equipment or buildings;

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

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

(G) catalysts and solvents; and

(H) any other goods that are not incorporated into the good but the use of which in the production of the good can reasonably be demonstrated to be a part of that production.

(9) MATERIAL.—The term "material" means a good that is used in the production of another good, including a part or an ingredient.

(10) MATERIAL THAT IS SELF-PRODUCED.—The term "material that is self-produced" means an originating material that is produced by a producer of a good and used in the production of that good.

(11) MODEL LINE.—The term "model line" means a group of motor vehicles having the same platform or model name.

(12) NET COST.—The term "net cost" means total cost minus sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost.

(13) NONALLOWABLE INTEREST COSTS.—The term "nonallowable interest costs" means interest costs incurred by a producer that exceed 700 basis points above the applicable official interest rate for comparable maturities of the CAFTA–DR country in which the producer is located.

(14) NONORIGINATING GOOD OR NONORIGINATING MATERIAL.—The terms "nonoriginating good" and "nonoriginating material" mean a good

or material, as the case may be, that does not qualify as originating under this section.

(15) PACKING MATERIALS AND CONTAINERS FOR SHIPMENT.—The term "packing materials and containers for shipment" means the goods used to protect a good during its transportation and does not include the packaging materials and containers in which a good is packaged for retail sale.

(16) PREFERENTIAL TARIFF TREATMENT.—The term "preferential tariff treatment" means the customs duty rate, and the treatment under article 3.10.4 of the Agreement, that are applicable to an originating good pursuant to the Agreement.

(17) PRODUCER.—The term "producer" means a person who engages in the production of a good in the territory of a CAFTA–DR country.

(18) PRODUCTION.—The term "production" means growing, mining, harvesting, fishing, raising, trapping, hunting, manufacturing, processing, assembling, or disassembling a good.

(19) REASONABLY ALLOCATE.—The term "reasonably allocate" means to apportion in a manner that would be appropriate under generally accepted accounting principles.

(20) RECOVERED GOODS.—The term "recovered goods" means materials in the form of individual parts that are the result of—

(A) the disassembly of used goods into individual parts; and

(B) the cleaning, inspecting, testing, or other processing that is necessary for improvement to sound working condition of such individual parts.

(21) REMANUFACTURED GOOD.—The term "remanufactured good" means a good that is classified under chapter 84, 85, or 87, or heading 9026, 9031, or 9032, other than a good classified under heading 8418 or 8516, and that—

(A) is entirely or partially comprised of recovered goods; and

(B) has a similar life expectancy and enjoys a factory warranty similar to such a new good.

(22) TOTAL COST.—The term "total cost" means all product costs, period costs, and other costs for a good incurred in the territory of one or more of the CAFTA–DR countries.

(23) USED.—The term "used" means used or consumed in the production of goods.

(o) PRESIDENTIAL PROCLAMATION AUTHORITY.—

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

(A) the provisions set out in Annex 4.1 of the Agreement; and

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

(2) FABRICS AND YARNS NOT AVAILABLE IN COMMERCIAL QUANTITIES IN THE UNITED STATES.—The President is authorized to proclaim that a fabric or yarn is added to the list in Annex 3.25 of the Agreement in an unrestricted quantity, as provided in article 3.25.4(e) of the Agreement.

(3) MODIFICATIONS.—

(A) IN GENERAL.—Subject to the consultation and layover provisions of section 104, the President may proclaim modifications to the provisions proclaimed under the authority of paragraph (1)(A), other than provisions of chapters 50 through 63, as included in Annex 4.1 of the Agreement.

(B) ADDITIONAL PROCLAMATIONS.—Notwithstanding subparagraph (A), and subject to the consultation and layover provisions of sec-

tion 104, the President may proclaim before the end of the 1-year period beginning on the date of the enactment of this Act, modifications to correct any typographical, clerical, or other non-substantive technical error regarding the provisions of chapters 50 through 63, as included in Annex 4.1 of the Agreement.

(4) FABRICS, YARNS, OR FIBERS NOT AVAILABLE IN COMMERCIAL QUANTITIES IN THE CAFTA–DR COUNTRIES.—

(A) IN GENERAL.—Notwithstanding paragraph 3(A), the list of fabrics, yarns, and fibers set out in Annex 3.25 of the Agreement may be modified as provided for in this paragraph.

(B) DEFINITIONS.—In this paragraph:

(i) The term "interested entity" means the government of a CAFTA–DR country other than the United States, a potential or actual purchaser of a textile or apparel good, or a potential or actual supplier of a textile or apparel good.

(ii) All references to "day" and "days" exclude Saturdays, Sundays, and legal holidays.

(C) REQUESTS TO ADD FABRICS, YARNS, OR FIBERS.—(i) An interested entity may request the President to determine that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the CAFTA–DR countries and to add that fabric, yarn, or fiber to the list in Annex 3.25 of the Agreement in a restricted or unrestricted quantity.

(ii) After receiving a request under clause (i), the President may determine whether—

(I) the fabric, yarn, or fiber is available in commercial quantities in a timely manner in the CAFTA–DR countries; or

(II) any interested entity objects to the request.

(iii) The President may, within the time periods specified in clause (iv), proclaim that a fabric, yarn, or fiber that is the subject of a request submitted under clause (i) is added to the list in Annex 3.25 of the Agreement in an unrestricted quantity, or in any restricted quantity that the President may establish, if the President determines under clause (ii) that—

(I) the fabric, yarn, or fiber is not available in commercial quantities in a

timely manner in the CAFTA–DR countries; or

(II) no interested entity has objected to the request.

(iv) The time periods within which the President may issue a proclamation under clause (iii) are—

(I) not later than 30 days after the date on which the request is submitted under clause (i); or

(II) not later than 44 days after the request is submitted, if the President determines, within 30 days after the date on which the request is submitted, that the President does not have sufficient information to make a determination under clause (ii).

(v) Notwithstanding section 103(a)(2), a proclamation made under clause (iii) shall take effect on the date on which the text of the proclamation is published in the Federal Register.

(vi) Not later than 6 months after proclaiming under clause (iii) that a fabric, yarn, or fiber is added to the list in Annex 3.25 of the Agreement in a restricted quantity, the

President may eliminate the restriction if the President determines that the fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the CAFTA–DR countries.

(D) DEEMED APPROVAL OF REQUEST.—If, after an interested entity submits a request under subparagraph (C)(i), the President does not, within the applicable time period specified in subparagraph (C)(iv), make a determination under subparagraph (C)(ii) regarding the request, the fabric, yarn, or fiber that is the subject of the request shall be considered to be added, in an unrestricted quantity, to the list in Annex 3.25 of the Agreement beginning—

(i) 45 days after the date on which the request was submitted; or

(ii) 60 days after the date on which the request was submitted, if the President made a determination under subparagraph (C)(iv)(II).

(E) REQUESTS TO RESTRICT OR REMOVE FABRICS, YARNS, OR FIBERS.—(i) Subject to clause (ii), an interested entity may request the President to restrict the quantity of, or remove

from the list in Annex 3.25 of the Agreement, any fabric, yarn, or fiber—

(I) that has been added to that list in an unrestricted quantity pursuant to paragraph (2) or subparagraph (C)(iii) or (D); or

(II) with respect to which the President has eliminated a restriction under subparagraph (C)(vi).

(ii) An interested entity may submit a request under clause (i) at any time beginning 6 months after the date of the action described in subclause (I) or (II) of that clause.

(iii) Not later than 30 days after the date on which a request under clause (i) is submitted, the President may proclaim an action provided for under clause (i) if the President determines that the fabric, yarn, or fiber that is the subject of the request is available in commercial quantities in a timely manner in the CAFTA–DR countries.

(iv) A proclamation declared under clause (iii) shall take effect no earlier than the date that is 6 months after the date on which the

text of the proclamation is published in the Federal Register.

(F) PROCEDURES.—The President shall establish procedures—

(i) governing the submission of a request under subparagraphs (C) and (E); and

(ii) providing an opportunity for interested entities to submit comments and supporting evidence before the President makes a determination under subparagraph (C) (ii) or (vi) or (E)(iii).

SEC. 204. CUSTOMS USER FEES.

Section 13031(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)) is amended by adding after paragraph (14), the following:

"(15) No fee may be charged under subsection (a) (9) or (10) with respect to goods that qualify as originating goods under section 203 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act. Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.".

SEC. 205. RETROACTIVE APPLICATION FOR CERTAIN LIQUIDATIONS AND RELIQUIDATIONS OF TEXTILE OR APPAREL GOODS.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, and subject to subsection (c), an entry—

(1) of a textile or apparel good—

(A) of a CAFTA–DR country that the United States Trade Representative has designated as an eligible country under subsection (b), and

(B) that would have qualified as an originating good under section 203 if the good had been entered after the date of entry into force of the Agreement for that country,

(2) that was made on or after January 1, 2004, and before the date of the entry into force of the Agreement with respect to that country, and

(3) for which customs duties in excess of the applicable rate of duty for that good set out in the Schedule of the United States to Annex 3.3 of the Agreement were paid,

shall be liquidated or reliquidated at the applicable rate of duty for that good set out in the Schedule of the United States to Annex 3.3 of the Agreement, and the Secretary

of the Treasury shall refund any excess customs duties paid with respect to such entry.

(b) ELIGIBLE COUNTRY.—The United States Trade Representative shall determine, in accordance with article 3.20 of the Agreement, which CAFTA–DR countries are eligible countries for purposes of this section, and shall publish a list of all such countries in the Federal Register.

(c) REQUESTS.—Liquidation or reliquidation may be made under subsection (a) with respect to an entry of a textile or apparel good only if a request therefor is filed with the Bureau of Customs and Border Protection, within such period as the Bureau of Customs and Border Protection shall establish by regulation in consultation with the Secretary of the Treasury, that contains sufficient information to enable the Bureau of Customs and Border Protection—

(1)(A) to locate the entry; or

(B) to reconstruct the entry if it cannot be located; and

(2) to determine that the good satisfies the conditions set out in subsection (a).

(d) DEFINITION.—As used in this section, the term "entry" includes a withdrawal from warehouse for consumption.

SEC. 206. DISCLOSURE OF INCORRECT INFORMATION; FALSE CERTIFICATIONS OF ORIGIN; DENIAL OF PREFERENTIAL TARIFF TREATMENT.

(a) DISCLOSURE OF INCORRECT INFORMATION.—Section 592 of the Tariff Act of 1930 (19 U.S.C. 1592) is amended—

(1) in subsection (c)—

(A) by redesignating paragraph (9) as paragraph (10); and

(B) by inserting after paragraph (8) the following new paragraph:

"(9) PRIOR DISCLOSURE REGARDING CLAIMS UNDER THE DOMINICAN REPUBLIC-CENTRAL AMERICA-UNITED STATES FREE TRADE AGREEMENT.—An importer shall not be subject to penalties under subsection (a) for making an incorrect claim that a good qualifies as an originating good under section 203 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act if the importer, in accordance with regulations issued by the Secretary of the Treasury, promptly and voluntarily makes a corrected declaration and pays any duties owing."; and

(2) by adding at the end the following new subsection:

"(h) FALSE CERTIFICATIONS OF ORIGIN UNDER THE DOMINICAN REPUBLIC-CENTRAL AMERICA-UNITED STATES FREE TRADE AGREEMENT.—

"(1) IN GENERAL.—Subject to paragraph (2), it is unlawful for any person to certify falsely, by fraud, gross negligence, or negligence, in a CAFTA–DR certification of origin (as defined in section 508(g)(1)(B) of this Act) that a good exported from the United States qualifies as an originating good under the rules of origin set out in section 203 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act. The procedures and penalties of this section that apply to a violation of subsection (a) also apply to a violation of this subsection.

"(2) PROMPT AND VOLUNTARY DISCLOSURE OF INCORRECT INFORMATION.—No penalty shall be imposed under this subsection if, promptly after an exporter or producer that issued a CAFTA–DR certification of origin has reason to believe that such certification contains or is based on incorrect information, the exporter or producer voluntarily provides written notice of such incorrect information to every person to whom the certification was issued.

"(3) EXCEPTION.—A person may not be considered to have violated paragraph (1) if—

"(A) the information was correct at the time it was provided in a CAFTA–DR certification of origin but was later rendered incorrect due to a change in circumstances; and

"(B) the person promptly and voluntarily provides written notice of the change in circumstances to all persons to whom the person provided the certification.".

(b) DENIAL OF PREFERENTIAL TARIFF TREATMENT.—Section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) is amended by adding at the end the following new subsection:

"(h) DENIAL OF PREFERENTIAL TARIFF TREATMENT UNDER THE DOMINICAN REPUBLIC-CENTRAL AMERICA-UNITED STATES FREE TRADE AGREEMENT.—If the Bureau of Customs and Border Protection or the Bureau of Immigration and Customs Enforcement finds indications of a pattern of conduct by an importer, exporter, or producer of false or unsupported representations that goods qualify under the rules of origin set out in section 203 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act, the Bureau of Customs and Border Protection, in ac-

cordance with regulations issued by the Secretary of the Treasury, may suspend preferential tariff treatment under the Dominican Republic-Central America-United States Free Trade Agreement to entries of identical goods covered by subsequent representations by that importer, exporter, or producer until the Bureau of Customs and Border Protection determines that representations of that person are in conformity with such section 203.".

SEC. 207. RELIQUIDATION OF ENTRIES.

Subsection (d) of section 520 of the Tariff Act of 1930 (19 U.S.C. 1520(d)) is amended—

(1) in the matter preceding paragraph (1), by striking "or section 202 of the United States-Chile Free Trade Agreement Implementation Act" and inserting ", section 202 of the United States-Chile Free Trade Agreement Implementation Act, or section 203 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act"; and

(2) in paragraph (2), by inserting "or certifications" after "other certificates".

SEC. 208. RECORDKEEPING REQUIREMENTS.

Section 508 of the Tariff Act of 1930 (19 U.S.C. 1508) is amended—

(1) by redesignating subsection (g) as subsection (h);

(2) by inserting after subsection (f) the following new subsection:

"(g) CERTIFICATIONS OF ORIGIN FOR GOODS EXPORTED UNDER THE DOMINICAN REPUBLIC-CENTRAL AMERICA-UNITED STATES FREE TRADE AGREEMENT.—

"(1) DEFINITIONS.—In this subsection:

"(A) RECORDS AND SUPPORTING DOCUMENTS.—The term 'records and supporting documents' means, with respect to an exported good under paragraph (2), records and documents related to the origin of the good, including—

"(i) the purchase, cost, and value of, and payment for, the good;

"(ii) the purchase, cost, and value of, and payment for, all materials, including indirect materials, used in the production of the good; and

"(iii) the production of the good in the form in which it was exported.

"(B) CAFTA–DR CERTIFICATION OF ORIGIN.—The term 'CAFTA–DR certification of origin' means the certification established under

article 4.16 of the Dominican Republic-Central America-United States Free Trade Agreement that a good qualifies as an originating good under such Agreement.

"(2) EXPORTS TO CAFTA–DR COUNTRIES.—Any person who completes and issues a CAFTA–DR certification of origin for a good exported from the United States shall make, keep, and, pursuant to rules and regulations promulgated by the Secretary of the Treasury, render for examination and inspection all records and supporting documents related to the origin of the good (including the certification or copies thereof).

"(3) RETENTION PERIOD.—Records and supporting documents shall be kept by the person who issued a CAFTA–DR certification of origin for at least 5 years after the date on which the certification was issued."; and

(3) in subsection (h), as so redesignated—

(A) by inserting "or (g)" after "(f)"; and

(B) by striking "that subsection" and inserting "either such subsection".

SEC. 209. ENFORCEMENT RELATING TO TRADE IN TEXTILE OR APPAREL GOODS.

(a) ACTION DURING VERIFICATION.—

(1) IN GENERAL.—If the Secretary of the Treasury requests the government of a CAFTA–DR country to conduct a verification pursuant to article 3.24 of the Agreement for purposes of making a determination under paragraph (2), the President may direct the Secretary to take appropriate action described in subsection (b) while the verification is being conducted.

(2) DETERMINATION.—A determination under this paragraph is a determination—

(A) that an exporter or producer in that country is complying with applicable customs laws, regulations, and procedures regarding trade in textile or apparel goods, or

(B) that a claim that a textile or apparel good exported or produced by such exporter or producer—

(i) qualifies as an originating good under section 203 of this Act, or

(ii) is a good of a CAFTA–DR country,

is accurate.

(b) APPROPRIATE ACTION DESCRIBED.—Appropriate action under subsection (a)(1) includes—

(1) suspension of preferential tariff treatment under the Agreement with respect to—

(A) any textile or apparel good exported or produced by the person that is the subject of a verification under subsection (a)(1) regarding compliance described in subsection (a)(2)(A), if the Secretary determines there is insufficient information to support any claim for preferential tariff treatment that has been made with respect to any such good; or

(B) the textile or apparel good for which a claim of preferential tariff treatment has been made that is the subject of a verification under subsection (a)(1) regarding a claim described in subsection (a)(2)(B), if the Secretary determines there is insufficient information to support that claim;

(2) denial of preferential tariff treatment under the Agreement with respect to—

(A) any textile or apparel good exported or produced by the person that is the subject of a verification under subsection (a)(1) regarding compliance described in subsection (a)(2)(A), if the Secretary determines that the person has provided incorrect information to support any

claim for preferential tariff treatment that has been made with respect to any such good; or

(B) the textile or apparel good for which a claim of preferential tariff treatment has been made that is the subject of a verification under subsection (a)(1) regarding a claim described in subsection (a)(2)(B), if the Secretary determines that a person has provided incorrect information to support that claim;

(3) detention of any textile or apparel good exported or produced by the person that is the subject of a verification under subsection (a)(1) regarding compliance described in subsection (a)(2)(A) or a claim described in subsection (a)(2)(B), if the Secretary determines there is insufficient information to determine the country of origin of any such good; and

(4) denial of entry into the United States of any textile or apparel good exported or produced by the person that is the subject of a verification under subsection (a)(1) regarding compliance described in subsection (a)(2)(A) or a claim described in subsection (a)(2)(B), if the Secretary determines that the person has provided incorrect information as to the country of origin of any such good.

(c) ACTION ON COMPLETION OF A VERIFICATION.—On completion of a verification under subsection (a), the President may direct the Secretary to take appropriate action described in subsection (d) until such time as the Secretary receives information sufficient to make the determination under subsection (a)(2) or until such earlier date as the President may direct.

(d) APPROPRIATE ACTION DESCRIBED.—Appropriate action under subsection (c) includes—

(1) denial of preferential tariff treatment under the Agreement with respect to—

(A) any textile or apparel good exported or produced by the person that is the subject of a verification under subsection (a)(1) regarding compliance described in subsection (a)(2)(A), if the Secretary determines there is insufficient information to support, or that the person has provided incorrect information to support, any claim for preferential tariff treatment that has been made with respect to any such good; or

(B) the textile or apparel good for which a claim of preferential tariff treatment has been made that is the subject of a verification under subsection (a)(1) regarding a claim described in subsection (a)(2)(B), if the Secretary deter-

mines there is insufficient information to support, or that a person has provided incorrect information to support, that claim; and

(2) denial of entry into the United States of any textile or apparel good exported or produced by the person that is the subject of a verification under subsection (a)(1) regarding compliance described in subsection (a)(2)(A) or a claim described in subsection (a)(2)(B), if the Secretary determines there is insufficient information to determine, or that the person has provided incorrect information as to, the country of origin of any such good.

(e) PUBLICATION OF NAME OF PERSON.—The Secretary may publish the name of any person that the Secretary has determined—

(1) is engaged in intentional circumvention of applicable laws, regulations, or procedures affecting trade in textile or apparel goods; or

(2) has failed to demonstrate that it produces, or is capable of producing, textile or apparel goods.

SEC. 210. REGULATIONS.

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

(1) subsections (a) through (n) of section 203;

(2) the amendment made by section 204; and

(3) any proclamation issued under section 203(o).

TITLE III—RELIEF FROM IMPORTS

SEC. 301. DEFINITIONS.

In this title:

(1) CAFTA–DR ARTICLE.—The term "CAFTA–DR article" means an article that qualifies as an originating good under section 203(b).

(2) CAFTA–DR TEXTILE OR APPAREL ARTICLE.—The term "CAFTA–DR textile or apparel article" means a textile or apparel good (as defined in section 3(5)) that is a CAFTA–DR article.

(3) DE MINIMIS SUPPLYING COUNTRY.—

(A) Subject to subparagraph (B), the term "de minimis supplying country" means a CAFTA–DR country whose share of imports of the relevant CAFTA–DR article into the United States does not exceed 3 percent of the aggregate volume of imports of the relevant CAFTA–DR article in the most recent 12-month period for which data are available that precedes the filing of the petition under section 311(a).

(B) A CAFTA–DR country shall not be considered to be a de minimis supplying country

if the aggregate share of imports of the relevant CAFTA–DR article into the United States of all CAFTA–DR countries that satisfy the conditions of subparagraph (A) exceeds 9 percent of the aggregate volume of imports of the relevant CAFTA–DR article during the applicable 12-month period.

(4) RELEVANT CAFTA–DR ARTICLE.—The term "relevant CAFTA–DR article" means the CAFTA–DR article with respect to which a petition has been filed under section 311(a).

Subtitle A—Relief From Imports Benefiting From the Agreement

SEC. 311. COMMENCING OF ACTION FOR RELIEF.

(a) FILING OF PETITION.—A petition requesting action under this subtitle for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of an industry. The Commission shall transmit a copy of any petition filed under this subsection to the United States Trade Representative.

(b) INVESTIGATION AND DETERMINATION.—Upon the filing of a petition under subsection (a), the Commis-

sion, unless subsection (d) applies, shall promptly initiate an investigation to determine whether, as a result of the reduction or elimination of a duty provided for under the Agreement, a CAFTA–DR article is being imported into the United States in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that imports of the CAFTA–DR article constitute a substantial cause of serious injury or threat thereof to the domestic industry producing an article that is like, or directly competitive with, the imported article.

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

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

(2) Subsection (c).

(3) Subsection (i).

(d) ARTICLES EXEMPT FROM INVESTIGATION.—No investigation may be initiated under this section with respect to any CAFTA–DR article if, after the date that the Agreement enters into force, import relief has been provided with respect to that CAFTA–DR article under this subtitle.

SEC. 312. COMMISSION ACTION ON PETITION.

(a) DETERMINATION.—Not later than 120 days after the date on which an investigation is initiated under section 311(b) with respect to a petition, the Commission shall make the determination required under that section. At that time, the Commission shall also determine whether any CAFTA–DR country is a de minimis supplying country.

(b) APPLICABLE PROVISIONS.—For purposes of this subtitle, the provisions of paragraphs (1), (2), and (3) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d) (1), (2), and (3)) shall be applied with respect to determinations and findings made under this section as if such determinations and findings were made under section 202 of the Trade Act of 1974 (19 U.S.C. 2252).

(c) ADDITIONAL FINDING AND RECOMMENDATION IF DETERMINATION AFFIRMATIVE.—If the determination made by the Commission under subsection (a) with respect to imports of an article is affirmative, or if the President may consider a determination of the Commission to be an affirmative determination as provided for under paragraph (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)), the Commission shall find, and recommend to the President in the report required under subsection (d), the amount of import relief that is necessary to remedy or prevent the injury found by the Commission in the de-

termination and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. The import relief recommended by the Commission under this subsection shall be limited to the relief described in section 313(c). Only those members of the Commission who voted in the affirmative under subsection (a) are eligible to vote on the proposed action to remedy or prevent the injury found by the Commission. Members of the Commission who did not vote in the affirmative may submit, in the report required under subsection (d), separate views regarding what action, if any, should be taken to remedy or prevent the injury.

(d) REPORT TO PRESIDENT.—Not later than the date that is 30 days after the date on which a determination is made under subsection (a) with respect to an investigation, the Commission shall submit to the President a report that includes—

(1) the determination made under subsection (a) and an explanation of the basis for the determination;

(2) if the determination under subsection (a) is affirmative, any findings and recommendations for import relief made under subsection (c) and an explanation of the basis for each recommendation; and

(3) any dissenting or separate views by members of the Commission regarding the determination and recommendation referred to in paragraphs (1) and (2).

(e) PUBLIC NOTICE.—Upon submitting a report to the President under subsection (d), the Commission shall promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

SEC. 313. PROVISION OF RELIEF.

(a) IN GENERAL.—Not later than the date that is 30 days after the date on which the President receives the report of the Commission in which the Commission's determination under section 312(a) is affirmative, or which contains a determination under section 312(a) that the President considers to be affirmative under paragraph (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)(1)), the President, subject to subsection (b), shall provide relief from imports of the article that is the subject of such determination to the extent that the President determines necessary to remedy or prevent the injury found by the Commission and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition.

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

(c) NATURE OF RELIEF.—

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

(A) The suspension of any further reduction provided for under Annex 3.3 of the Agreement in the duty imposed on such article.

(B) An increase in the rate of duty imposed on such article to a level that does not exceed the lesser of—

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

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

(2) PROGRESSIVE LIBERALIZATION.—If the period for which import relief is provided under this section is greater than 1 year, the President shall provide for the progressive liberalization (described

in article 8.2.3 of the Agreement) of such relief at regular intervals during the period of its application.

(d) PERIOD OF RELIEF.—

(1) IN GENERAL.—Subject to paragraph (2), any import relief that the President is authorized to provide under this section may not, in the aggregate, be in effect for more than 4 years.

(2) EXTENSION.—

(A) IN GENERAL.—If the initial period for any import relief provided under this section is less than 4 years, the President, after receiving a determination from the Commission under subparagraph (B) that is affirmative, or which the President considers to be affirmative under paragraph (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)(1)), may extend the effective period of any import relief provided under this section, subject to the limitation under paragraph (1), if the President determines that—

(i) the import relief continues to be necessary to remedy or prevent serious injury and to facilitate adjustment by the domestic industry to import competition; and

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

(B) ACTION BY COMMISSION.—(i) Upon a petition on behalf of the industry concerned that is filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date on which any action taken under subsection (a) is to terminate, the Commission shall conduct an investigation to determine whether action under this section continues to be necessary to remedy or prevent serious injury and whether there is evidence that the industry is making a positive adjustment to import competition.

(ii) The Commission shall publish notice of the commencement of any proceeding under this subparagraph in the Federal Register and shall, within a reasonable time thereafter, hold a public hearing at which the Commission shall afford interested parties and consumers an opportunity to be present, to present evidence, and to respond to the presentations of other

parties and consumers, and otherwise to be heard.

(iii) The Commission shall transmit to the President a report on its investigation and determination under this subparagraph not later than 60 days before the action under subsection (a) is to terminate, unless the President specifies a different date.

(e) RATE AFTER TERMINATION OF IMPORT RELIEF.—When import relief under this section is terminated with respect to an article—

(1) the rate of duty on that article after such termination and on or before December 31 of the year in which such termination occurs shall be the rate that, according to the Schedule of the United States to Annex 3.3 of the Agreement would have been in effect 1 year after the provision of relief under subsection (a); and

(2) the rate of duty for that article after December 31 of the year in which termination occurs shall be, at the discretion of the President, either—

(A) the applicable rate of duty for that article set out in the Schedule of the United States to Annex 3.3 of the Agreement; or

(B) the rate of duty resulting from the elimination of the tariff in equal annual stages ending on the date set out in the Schedule of the United States to Annex 3.3 of the Agreement for the elimination of the tariff.

(f) ARTICLES EXEMPT FROM RELIEF.—No import relief may be provided under this section on—

(1) any article subject to import relief under chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.); or

(2) imports of a CAFTA–DR article of a CAFTA–DR country that is a de minimis supplying country with respect to that article.

SEC. 314. TERMINATION OF RELIEF AUTHORITY.

(a) GENERAL RULE.—Subject to subsection (b), no import relief may be provided under this subtitle after the date that is 10 years after the date on which the Agreement enters into force.

(b) EXCEPTION.—If an article for which relief is provided under this subtitle is an article for which the period for tariff elimination, set out in the Schedule of the United States to Annex 3.3 of the Agreement, is greater than 10 years, no relief under this subtitle may be provided for that article after the date on which that period ends.

SEC. 315. COMPENSATION AUTHORITY.

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

SEC. 316. CONFIDENTIAL BUSINESS INFORMATION.

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

(1) by striking "and"; and

(2) by inserting before the period at the end ", and title III of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act".

Subtitle B—Textile and Apparel Safeguard Measures

SEC. 321. COMMENCEMENT OF ACTION FOR RELIEF.

(a) IN GENERAL.—A request under this subtitle for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the President by an interested party. Upon the filing of a request, the President shall review the request to determine, from information presented in the request, whether to commence consideration of the request.

(b) PUBLICATION OF REQUEST.—If the President determines that the request under subsection (a) provides the information necessary for the request to be considered,

the President shall cause to be published in the Federal Register a notice of commencement of consideration of the request, and notice seeking public comments regarding the request. The notice shall include a summary of the request and the dates by which comments and rebuttals must be received.

SEC. 322. DETERMINATION AND PROVISION OF RELIEF.

(a) DETERMINATION.—

(1) IN GENERAL.—If a positive determination is made under section 321(b), the President shall determine whether, as a result of the elimination of a duty under the Agreement, a CAFTA–DR textile or apparel article of a specified CAFTA–DR country is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article.

(2) SERIOUS DAMAGE.—In making a determination under paragraph (1), the President—

(A) shall examine the effect of increased imports on the domestic industry, as reflected in changes in such relevant economic factors as

output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits, and investment, none of which is necessarily decisive; and

(B) shall not consider changes in technology or consumer preference as factors supporting a determination of serious damage or actual threat thereof.

(3) DEADLINE FOR DETERMINATION.—The President shall make the determination under paragraph (1) no later than 30 days after the completion of any consultations held pursuant to article 3.23.4 of the Agreement.

(b) PROVISION OF RELIEF.—

(1) IN GENERAL.—If a determination under subsection (a) is affirmative, the President may provide relief from imports of the article that is the subject of such determination, as provided in paragraph (2), to the extent that the President determines necessary to remedy or prevent the serious damage and to facilitate adjustment by the domestic industry.

(2) NATURE OF RELIEF.—The relief that the President is authorized to provide under this subsection with respect to imports of an article is an in-

crease in the rate of duty imposed on the article to a level that does not exceed the lesser of—

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

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

SEC. 323. PERIOD OF RELIEF.

(a) IN GENERAL.—Subject to subsection (b), any import relief that the President provides under subsection (b) of section 322 may not, in the aggregate, be in effect for more than 3 years.

(b) EXTENSION.—If the initial period for any import relief provided under section 322 is less than 3 years, the President may extend the effective period of any import relief provided under that section, subject to the limitation set forth in subsection (a), if the President determines that—

(1) the import relief continues to be necessary to remedy or prevent serious damage and to facilitate adjustment by the domestic industry to import competition; and

(2) there is evidence that the industry is making a positive adjustment to import competition.

SEC. 324. ARTICLES EXEMPT FROM RELIEF.

The President may not provide import relief under this subtitle with respect to any article if—

(1) import relief previously has been provided under this subtitle with respect to that article; or

(2) the article is subject to import relief under—

(A) subtitle A; or

(B) chapter 1 of title II of the Trade Act of 1974.

SEC. 325. RATE AFTER TERMINATION OF IMPORT RELIEF.

When import relief under this subtitle is terminated with respect to an article, the rate of duty on that article shall be the rate that would have been in effect, but for the provision of such relief.

SEC. 326. TERMINATION OF RELIEF AUTHORITY.

No import relief may be provided under this subtitle with respect to any article after the date that is 5 years after the date on which the Agreement enters into force.

SEC. 327. COMPENSATION AUTHORITY.

For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2133), any import relief provided by the Presi-

dent under this subtitle shall be treated as action taken under chapter 1 of title II of that Act.

SEC. 328. CONFIDENTIAL BUSINESS INFORMATION.

The President may not release information received in connection with a review under this subtitle which the President considers to be confidential business information unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released by the President, or such party subsequently consents to the release of the information. To the extent a party submits confidential business information, it shall also provide a nonconfidential version of the information in which the confidential business information is summarized or, if necessary, deleted.

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

SEC. 331. FINDINGS AND ACTION ON GOODS OF CAFTA-DR COUNTRIES.

(a) EFFECT OF IMPORTS.—If, in any investigation initiated under chapter 1 of title II of the Trade Act of 1974, the Commission makes an affirmative determination (or a determination which the President may treat as an affirmative determination under such chapter by reason of section 330(d) of the Tariff Act of 1930), the Commission shall also find (and report to the President at the

time such injury determination is submitted to the President) whether imports of the article of each CAFTA–DR country that qualify as originating goods under section 203(b) are a substantial cause of serious injury or threat thereof.

(b) PRESIDENTIAL DETERMINATION REGARDING IMPORTS OF CAFTA–DR COUNTRIES.—In determining the nature and extent of action to be taken under chapter 1 of title II of the Trade Act of 1974, the President may exclude from the action goods of a CAFTA–DR country with respect to which the Commission has made a negative finding under subsection (a).

TITLE IV—MISCELLANEOUS

SEC. 401. ELIGIBLE PRODUCTS.

Section 308(4)(A) of the Trade Agreements Act of 1979 (19 U.S.C. 2518(4)(A)) is amended—

(1) by striking "or" at the end of clause (ii);

(2) by striking the period at the end of clause (iii) and inserting "; or"; and

(3) by adding at the end the following new clause:

"(iv) a party to the Dominican Republic-Central America-United States Free Trade Agreement, a product or service of that country or instrumentality which is

covered under that Agreement for procurement by the United States.".

SEC. 402. MODIFICATIONS TO THE CARIBBEAN BASIN ECONOMIC RECOVERY ACT.

(a) FORMER BENEFICIARY COUNTRIES.—Section 212(a)(1) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(a)(1)) is amended by adding at the end the following new subparagraph:

"(F) The term 'former beneficiary country' means a country that ceases to be designated as a beneficiary country under this title because the country has become a party to a free trade agreement with the United States.".

(b) COUNTRIES ELIGIBLE FOR DESIGNATION AS BENEFICIARY COUNTRIES.—Section 212(b) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(b)) is amended by striking from the list of countries eligible for designation as beneficiary countries—

(1) "Costa Rica", effective on the date the President terminates the designation of Costa Rica as a beneficiary country pursuant to section 201(a)(3);

(2) "Dominican Republic", effective on the date the President terminates the designation of the Do-

minican Republic as a beneficiary country pursuant to section 201(a)(3);

(3) "El Salvador", effective on the date the President terminates the designation of El Salvador as a beneficiary country pursuant to section 201(a)(3);

(4) "Guatemala", effective on the date the President terminates the designation of Guatemala as a beneficiary country pursuant to section 201(a)(3);

(5) "Honduras", effective on the date the President terminates the designation of Honduras as a beneficiary country pursuant to section 201(a)(3); and

(6) "Nicaragua", effective on the date the President terminates the designation of Nicaragua as a beneficiary country pursuant to section 201(a)(3).

(c) MATERIALS OF, OR PROCESSING IN, FORMER BENEFICIARY COUNTRIES.—Section 213(a)(1) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(a)(1)) is amended by striking "the Commonwealth of Puerto Rico and the United States Virgin Islands" and inserting "the Commonwealth of Puerto Rico, the United

States Virgin Islands, and any former beneficiary country".

(d) DEFINITIONS AND SPECIAL RULES.—Section 213(b)(5) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)(5)) is amended by adding at the end the following new subparagraphs:

"(G) FORMER CBTPA BENEFICIARY COUNTRY.—The term 'former CBTPA beneficiary country' means a country that ceases to be designated as a CBTPA beneficiary country under this title because the country has become a party to a free trade agreement with the United States.

"(H) ARTICLES THAT UNDERGO PRODUCTION IN A CBTPA BENEFICIARY COUNTRY AND A FORMER CBTPA BENEFICIARY COUNTRY.—(i) For purposes of determining the eligibility of an article for preferential treatment under paragraph (2) or (3), references in either such paragraph, and in subparagraph (C) of this paragraph to—

"(i) a 'CBTPA beneficiary country' shall be considered to include any former CPTPA beneficiary country, and

"(ii) 'CBTPA beneficiary countries' shall be considered to include former CBTPA beneficiary countries,

if the article, or a good used in the production of the article, undergoes production in a CBTPA beneficiary country.

"(ii) An article that is eligible for preferential treatment under clause (i) shall not be ineligible for such treatment because the article is imported directly from a former CBTPA beneficiary country.

"(iii) Notwithstanding clauses (i) and (ii), an article that is a good of a former CBTPA beneficiary country for purposes of section 304 of the Tariff Act of 1930 (19 U.S.C. 1304) or section 334 of the Uruguay Round Agreements Act (19 U.S.C. 3592), as the case may be, shall not be eligible for preferential treatment under paragraph (2) or (3), unless—

"(I) it is an article that is a good of the Dominican Republic under either such section 304 or 334; and

"(II) the article, or a good used in the production of the article, undergoes production in Haiti.".

Senator Olympia J. Snowe
Senate Finance Committee
"U.S. - Dominican Republic - Central American Free Trade Agreement"
June 14, 2005

Statement

Good morning and thank you Mr. Chairman for calling this session to consider the U.S. - Dominican Republic-Central American Free Trade Agreement (DR-CAFTA). It has been over a year since the United States and the CAFTA countries signed this free trade agreement, and during that time there has been great debate over the serious implications this agreement will have on our nation's entrepreneurs, businesses and consumers.

In April, I listened to the testimony of the Administration and the various industry representatives on this agreement. The reality we face from many nations – including the DR-CAFTA countries – is that prohibitively protected and closed markets routinely impede American exports and limit the global competitiveness of our companies. With exporters supporting over 12 million jobs and paying an average of 18 percent higher wages, we have an obligation to provide American businesses with a comprehensive trade agreement that will expand and strengthen our nation's economic foundation. I believe, however, that DR-CAFTA falls short of that goal.

All too often, foreign businesses enjoy the benefits of *their* nation's government subsidies, dump their products into the U.S. market, and face little or no tariff trade barriers to our markets. Our nation's 25 million small businesses and small manufacturers have revitalized our economy, yet have suffered severely from these unfair trade practices. Currently, there are over 13,000 small businesses exporting to the DR-CAFTA countries – accounting for 37 percent of merchandise exports. Our small businesses need to be assured that they will have fair access to government procurement in the

Central America region, for example – free of corruption – just as DR-CAFTA countries do in the United States. Opening our markets should help bolster American businesses not force them to cut back and outsource.

Mr. Chairman, as I have noted many times, our nation's trade environment continues to alarm me. The U.S. trade deficit saw an all-time high of *$618 billion* in 2004 – representing 5 percent of our nation's Gross Domestic Product! And recent reports indicate that our trade deficit has widened at record pace to $229 billion so far this year.... this is $40 billion more at this time last year. This gap signals an increasing amount of money leaving our pockets to pay for imports. This especially concerns me since we currently run a $2 billion trade deficit with DR-CAFTA countries.

According to a Federal Reserve study, when our budget deficit increases by one dollar, our trade deficit also increases by nearly 20 cents. The question becomes; how will our nation continue to finance its trade and budget deficits, especially with the dollar falling to the Euro and Yen over the last 3 years. Moreover, foreign investors have become less than willing to purchase U.S. stocks and bonds. We must take action to reverse this dangerous trend and burdensome trade deficit – not fall deeper into it.

I must also note my continuing concern for the state of the domestic textile industry. With the elimination of the WTO textile quotas at the beginning of 2005, China is now on the verge of capturing much of the U.S. market. And reports indicate that Chinese companies are also expanding their already large investments in the textile and apparel industries in Central America, reportedly to take advantage of DR-CAFTA if it passes. There are real concerns about language in this agreement that will allow Chinese fabric to be cut and assembled into duty free apparel shipments to the U.S. If realized, these duty free privileges for DR-CAFTA may also exacerbate the

fraudulent trans-shipment problem from China.

Concerns such as these are very real for businesses like Springvale, Maine's Jagger Brothers Inc. Manufacturing spun yarn in Maine since the 1890s, Jagger Brothers is one of Maine's remaining textile businesses – in recent decades the company has seen scores of textile jobs in Maine evaporate, leaving for overseas factories. Maine had 7,800 textile and apparel industry jobs when NAFTA went into effect in January 1994. Today, Maine has only 3,400 textile and apparel jobs left. Nationwide, some 680,000 textile jobs remain but are at grave risk. We owe the Jagger Brothers of this nation a better agreement than the one before us.

Mr. Chairman, trade should increase opportunities, not reduce them. Yes that may be just what DR-CAFTA does when it comes to prescription drugs. A trade agreement which could jeopardize access to prescription drugs in countries suffering poverty, and perhaps even here in the U.S., will not promote development. Provisions in this agreement *limit* access to data used in the drug approval process – data which is *essential* to licensing generic drugs. We should not hinder current progress, especially at a time when we are reaching agreement to achieve greater transparency in the drug approval process.

I also remain concerned that our nation's businesses are not receiving the full advantages our trade agreements yield. The U.S. has filed 69 complaints at the WTO, and thus far, successfully concluded 40 of them by settling 22 cases favorably and prevailing on 18 others through litigation in the WTO panels and the Appellate Body. However, enforcing U.S. interests under free trade agreements through the FTA work program, threats of imposing tariffs and use of FTA dispute settlement mechanisms have not always been effective and does not ensure future compliance. The U.S. has

been forced to litigate Mexico's antidumping duties on high-fructose corn syrup; Australian's export subsidies on automotive leather; and Canada's export subsidies and import barriers on dairy products. These are countries that we currently have free trade agreements with. And while we address these issues, our businesses are again left on an unfair playing field. There needs to be more vigorous monitoring and enforcing of our trade laws, and not just our free trade agreements but with all WTO members.

Mr. Chairman, there is too much at stake for our nation's businesses and consumers. Therefore, for the reasons I have outlined, I am compelled to opposed the DR-CAFTA package. The people of Maine and across this country deserve a comprehensive agreement where employers are not forced to outsource their services, employees do not fear losing their jobs, and businesses that export are assured that they receive equal and fair treatment.

Thank you.

United States Senate Committee on Finance
Mark-up on the implementation of DR-CAFTA
June 14, 2005

Statement by Senate Majority Leader Bill Frist, M.D.

Mr. Chairman, I would like to begin by applauding you for scheduling this mark up today to discuss the U.S.-Central American Free Trade Agreement (CAFTA). I also want to thank Ranking Member Baucus and all of the Members of the Committee for their willingness to address this most important issue.

Over the last half century, the Untied States has led the way to opening new markets and encouraging free trade around the globe. These efforts have had tremendous success. Over the last decade, international trade has become an increasingly important part of our economy; every day American consumers and businesses benefit from the competition and choice that trade expansion brings. As we promote free and fair trade agreements, we create economic opportunity and build relationships that will continue to grow for years to come.

The benefits of free trade have been particularly positive for my home state of Tennessee. Just ask the 156,000 employees, the over 4,000 businesses, and the countless farmers in my state that already benefit from past trade agreements. Since the North American Free Trade Agreement was signed in 1993, Tennessee's combined exports to Canada and Mexico have increased by more than 190 percent. Clearly, developing our economic relationship with Central American countries holds great promise for the future.

The benefits of opening new export markets through CAFTA would be felt by the citizens of Tennessee. Trade agreements, such as this one, will help open markets for Tennessee goods by requiring foreign governments to abandon trade distorting practices such as import quotas, tariffs, and government subsidies.

I am proud that Tennesseans are actively engaged in the global marketplace and that we are increasingly becoming an export-oriented state. In 2004, my home state exported $16.12 billion worth of goods. This is a 27.8 percent increase from 2003.

Currently, Tennessee is the eleventh largest state exporter to the CAFTA region. The total amount of exports to this region totaled $271 million in 2004 and continues to increase. Over the last four years, exports to Central American countries grew by $71 million – a 35 percent increase over a five-year period. This gain is more than double the sixteen percent increase for all U.S. exports to the region.

The implementation of CAFTA will help to continue this positive trend and encourage economic growth and development in Tennessee. Additionally, expanded markets would mean the creation of new jobs. With this agreement, over 27,516 new jobs will be created in its first year of implementation – 522 of which will be in Tennessee. And nine

years after implementation, thanks to CAFTA over 137,000 Americans – including 2,221 Tennesseans – will have the benefit of a new job.

While the benefits of free trade are impressive, America risks being left behind if action is not taken. Foreign businesses are getting an edge on U.S. companies because their products face lower tariffs and fewer non-tariff barriers. We cannot afford to continue losing market share to our global competitors. We must act.

Today, nearly eighty percent of imports from Central American countries enter the United States duty free. At the same time, American goods exported to CAFTA countries are burdened with substantial tariffs. This agreement is about fairness for American workers, businesses, and consumers. It's time that we enjoyed equal treatment for our goods.

Once CAFTA is implemented, more than eighty percent of U.S. exports of consumer and industrial goods and more than half of all U.S. farm products exported to the region will become tariff-free immediately. This agreement will ensure fair treatment for companies throughout the United States. Additionally, CAFTA will provide U.S. businesses with access to nearly 44 million new consumers. U.S. exporters of agricultural goods, manufactured products, and services will benefit from this expanded market.

In Tennessee, the agreement will be particularly beneficial to exporters of information technology equipment such as IBM and Dell as they will enjoy immediate duty-free treatment. Similarly, our chemical manufactures – such as Eastman Chemical Company in Kingsport, Tennessee, will benefit as many of the exorbitant tariffs on its products will be eliminated immediately and others will be phased-out over five years.

CAFTA will also allow the United States to strengthen its bonds with countries in that region – allowing us to more effectively work together to fight the war on terrorism and reduce social unrest. The agreement will enhance security in the CAFTA countries, which in turn will enhance our own national security. Additionally, through a stronger relationship, we can make positive strides in combating the trafficking of illegal drugs – thus reducing the supply of drugs on our nation's streets and in our neighborhoods. Finally, the economic development spurred by this agreement will strengthen the hand of democratically elected leaders against the renewed challenges they face.

We cannot afford to be isolationist – leaving America on the sidelines as other nations rush to embrace free trade. We have the opportunity before us to act with CAFTA. If we do not seize this opportunity, the United States will find itself falling further and further behind other nations. We should not allow American goods and services to be squeezed out of markets like Costa Rica, Honduras, and the Dominican Republic – while other countries take advantage of new global business opportunities. Continued delay means lost jobs and opportunities.

I urge my colleagues to support this agreement – American farmers, manufacturers, workers, and consumers are waiting for us to act. If the Committee approves this

agreement, I am committed to bringing it to the floor for swift consideration and am confident that the Senate will approve it quickly.

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Statement of Senator Mike Crapo
Senate Finance Committee
June 14, 2005

Thank you, Chairman Grassley and Senator Baucus, for holding this mock markup today to provide recommendations regarding the implementation of the U.S. – Central America – Dominican Republic Free Trade Agreement (DR-CAFTA). I realize that the mock markup is not required, but is carried out by the committee to provide a forum to address congressional interests and concerns with the agreement. Given the controversy of this agreement, it may have been easier to have forgone the mock markup. However, I appreciate your determination, and I am glad to have this opportunity as this agreement is of substantial interest and importance to many Idahoans.

I believe in free trade, and the benefits achieved for many U.S. industries and some agriculture sectors through this agreement. I realize the substantial work and obstacles our trade negotiators face when negotiating trade agreements that provide for market access while not harming U.S. industries.

I also realize that implementing DR-CAFTA is a priority for this Committee, and as a new member of this Committee I wish that I could be sitting here today ready to support legislation to implement a trade agreement that I felt would achieve mutually beneficial trade and make strong achievements for all of agriculture and not harm our domestic sugar industry. Instead, I sit here today unable to support this legislation.

I am hopeful that an agreement can still be reached that may minimize the impact of DR-CAFTA on our sugar industry. However, as it stands, this agreement jeopardizes the solvency of U.S. sugar producers. And, I do not want to see a day when U.S. sugar production no longer exists.

A University of Idaho study estimated that if sugarbeet production and processing no longer existed, Idaho's losses would include more than three thousand jobs, $201 million in lost revenue for sugarbeets, $70 million in decreased potato prices resulting from an increase in potato production. I cannot support an agreement that threatens Idaho's jobs and economy in such a way.

I look forward to the debate today and in the weeks to come, and I thank you for the time to share my views.

Thank you, Mr. Chairman.

U.S. APPLE®
ASSOCIATION

STATEMENT OF THE U.S. APPLE ASSOCIATION

SENATE COMMITTEE ON FINANCE

June 14, 2005

The U.S. Apple Association (USApple) appreciates the opportunity to provide this testimony in strong support of ratification of the Central America and Dominican Republic Free Trade Agreement (CAFTA-DR).

USApple is the national trade association representing all segments of the apple industry. Members include 36 state and regional apple associations representing the 7,500 apple growers throughout the country as well about 300 individual firms involved in the apple business. Our mission is to provide the means for all segments of the U.S. apple industry to join in appropriate collective efforts to profitably produce and market apples and apple products.

The U.S. apple industry exports about 25% of its fresh crop annually and the CAFTA-DR region represents a significant market. It is the largest export market for apples from Virginia, Pennsylvania and Michigan and a significant market for Washington, New York and other regions. Nearly one million cartons of U.S. apples were exported to the region last year with a value of over $11 million.

CAFTA-DR offers a significant and immediate market growth opportunity for U.S. apple exports. Since current trade barriers in Central America will be eliminated immediately when the treaty takes effect, U.S. apples will gain quota-free and duty-free access to the six countries included in the agreement – Dominican Republic, Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua. This will give the apple industry fair opportunity to compete against producers who have enjoyed preferential market access into this nearby market of more than 45 million consumers.

CAFTA-DR will let fair competition drive the marketplace, instead of allowing foreign government trade barriers to disadvantage U.S. apple exports for the benefit of our competitors. CAFTA-DR will provide true market access for the U.S. apple industry, since U.S. exports do not face sanitary-phytosanitary import barriers in these Central American markets.

When Chile began enjoying the benefits of a free trade agreement in January 2003 with several Central American nations, U.S. apple exports suffered a competitive disadvantage in this regional market. For example, prior to Chile's free trade agreement with Costa Rica, U.S. and Chilean apples each had 41% market share.

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Just two years after the free trade agreement took affect, Chile's market share increased to 62% while the percentage of apples from the U.S. shrank to 32%. In contrast for example, during the same time period Chilean and U.S. market shares in Honduras each remained steady (Chile does not have a free trade agreement with Honduras). In a price-sensitive market such as this, the additional cost can easily price U.S. apples out of the market.

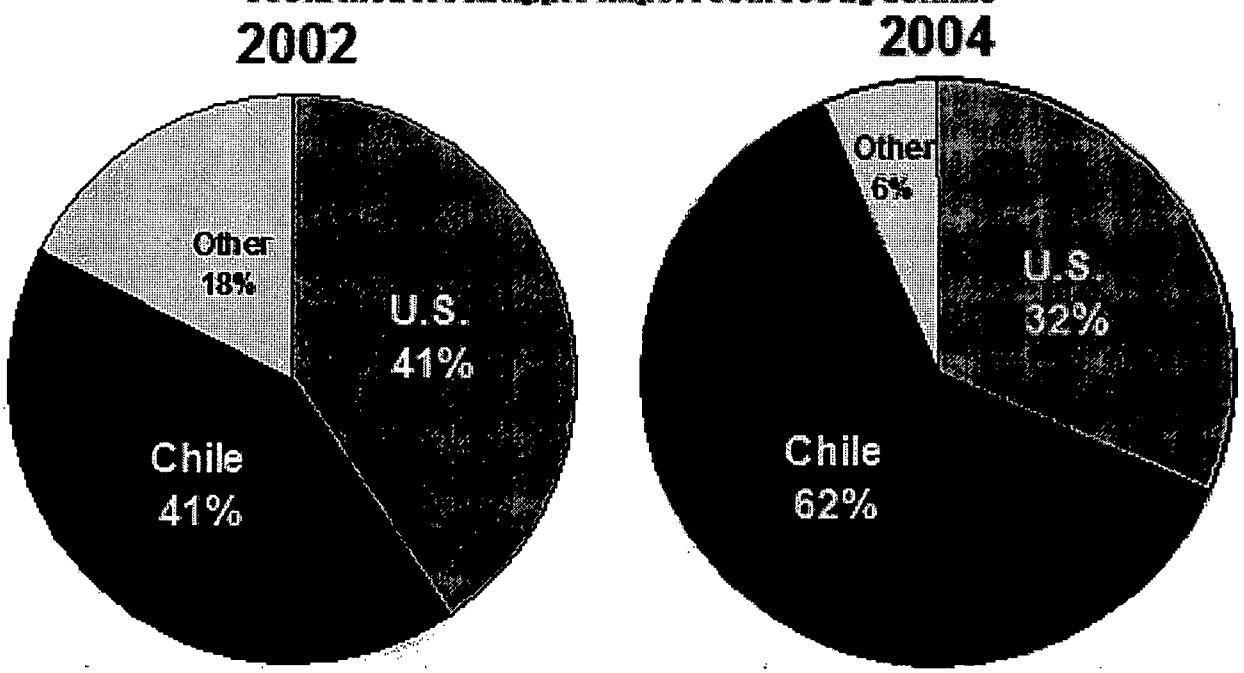
Import duties in CAFTA-DR nations currently range from 12-25 percent for U.S. apples, so the duty-free market access from the agreement will result in an immediate reduction of $1.80 to $3.75 in costs paid by the importer for each $15.00 bushel box of apples imported from the U.S. These duties would go to zero on day one of the agreement.

The attached charts illustrate the adverse effect of the Chilean free trade agreement with Costa Rica and El Salvador on U.S. apple exports to both countries.

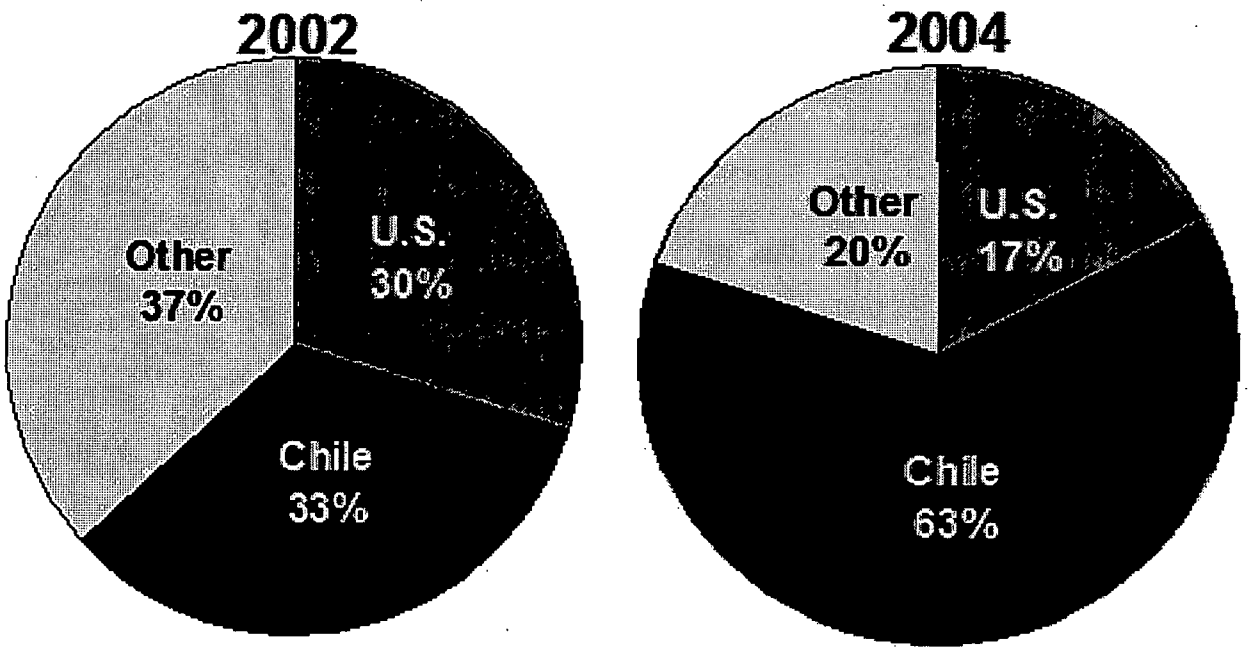
The U.S. Apple Association urges the Committee, and Congress, to approve the CAFTA-DR agreement as negotiated. Thank you for considering our views, we would be pleased to provide the Committee with any additional information upon request.

Chilean Trade Agreements Cause A Shrinking U.S. Marketshare:

Costa Rica Fresh Apple Import Sources by Volume



El Salvador Fresh Apple Import Sources by Volume

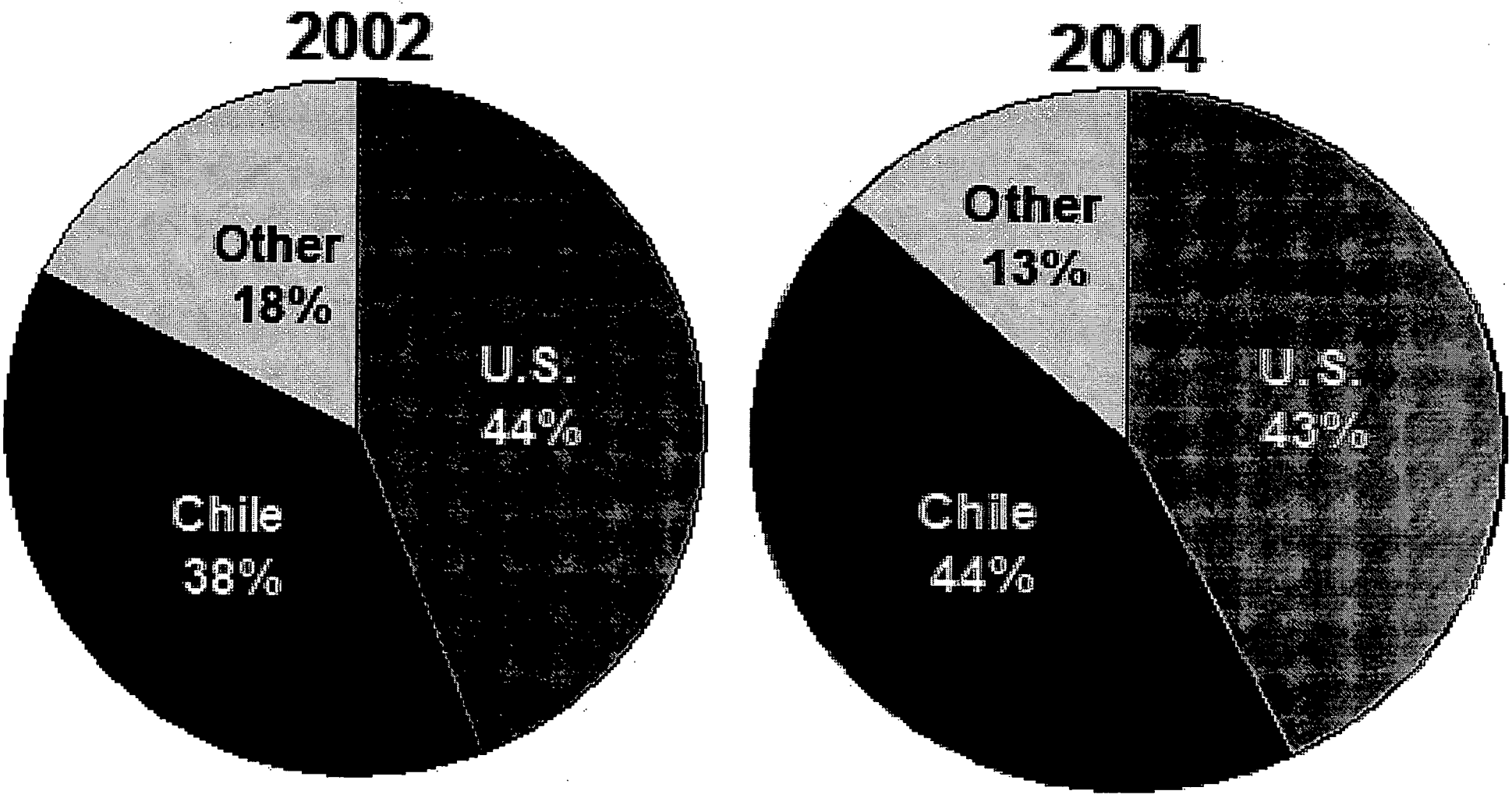


Source: Global Trade Atlas

Note: Chile's free trade agreements with Costa Rica and El Salvador began in 2003.

With Fair Access U.S. Apples Keep Pace:

Honduras Fresh Apple Import Sources by Volume



Source: Global Trade Atlas