EXECUTIVE COMMITTEE MEETING TO CONSIDER PROPOSED LEGISLATION IMPLEMENTING THE U.S-MOROCCO FREE TRADE AGREEMENT; AND S. 2610, THE U.S. AUSTRALIA FREE TRADE AGREEMENT IMPLEMENTATION ACT

WEDNESDAY, JULY 14, 2004

U.S. Senate,

Committee on Finance,

Washington, DC.

The meeting was convened, pursuant to notice, at 10:05 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Charles E. Grassley (chairman of the committee) presiding.

Also present: Senators Hatch, Nickles, Lott, Snowe, Kyl, Thomas, Santorum, Frist, Smith, Bunning, Rockefeller, Breaux, Conrad, Graham, Jeffords, Bingaman, and Lincoln.

Also present: Kolan Davis, Republican Staff Director and Chief Counsel; Russ Sullivan, Democratic Staff Director; Ted Totman, Deputy Staff Director; Everett Eissenstat, Chief Trade Counsel; David Johanson, Majority Trade Counsel; Brian Pomper, Democratic Trade Counsel; John Gilliland, Democratic Trade Counsel; and Amber Williams, Deputy Clerk.

Also present: John K. Veroneau, General Counsel, USTR; and Cathy Novelli, Assistant USTR for Europe and

the Mediterranean.

OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM IOWA, CHAIRMAN, COMMITTEE ON FINANCE

Senator Grassley. I would call the meeting to order.

There is some speculation as to whether or not we will get a quorum to actually do business, but we can go ahead and give our remarks and have any other business we can do short of actually taking action.

So I hope that if there is a chance of getting a quorum, that, respectfully, Republican and Democrat staff members can either tell us that their members definitely will not be here, or there is a chance that they will be here.

Then we will make a decision at that point to move on. Normally, we do not start without Senator Baucus, but he has to be to the doctor. He will come very shortly, I am sure, and be with us. Then we will have his opening statement as well.

Not long ago, I indicated my desire to see both the U.S.-Morocco Free Trade Agreement and the U.S.-Australia Free Trade Agreement pass the U.S. Senate before the August recess.

That recess is looming just ahead of us and we are not there yet, but we are getting close. Today, we are

taking two significant steps closer to that goal. The first, the committee will review and make informal recommendations on legislation to implement the U.S.-Morocco Free Trade Agreement Implementation Act.

I would like to express my appreciation to the Office of the General Counsel of USTR, and also to Senate legislative counsel for working so diligently over the July 4 recess to get this legislation ready for staff and member review.

Without their hard work, the committee would not be able to consider that bill today. I hope we will be able to favorably approve the committee's informal recommendations on the Morocco legislation this morning. In order to get the U.S.-Morocco implementing bill to the Senate floor before August, the administration must submit legislation formally to the House and to the Senate soon. I have been assured by the White House that the administration is prepared to take those necessary steps.

Because of these assurances, the committee will also be formally reporting out S. 2610, the U.S.-Australia Free Trade Agreement. This bill was introduced in the House and Senate July 6, pursuant to the trade promotion authority procedures outlined in the Trade Act of 2002.

Once we formally report the bill out of the Finance

Committee, it will be ready for full Senate consideration. I believe it is the Majority Leader's intention to hold a vote on this bill before the Senate adjourns for the August recess.

While I understand that there are just a few short days left before we recess, I hope also that we will find time to consider the U.S.-Morocco Free Trade Agreement.

I also want to notify members that as soon as a quorum is present, I will stop proceedings to ask that we favorably approve recommendations on the U.S.-Morocco Implementation Act and favorably report 2610, the U.S.-Australia Free Trade Agreement Implementation Act.

When Senator Baucus gets here, he will be the next in line to speak. But short of his speaking, I will go to Senator Conrad because he was here first.

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

Senator Conrad. Thank you, Mr. Chairman.

I would like to make comments on three issues related to the Australia Free Trade Agreement. I believe this a momentous meeting with respect to trade negotiations. I think we are about to take a step that will dramatically undermine the fast track procedure because we are on the brink of making mockery of the consultation process.

The Australia agreement, I believe, is a perfect example of what has gone wrong with U.S. trade policy. On agriculture, the U.S., in this agreement, had almost nothing to gain and a lot to lose.

The simple fact is, Australia is not ever going to be a large export market for the United States' commodities, but this agreement poses a serious threat to certain commodities produced here at home such as beef and dairy.

Opening our market to further import competition without creating significant new export opportunities is, I believe, a serious mistake. That is exactly what the Australia Free Trade Agreement does.

Second, this general mistake has been compounded by a huge loophole in the implementing bill with regard to beef safeguards. Ever since the Australia Free Trade

Agreement was signed, the administration has said over and over the agreement had an automatic, guaranteed safeguard to protect the U.S. beef industry against increased imports.

But now we find out the safeguard is not fully automatic, it is not guaranteed, and in fact this safeguard has a loophole big enough to drive a cattle truck through.

The implementing bill before us specifies that the USTR can waive the beef safeguards whenever it determines that extraordinary market conditions make it in the national interest to do so.

The legislation does not define "extraordinary market conditions." Anything out of the ordinary, lower prices than usual, for example, could qualify, no matter how damaging the waiver might be to the U.S. beef industry.

Mr. Chairman, I do not think that is right. I do not think that is how this agreement has been sold to the American people. So when the committee conducted its mark-up of the Australia Free Trade Agreement two weeks ago, I offered an amendment to insist that Congress have a say before USTR decides unilaterally to waive this safeguard.

My amendment was adopted on an 11 to 10 vote, but the amendment is not in the legislation we are considering

today because the Chairman took the unprecedented action of voting down the recommendation of the committee to the administration and encouraged the administration to ignore my amendment.

Third, Mr. Chairman, with all due respect, the process that was followed to subvert the will of the majority of this committee was not only egregious, but sets a very dangerous precedent and threatens the underpinnings of the fast track program.

As all members of this committee know, each Senator gives up an enormous amount of power in agreeing to fast track. We lose our right to amend. That is the fundamental right of any U.S. Senator. We lose our right to unlimited debate. That, too, is a fundamental right of a U.S. Senator.

Members of this committee give up the right to amendments during mark-up. In return, there is supposed to be a detailed consultation with the Finance Committee throughout the process of negotiating trade agreements. In practice, this consultation occurs through what is known as the "mock mark-up" process.

The mock mark-up is the committee's opportunity to amend the implementing bill before it is formally introduced and cannot be amended under fast track rules. This informal process has a long history.

As the Ranking Member has pointed out with past agreements, the process has lasted months and produced a host of changes during consideration of previous trade agreements. But what happened during the mark-up of this bill threatens to make a mockery of the entire process.

On the Australia agreement, we got a bum's rush. Four months went by before the agreement was signed without any implementing legislation. Then we were given just four days to review the legislation before mark-up.

Then when my amendment prevailed, the Chairman and the Majority side of the committee joined those of us who opposed to the underlying agreement to vote down the overall recommendation.

In essence, what the Chairman and the administration are saying is that voting down a recommendation is tantamount to approving it. This is almost Orwellian, what is going on here.

They are ignoring the clearly expressed will of a majority of the committee when it came to the language on beef safeguards. This precedent strikes me as dangerous. It opens the process to abuse and it reduces the committee's role in crafting trade policy and trade legislation.

While it may have been expedient in this instance, I fear that this committee will come to regret this

precedent. What happens when a future President sends up a trade bill and there is not agreement, not majority agreement, in the Finance Committee about that legislation?

What is going to happen? I think this is a profound moment for this committee and for the body on the question of dealing with trade legislation. I think this is going to put a gun to the head of the fast track process.

To the extent that it becomes clear that the enhanced consultation promised in the fast track process is being ignored by the administration, the next administration will have a much harder time winning support for extending fast track when it is up for renewal. I think we have made the whole fast track process a joke.

This committee is supposed to be consulted. This committee was consulted, and this committee voted. They did not like the will of the majority. They did not like the vote, so they simply disregarded it. I believe this puts a nail in the coffin of the fast track process.

Mr. Chairman, I will pose this bill for all of the reasons given. I would say, in addition, I would like to enter into the record, repeatedly we have heard that my amendment had a constitutional problem.

I have in my hand a memo from the gentleman from CRS

who drafted the earlier memo suggesting that there was a constitutional problem, a new memo in which he says it could have been drafted in a way that would have avoided any constitutional problem.

Every member of this committee knows, when we offer an amendment, we do it conceptually. That is the agreement of this committee. That is what my amendment did. It was drafted conceptually.

It is absolutely clear, it could have been legally drafted in a way that complied with the constitutional requirement. This, from the same gentleman who drafted the earlier memo raising constitutional questions.

The fact is, there are no constitutional questions that could not have been dealt with in the drafting process, so the suggestion that they have done away with this amendment because of constitutional questions has no merit.

My amendment could have been drafted in final form in a way that completely complied with constitutional requirements. So let us be clear. What is about to happen here is that, for the first time, a vote of this committee is being absolutely disregarded with respect to a trade agreement.

Do not misunderstand the precedent that this sets and the consequences of a failure to consult with this

committee and the Congress of the United States on the trade agreement. Fast track is in deep danger if this process is adopted.

I thank the Chair.

The Chairman. Before other members speak, I would like to respond to the Senator from North Dakota.

I have a very long statement I am going to put in the record, but I would first have people keep in mind that trade promotion authority does not require any formal action by the Finance Committee before legislation is submitted by the administration using trade promotion authority procedures.

The committee can simply do nothing and the bill will still be eligible for trade promotion authority procedures. Thus, I think the allegations that certain steps are required are not within the law.

However, even if certain steps are required, I think that allegations that steps were skipped are baseless. As Chairman, I worked hard to develop an open and transparent process when implementing the Chile and Singapore trade agreements.

I also worked hard to keep extraneous provisions off of those bills. I followed exactly the same procedure during informal consideration of the U.S.-Australia bill.

The only thing that was different was the desire by

some on the committee to compromise this carefully crafted process. So let us be clear. The amendment that was adopted during informal committee consideration was unconstitutional, as I said then.

I have not seen, nor have I been given, any evidence to the contrary, even considering the most recent memorandum produced by, presumably, the same individual.

It still does not detract from the fact at that particular time that the way the amendment was drafted at that time, and the way the amendment was voted on at that time, that it as not drafted in a constitutional way.

Now, the fact that it could have been is separate from this debate in this sense, that I was dealing with the facts as they were at that particular time and we were voting on that amendment the way it was drafted at that particular time.

Because at that time, as I recall, we had a memorandum from the nonpartisan Congressional Research Service, and it was provided to every committee member, which outlined the constitutional infirmities of that amendment.

I ask that that amendment, along with the letter from Ambassador Zoellick and a letter from the American-Australian Free Trade Coalition dated July 6, 2004 be included in the record.

[The amendment and the letters appear in the appendix.]

The Chairman. Unfortunately, the constitutional infirmities were ignored at that time and the amendment was adopted. The fact that it could have been written another way is a possibility, but it was not and we voted on what we voted on. That is all you can vote on, is what you have in front of you.

So we have maneuvering before the Senate Finance Committee and we have its members in the impossible situation of sending, if we had adopted that amendment the way it was written at that time, unconstitutional recommendations to the President. You can understand, as Chairman, why I would not want to do that.

My objectives were very clear. I did not want to further delay consideration of the agreement. I did not want the Finance Committee to approve unconstitutional trade provisions, so the majority of the Finance Committee voted against approving the committee recommendations.

While the trade promotion authority procedures ensure the opportunity for extensive consultation and input from the Finance Committee throughout the process, no formal recommendation is required by the committee. The committee's consideration of Australia's implementing

bill is in no way inconsistent with these TPA authorities and procedures. This has been confirmed by the Senate parliamentarian.

So, we are here with what we had at that particular time. I responded in a way that I thought was very appropriate, that we ought to be recommending to the President of the United States things that we think are constitutional, not things that we think are unconstitutional.

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

The Chairman. Senator Thomas, opening statement?

Senator Conrad. Mr. Chairman, might I respond?

The Chairman. Yes, you can. I called on the Senator, but he will relinquish and go back to you. Go ahead, Senator Conrad.

Senator Conrad. If I might respond. I think it is very important. The Chairman keeps arguing that my amendment was unconstitutional. As the Chairman well knows, and every member of this committee knows, our mark-ups are conducted using concept language that can be implemented in a variety of ways.

Historically, committee staff has been given broad latitude in choosing how to implement concept language that has been adopted so long as the final version is

consistent with the concept espoused by the amendment's author.

Now, that is a fact. That is how this committee has always operated. In this case, the concept was clear. The Conrad amendment called for the committee to have a say before USTR unilaterally acted to waive the beef safeguard.

There are several different ways this amendment could have been implemented that would not have raised any constitutional concerns. For example, during debate on the Conrad amendment the Chairman repeatedly referred to the requirement that the Finance Committee be notified five days before a waiver takes effect.

What is interesting about that requirement is, it is not in the implementing legislation. Instead, it is found in the Statement of Administrative Action, the document that explains how the executive branch intends to implement the Australia agreement.

Consistent with this approach, the Conrad amendment could have been implemented by adding a commitment in the Statement of Administrative Action that USTR would not seek to waive the safeguard without getting the consent of the Finance Committee and Ways and Means Committee.

Since the Statement of Administrative Action is an executive branch document that explains how the executive

branch will choose to operate, no separation of powers problem would exist.

Alternatively, this committee is very familiar with the Jackson-Vanik disapproval process that is applied when the executive chooses to extend normal trading relations to a non-market economy.

For years, the Congress voted annually on a resolution extending normal trade relations, or MFN as it was then called, treatment for China. There has never been any question that this waiver process was fully and totally constitutional.

Moreover, it would have been entirely consistent with the intent of my amendment to implement it through the establishment of a similar disapproval process.

Again, I say to the Chairman and my colleagues, I have a memo from CRS produced by the same analyst who initially examined the concept language and suggested that it might pose constitutional difficulties confirming that either approach would resolve the purported constitutional problems originally raised.

Given that there are at least two ways that any constitutional problem could have been cured, I can only conclude that the Chairman is trying to avoid the real issue. The real issue is whether USTR should be given the power unilaterally to revoke a safeguard that was

sold to our beef producers as an absolutely automatic, guaranteed protection against surges of low-cost Australia beef imports that would damage the U.S. beef industry.

On that issue, a majority of this committee voted and clearly said no. I have yet to hear any member of the committee make a persuasive argument why USTR should be able to unilaterally take away this safeguard.

It is unfair to a majority of this committee that the process was short-circuited to drop an amendment that was passed by a majority vote in the Finance Committee. More importantly, it is unfair to our ranchers and cattlemen to take away that safeguard.

Mr. Chairman, I would just close by saying, anybody who does not think what is going to be done here today does not have big consequences as to how we deal with trade around here has got another thing coming.

There is supposed to be consultation. This committee is about to act in a way that says, consultation be damned; we do it our way or the highway. I will tell you, fast track is in deep trouble if this committee proceeds.

The Chairman. Senator Thomas, I want to respond, so if you will be patient.

I think I want to give you an example of how this

process can work very successfully. The Morocco agreement is an example of how this process before this committee could work, and should work. As an example, Senator Conrad's staff contacted my staff very late on Friday afternoon, asking for revisions of the draft Statement of Administrative Action on Morocco.

My staff worked over the weekend to try and accommodate Senator Conrad, and my staff, together with the people at USTR, were able to work out a compromise. That compromise, which I note does not raise any constitutional questions, has been incorporated in the draft Statement of Administrative Action. That is how the process should work.

That is how the committee can work together to fulfill responsibilities to recommend the implementing package to the administration, and not in any way giving up Congress' constitutional power to regulate interstate and foreign commerce. By working together to address legitimate concerns, the process will work as it should.

But if the process is subverted by attaching unconstitutional provisions, well, then that is where I think the process breaks down. I do not think this committee should be in the process of recommending to the President some unconstitutional process.

Now, I have the language that was before us when the

committee considered the U.S.-Australia agreement. It says "the amendment enhances the consultation requirements in the waiver provisions by adding a requirement in paragraph 202(c)(4) and 202(d)(5) that the Finance and Ways and Means Committees--understand, it says Finance and Ways and Means Committees, not the Congress--must both affirmatively approve a proposed waiver before the STR can waive the application of the safeguard.

Now, you can make an argument that we do have concept legislation before us, and that that concept legislation does give some leeway. But it is very clear here that there is no leeway when it comes to the Finance Committee and the Ways and Means Committee, that process, running contrary to the Chadda case of the 1980s.

I would think that every member of this body would want to be very, very careful that what is on a concept sheet on any subject, on any bill, would be very carefully followed in drafting legislation, albeit some leeway within it.

But you could not argue, where it says Finance and Ways and Means Committees, that that implies anything other than Finance and Ways and Means Committees, and that sort of a veto is quite obviously is not within the constitutional power and should not be recommended to the

President.

Senator Thomas?

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

Senator Thomas. Thank you, Mr. Chairman. That is a pretty good debate over the issue.

I think we ought to go back to the notion that this agreement, this Australia trade thing, is pretty well received by most everyone and seemed to be something that will be useful and will be helpful.

It is true, and I was concerned, too, about the waiver. I am sorry that the Senator from North Dakota is not here. I had met with the calf people and livestock people, and they were concerned about the waiver, but are generally in favor of this proposition and felt like it would be a process to follow.

I think we have to go back, as we talked about trade agreements in the past, and understand that we can have input. I felt as if we had input as it went along. But you cannot have the Congress negotiating and changing after the negotiation is over. That is why we either vote up or down. I think that makes a reasonable kind of a thing. So, I appreciate what the Chairman had to say.

By the way, we did go back with the majority, who voted to go ahead with the bill, I believe, after the first vote, and it was a majority that voted the other

way. So, that sometimes happen, and indeed, did.

In any event, I hope we can move forward and get on with both of these bills.

The Chairman. Yes.

Senator Bunning, then Senator Bingaman.

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

Senator Bunning. Thank you, Mr. Chairman.

I have examined the details of this agreement before us today, believe it or not, and have been quite pleased with one particular aspect, that the rate of tariff reductions agreed to by each party are implemented on very similar and coordinated time schedules.

This fact is in happy contrast to some previous trade agreements that I have had the opportunity to examine during my years in the Congress, particularly NAFTA and some others.

All too often, I have found agreements that appeared to grant full access to the strong and large American marketplace, while limiting reciprocal access for American exports.

Important to my State of Kentucky is the treatment of the exportation of tobacco products under the agreement. I was particularly pleased to see that the report of the Agricultural Technical Advisory Committee for Cotton, Peanuts, Planting Seeds, and Tobacco, which included a member, Mr. Marshall Coyle from the Kentucky Farm Bureau, found the Australia Trade Agreement to be fair regarding tobacco trade.

With regard to the Moroccan agreement, I would have preferred to see that the State-run monopoly on the distribution of wholesale tobacco products was immediately eliminated. However, the agreement before us does provide that Morocco's right to impose monopolistic restrictions ends after 2008.

Similarly, while a more accelerated reduction in tariffs on tobacco would have been preferable, the eventual elimination of the high tariffs imposed on these products by Morocco is very encouraging.

I was also pleased to see that, as part of this agreement, Australia has agreed to immediately eliminate its 5 percent tariffs on distilled spirits imported from America, and Morocco is likewise eliminating the 50 percent tariff on these products.

As you know, the bourbon industry is an important part of Kentucky's heritage and its modern economy, with the Kentucky bourbon industry employing over 30,000 workers and contributing hundreds of millions of dollars to the State economy.

In addition to the elimination of the ad valorem tax, the recognition under the Australia agreement that only qualified spirits produced in the United States may be sold in Australia labeled as "bourbon" is extremely important.

A combination of these two provisions ensures that this agreement has the potential to greatly expand export opportunities to the strong Australia market for this important Kentucky product.

I appreciate the efforts that the administration made to work closely with this committee as the negotiations of these agreements developed during the last few months. As I have stated in the past, our trade representative must continue to push for, and to require, market access for our exported goods.

I expect this to be the over-arching theme in all of our trade negotiations, and it appears that the agreements before us today go a long way toward meeting this goal.

If, as expected, more free trade agreements come before this committee over the coming months, I will examine each of them in the light of these same criteria.

Thank you, Mr. Chairman.

The Chairman. Yes. Thank you.

Senator Bingaman, then Senator Jeffords, then Senator Lincoln.

Senator Bingaman. Thank you, Mr. Chairman. I do not have an opening statement. I do have several questions, particularly as to the transparency obligations related to prescription drugs that I wanted

to ask the experts when we get a chance to do that.

The Chairman. All right. We will have the walk-through just as soon as Senator Lincoln gets done.

Senator Jeffords?

OPENING STATEMENT OF HON. JAMES M. JEFFORDS, A U.S. SENATOR FROM VERMONT

Senator Jeffords. I am pleased that we are reporting out the U.S.-Australia Free Trade Agreement Implementation Act. Like all products of negotiation, this trade agreement is less than perfect.

However, I believe we should be actively engaging in free and fair trade with Australia. Our economies have much they can provide each other, and this agreement will benefit the two peoples and both of our economies.

As I have commented in the past, I would prefer that the dairy industry receive greater protection from imports, but I realize that the USTR went a long ways in addressing the concerns of the dairy industry.

I have also examined the provisions regarding the protection of patents as they relate to the pharmaceutical industry. While in this case Australian domestic law prevents drug importation from Australia into the United States, I want to make clear my support for enacting drug re-importation legislation. I hope this legislation will soon receive favorable consideration by Congress.

I warn USTR not to construe my support for this trade agreement as an endorsement on any restrictions on drug

re-importation.

I thank the Chairman and the Ranking Member for their efforts to consult with the members of this committee and urge we go forward.

The Chairman. Thank you very much.

Now, Senator Lincoln?

Senator Lincoln. Thank you, Mr. Chairman. I do not have an opening statement. I am just here to help you get a quorum. But I have always been an advocate for free but fair trade. I think that although there are some sensitivities in these agreements that I am not as pleased with, I think overall we have reached what we have set out to do. Thank you.

The Chairman. All right.

Here is what we will do then, if it is all right with the members. We have two things to do. At least one member has questions on Australia, and we have the walk-through, and presumably some questions on Morocco. So what I would like to do is have the short walk-through on Morocco, and then open it up for questions either on Australia or on Morocco at the same time.

Mr. Johanson?

Mr. Johanson. Thank you, Chairman Grassley and members of the committee. I am pleased to have the opportunity to summarize the administration's proposed

implementing bill for the U.S.-Morocco Free Trade Agreement.

I will first provide a general overview of the implementing bill, and then I will next highlight specific provisions of the legislation.

First, an overview. The bill is divided into three titles. Title 1 approves the agreement and establishes the general proclamation authority for the President, and the general regulatory authority for the administration to implement the agreement.

Title 2 contains changes to Customs law which are necessary or appropriate to implement the agreement. Title 3 establishes a bilateral safeguard and a textile and apparel safeguard which are part of the agreement.

I will now turn to some specific provisions of the bill. Within Title 1, Section 101 provides for the congressional approval of the agreement in the accompanying Statement of Administrative Action. Congressional approval of the agreement and the 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 implement tariff modifications by proclamation, subject to strict

consultation and layover procedures as set forth in Section 104.

Title 1 also authorizes the administration to issue regulations to implement the agreement.

I will now turn to Title 2 and summarize the Customs provisions of the bill.

Section 201 authorizes the President to implement by proclamation the continuation, modification, or elimination of tariffs as the President determines to be necessary or appropriate to carry out the terms of the agreement.

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

The remaining sections of Title 2 establish rules of origin for goods to qualify for preferential treatment under the agreement, authorizes actions to be taken by the administration to enforce the textile and apparel rules of origin, and authorize the Secretary of the Treasury to prescribe regulations as may be necessary to carry out Customs-related provisions of the agreement.

Title 3 of the bill establishes the bilateral and textile safeguard provisions of the agreement. Subtitle A of Title 3 sets forth procedures for the conduct of bilateral safeguard investigations by the International Trade Commission, exempts articles from relief if relief

has been previously granted under the safeguard, or if the article is already subject to relief under the agricultural safeguard, and authorizes the President to provide trade compensation when the United States imposes relief through bilateral safeguard actions.

Subtitle B of Title 3 sets forth procedures for the application of the agreement's textile and apparel safeguard measures. Under the textile safeguard, determinations for relief will be made by the President, not the International Trade Commission.

Subtitle B sets forth maximum periods of relief under the agreement, exempts articles from relief if relief has been previously granted under the safeguard, or if the article is subject to import relief under the global safeguard of Section 201 of the Trade Act of 1974, and establishes the rate of duty on imports of textile and apparel articles after relief is terminated.

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. All right. I will start with Senator Bingaman, but anybody can jump in for questions.

Senator Bingaman, on either agreement that you want to ask questions about.

Senator Bingaman. Thank you, Mr. Chairman.

I would address this to whoever is the expert here. It is hard to tell, we have such a phalanx of experts.

The transparency obligations that are in this agreement with Australia, as I understand it, include an independent review option. Where there is a reimbursement on drugs or a subsidy provided for prescription drugs that is objectionable to a company, for example, they have a right to an independent review, or arguably so.

I am not clear how that affects our own government programs to provide prescription drugs, Medicare, Medicaid, VA, what kind of an impact that provision could have on those programs.

Is anyone expert enough to tell me that?

Mr. Veroneau. Senator Bingaman, I will be glad to answer that question. The Australia agreement does provide for these transparency obligations that you alluded to.

The motivation behind those was because U.S. exporters were concerned about a lack of transparency in some of the reimbursement programs that exist in Australia, so the goal was to create greater transparency on the Australian side. Obviously, this obligation is a mutual obligation that the U.S. undertook, and would

undertake as well.

We are very comfortable with those transparency obligations and have already compared that obligation to existing transparency/due processes that are in place under our federal reimbursement programs such as Medicare. We are very comfortable that our procedures already meet this obligation, so we anticipate no changes to current U.S. programs and policies.

Senator Bingaman. This idea of an independent review of a decision. If the VA determines to provide a drug at a particular price or include a drug in a formulary, or exclude a drug from a formulary, you are saying there is currently this same independent review option in American procurement law somehow or another so that does not change by virtue of adopting this free trade agreement?

Mr. Veroneau. What I am saying, Senator, is that our processes are already transparent, so that we do not anticipate that there would be any situation where an independent review could conclude that our processes lack the transparency that is required in the agreement.

Senator Bingaman. So it would not be your thought that these transparency obligations in any way impact upon our ability to continue providing prescription drugs through the Veterans Administration, through Medicare,

through Medicaid as we always have, without any additional bureaucracy attaching?

Mr. Veroneau. That is correct.

Senator Bingaman. All right.

Now, you are with USTR?

Mr. Veroneau. I am the General Counsel at USTR, Senator.

Senator Bingaman. Do you know if that is the same view that the Secretary of Health and Human Services has?

Mr. Veroneau. Yes, it is, sir.

Senator Bingaman. Could we get a letter to that effect from the Secretary of Health and Human Services that he sees no impact on this?

Mr. Veroneau. I will not speak for the Secretary, but let us work to do that. We have obviously been working closely with HHS on this matter for months now, so let me take that for action.

Senator Bingaman. If you would do that.

Mr. Chairman, that would relieve my mind somewhat if we had a written statement from the Secretary saying that the procedures that currently apply with regard to government reimbursement and subsidy in these various government-supported programs will in no way change as a result of anything in this free trade agreement, that would be very useful.

The Chairman. You will follow up on that and try to satisfy the Senator?

Mr. Veroneau. I will follow up on that.

The Chairman. Even though you cannot speak for the Secretary, do your best.

Mr. Veroneau. Yes.

The Chairman. Are there any other questions?

[No response]

The Chairman. If Senator Snowe had a statement she wanted to make, we would listen to that. e would have you ask questions, too. But while you are getting ready to do that, let me see. We have five of us here now, and I just got word that Senator Baucus will not be able to come because he is still at the doctor's. We have to have seven.

If there are six staff members who know their members are going to come, I would like to have you stand. [Laughter]. Then I will make a judgment of whether or not, when Senator Snowe is done, we adjourn until we do it off the floor. Does anybody know their members are coming? All right. One.

It is still the Chair's conclusion that, after Senator Snowe gets done, we will adjourn to do this off the floor. Is it possible to do that? Yes. It would be an opportunity then to do this during the vote that we

have on the constitutional amendment that is before the Senate.

Senator Snowe, let me also say that you called me yesterday, and I am glad to sit down and talk to you about another matter any time you want to. I tried to get ahold of you last night and could not.

Senator Snowe. What could that matter be, Mr. Chairman? [Laughter].

The Chairman. Well, you initiated the call, so I will be glad to respond to you. In other words, I am apologizing to you. You proceed, then.

Senator Snowe. Thank you, Mr. Chairman. I appreciate your consideration. I would like to ask unanimous consent to include in the record my statement and some additional letters from the industries that are within my State with respect to both the U.S.-Australia and Morocco agreements.

The Chairman. They will be included.

Senator Snowe. Thank you, Mr. Chairman.

[The prepared statement of Senator Snowe and several letters appear in the appendix.]

Senator Snowe. As I indicated earlier, I do believe that that could put them in a perilous and disadvantaged position, given the size of the market in Australia.

With respect to Morocco--and I want to express my

appreciation to the USTR, and I know John Veroneau is here today--we have been working with USTR with respect to the Maine sardine industry. There is a primary company in Maine, Stinson Seafood, that has two processing plants.

Under the Moroccan Free Trade Agreement, the specific line on sardines, most important to our industry, will receive phase-out tariff status that will ultimately help the industry because it is going to be done over a long period of time.

I am going to include a letter in the record that indicates their support for this agreement because they received the most favorable treatment under this agreement for oil-packed sardines that are very important to our industry that employs more than 250 people in the State of Maine.

The same is true for the Maine potato industry. Again, in a letter the industry has sent to me indicates that the industry will rely most extensively on new development and new markets, and that the Morocco Free Trade Agreement does advance their interests in doing so and expanding new markets, and not to their disadvantage. The same is true for the wood and paper industry, which is another employer not only in Maine and America.

Although they have concerns about the length of time

that it will take to eliminate tariffs on U.S. exports to Morocco, an issue that of course I raised in this hearing earlier on this agreement, the industry is pleased that the tariff reductions will bring them into parity with tariffs on competing products from the European Union.

So, based on all of those considerations and the fact that we have many industries that will benefit from these agreements not placed at a disadvantage, I will be supporting the Moroccan Free Trade Agreement, Mr. Chairman.

I will include the remainder of my statement in the record.

The Chairman. Yes.

We will now recess until the vote, and hopefully meet off the floor and take the action that we were going to take. It will be in S. 216, the President's Room.

[Whereupon, at 10:54 a.m. the meeting was recessed.]

AFTER RECESS

[Whereupon, at 12:01 p.m. the meeting was reconvened in room S. 216, the President's Room, the Capitol.]

The Chairman. I now reconvene this meeting of today's executive session.

I move that the committee approve the committee's recommendations for the proposed implementing bill for the U.S.-Morocco Free Trade Agreement.

I would give my vote as aye.

The Clerk will call the roll.

The Clerk. Mr. Hatch?

Senator Hatch. Aye.

The Clerk. Mr. Nickles?

Senator Nickles. Aye.

The Clerk. Mr. Lott?

Senator Lott. Aye.

The Clerk. Ms. Snowe?

Senator Snowe. Aye.

The Clerk. Mr. Kyl?

Senator Kyl. Aye.

The Clerk. Mr. Thomas?

Senator Thomas. Aye.

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. Baucus?

Mr. Baucus. Aye.

The Clerk. Mr. Rockefeller?

Senator Rockefeller. Aye.

The Clerk. Mr. Daschle?

Senator Daschle. Aye.

The Clerk. Mr. Breaux?

Senator Breaux. Aye.

The Clerk. Mr. Conrad?

Mr. Conrad. Aye.

The Clerk. Mr. Graham?

Senator Graham. Aye.

The Clerk. Mr. Jeffords?

Senator Jeffords. Aye.

The Clerk. Mr. Bingaman?

Senator Bingaman. Aye.

The Clerk. Mr. Kerry?

[Mr. Kerry votes aye by proxy.]

The Clerk. Mrs. Lincoln?

Senator Lincoln. Aye.

The Clerk. Mr. Chairman, the vote is 20 ayes and 1 nay.

The Chairman. The ayes have it. The committee's recommendations are approved.

I now move that the committee favorably report S. 2610, the U.S.-Australia Free Trade Agreement Implementation Act.

Again, we will be operating under a rolling quorum.

I will vote aye.

The Clerk will call the roll.

The Clerk. Mr. Hatch?

Senator Hatch. Aye.

The Clerk. Mr. Nickles?

Senator Nickles. Aye.

The Clerk. Mr. Lott?

Senator Lott. Aye.

The Clerk. Ms. Snowe?

Senator Snowe. Nay.

The Clerk. Mr. Kyl?

Senator Kyl. Aye.

The Clerk. Mr. Thomas?

Senator Thomas. Aye.

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. Baucus?

Mr. Baucus. Aye.

The Clerk. Mr. Rockefeller?

Senator Rockefeller. Nay.

The Clerk. Mr. Daschle?

Senator Daschle. Nay.

The Clerk. Mr. Breaux?

Senator Breaux. Aye.

The Clerk. Mr. Conrad?

[Mr. Conrad votes no by proxy.]

The Clerk. Mr. Graham?

Senator Graham. Aye.

The Clerk. Mr. Jeffords?

Senator Jeffords. Aye.

The Clerk. Mr. Bingaman?

Senator Bingaman. Aye.

The Clerk. Mr. Kerry?

[Mr. Kerry votes aye by proxy.]

The Clerk. Mrs. Lincoln?

Senator Lincoln. Aye.

The Clerk. Mr. Chairman, the vote is 17 ayes, 4 nays.

The Chairman. The ayes have it. S. 2610 is favorably reported.

[Whereupon, at 12:53 p.m. the meeting was concluded.]

I N D E X

Gilmour
15 pp.
7-14-04

EXECUTIVE COMMITTEE MEETING ON S. 2677, THE U.S.-MOROCCO FREE TRADE AGREEMENT IMPLEMENTATION ACT; H.R. 982, A BILL TO CLARIFY THE TAX TREATMENT OF BONDS AND OTHER OBLIGATIONS ISSUED BY THE GOVERNMENT OF AMERICAN SAMOA; NOMINATION OF TIMOTHY BITSBERGER, TO BE ASSISTANT SECRETARY FOR FINANCIAL MARKETS, U.S. DEPARTMENT OF TREASURY; NOMINATION OF PATRICK P. O'CARROLL, JR., TO BE INSPECTOR GENERAL, SOCIAL SECURITY ADMINISTRATION; NOMINATION OF PAUL B. JONES, TO BE MEMBER, IRS OVERSIGHT BOARD; AND NOMINATION OF CHARLÉS L. KOLBE, TO BE A MEMBER, IRS OVERSIGHT BOARD

WEDNESDAY, JULY 14, 2004

U.S. Senate,

Committee on Finance,

Washington, DC.

The meeting was convened, pursuant to notice, at 2:00 p.m., in room S216 of the Capitol, Hon. Charles E. Grassley (chairman of the committee) presiding.

Also present: Senators Hatch, Nickles, Lott, Snowe, Kyl, Thomas, Santorum, Frist, Smith, Bunning, Baucus, Rockefeller, Daschle, Breaux, Conrad, Graham, Jeffords, Bingaman, and Lincoln.

Also present: Kolan Davis, Republican Staff Director and Chief Counsel; Russ Sullivan, Democratic Staff

Director; and Carla Martin, Chief Clerk.

Also present: Cathy Novelli, Assistant USTR for Europe and the Mediterranean; Brian Pomper and David Johanson, International Trade Counsels.

OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM IOWA, CHAIRMAN, COMMITTEE ON FINANCE

The Chairman. The meeting will come to order.

Today we are meeting in executive session to consider two bills and some pending nominations.

First, the committee will consider favorably reporting S. 2677, U.S.-Morocco Free Trade Agreement. Second, we will consider favorably reporting H.R. 982, a bill to clarify the tax treatment of bonds for American Samoa.

Finally, we will consider favorably reporting nominations of Timothy S. Bitsberger, Patrick O'Carroll, Paul Jones, and Charles Kolbe.

I also want to notify members that as soon as a quorum is present, we would stop proceedings to ask that we favorably report these bills and the pending nominations.

I am very pleased that we are able to consider implementing legislation on the U.S.-Morocco FTA. I, first, want to acknowledge that we would not be here today without the cooperation and support of Senator Baucus, the Ranking Member.

I always appreciate his willingness to work with me on important pieces of legislation, but particularly as I

was trying to keep Australia and Morocco moving in a fairly parallel order.

I think we have a good agreement with Morocco. It is good for American manufacturing. Under the agreement, 95 percent of the consumers in industrial products become duty-free immediately after implementation. It is also good for our American service sector.

The agreement contains broad market access commitment in key sectors such as audiovisual, telecommunications, and engineering, and I think it is extremely good for an interest of mine, American agriculture.

Independent analysis by the Farm Bureau American Federation estimates that, under this agreement, the U.S. agriculture trade surplus with Morocco would reach $382 million by the year 2015.

In contrast, Morocco is expected to increase its agricultural trade by about $25 million. Thus, under this agreement, U.S. agriculture will see roughly a 10 to 1 gain.

That would be great news for our corn, soybean and wheat growers, and great news for beef and poultry producers. So, I am pleased to be able to have this agreement before the committee. Morocco has been a good friend and ally of the United States, and this agreement brings sound economic benefit to the U.S. economy.

I trust the agreement will receive broad bipartisan support in this committee and on the Senate floor. I understand that the House of Representatives will be taking up the agreement this week. While time is short before the August recess, I sincerely hope the Senate would be able to duplicate the House action.

Next, we will consider favorably reporting H.R. 982, bill that has been passed by the House, referred to our committee, to clarify tax treatment for American Samoa.

While the interest on bonds issued by the government of Samoa is exempt for federal tax purposes, it is subject to taxation by State, local, and territorial governments. This legislation before us would put America Samoa on the same level playing field with other territories of the United States.

The Joint Committee on Taxation estimates that this bill would have negligible impact on the federal budget, and the Congressional Budget Office estimates that because American Samoa has only a few million dollars in bonds outstanding at any time, the preemption would not have significant impact on State, local, and territorial governments.

I encourage my colleagues to support this legislation, which would save American Samoa significant interest costs and give them ability to address critical

shortfalls in their own infrastructure.

I would now like to call on Senator Baucus for any statements that he wants to make.

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

Senator Baucus. Thank you very much, Mr. Chairman. Thank you for your continual leadership, your friendship, your hard work in all areas, particularly here to make sure this agreement is passed very quickly.

As you know, we began this process last week when we had a walk-through and a formal mark-up of this legislation. Before then, as you know, Mr. Chairman, you and I worked hard to address many committee members' concerns--and there were several--with this legislation, and I believe that we were successful.

I compliment, in fact, members for their willingness to cooperate and work with you, Mr. Chairman, and with myself to get those differences--they were not great--ironed out.

I, myself, fought to ensure that U.S. wheat exporters would not be left out of this agreement. Wheat, clearly, is very important for many of our States, especially my State of Montana. There are very significant barriers to entry and access, particularly in Morocco. But with this agreement, we are making very significant process.

The agreement creates new tariff rate quotas, for example, for wheat that can lead to a five-fold increase

in U.S. exports to Morocco. It would allow U.S. wheat producers to compete in Morocco, and not only compete in the abstract, but according to provisions of this agreement, compete on a level playing field with European competitors.

That was an issue, as we all know, and there is now language in the legislation, in the agreement, assuring that we are on the same level playing field as the Europeans are with respect to access to the Morocco market.

The agreement also gives U.S. beef producers new access to Morocco for their high-quality beef exports. The free trade agreement negotiations have also spurred Morocco to engage in significant domestic reforms.

For example, Morocco recently enacted a new labor law and a new law on child labor, both of which were drafted with the help of the International Labor Organization.

By voting to approve the Morocco implementing legislation, we can therefore support reformers in Morocco. We can also confirm our very close ties with Morocco, the first country to recognize the United States after the American Revolution, and therefore one of our oldest friends in the world.

It is a story that has been mentioned many times, Mr. Chairman, and I do not think we can mention it too often.

It is important to remind ourselves of our early ties with Morocco.

As many of my colleagues have already noted, soon after America's founding, Morocco's ruler wrote to President Washington to ask for help in protecting Morocco's shipping fleet from marauding bandits.

Well, President Washington wrote back, apologizing that the United States was, at that time, too poor and too weak from the recent revolution to be of much help to Morocco.

But the President said that perhaps some day the United States would be strong enough to help its friends, and for Morocco, that day has now come. I urge my colleagues to support this legislation.

The Chairman. Thank you, Senator Baucus.

Would the Senator from Kentucky like to make a statement?

Senator Bunning. Short though it may be, yes.

The Chairman. Go ahead.

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

Senator Bunning. Thank you. Thank you, Mr. Chairman.

As I mentioned in the mock mark-up which took place on the Moroccan Free Trade Agreement last week, I am generally pleased with the details of this agreement. The current tariffs that American exports face in Morocco average over 20 percent, and this agreement will reduce these tariffs significantly.

Particularly, I was pleased to see that Morocco has agreed to immediately eliminate its 50 percent tariff on distilled spirits imported from America. As you know, the bourbon industry is a very important part of Kentucky's heritage and its modern economy, with the Kentucky bourbon industry employing over 30,000 workers and contributing hundreds of millions of dollars to the State's economy.

Also important to Kentucky is the treatment of the exportation of tobacco products under this agreement. I would have preferred to see that the State-run monopoly on the distribution of wholesale tobacco products was immediately eliminated. However, the agreement before us does provide that Morocco's right to impose monopoly

restrictions ends after 2007.

Similarly, while a more accelerated reduction in tariffs on tobacco would have been preferable, the eventual elimination of the high tariffs imposed on these products by Morocco is encouraging.

I appreciate the efforts that the administration has made to closely work with this committee as the negotiations of this agreement have developed during the last few months.

As I have stated in the past, our trade representatives must continue to push for, and to require, market access for our exported goods. I expect this to be the over-arching theme in all our trade negotiations and I will be examining future trade agreements closely to watch just those things.

Thank you very much, Mr. Chairman.

The Chairman. Well, thank you very much.

Now, I had hoped that we would have a quorum. I think that there is just a lot of conflict for everybody. At this point, it would be my intention, in consultation with Senator Baucus, that we would then have this executive session continued after the 2:15 vote in the President's Room, and it would be the for the sole purpose of reporting S. 2677, the U.S.-Morocco FTA, H.R. 982, a bill to clarify the tax treatment of bonds issued

by American Samoa, and the following nominations: Bitsberger, O'Carroll, Paul Jones and Charles Kolbe.

So at this point, I think that we will recess. The meeting is just recessed until the 2:15 hour. Thank you.

[Whereupon, at 10:15 a.m. the meeting was recessed.]

AFTER RECESS

[Whereupon, at 2:18 p.m. the meeting was reconvened in Room 216, the Capitol.]

The Chairman. I now reconvene this meeting of today's executive session.

I now move that the committee favorably report S. 2677, the U.S.-Morocco Free Trade Agreement Implementation Act.

The Clerk will call the roll.

The Clerk. Mr. Hatch?

Senator Hatch. Aye.

The Clerk. Mr. Nickles?

Senator Nickles. Aye.

The Clerk. Mr. Lott?

Senator Lott. Aye.

The Clerk. Ms. Snowe?

Senator Snowe. Aye.

The Clerk. Mr. Kyl?

Senator Kyl. Aye.

The Clerk. Mr. Thomas?

Senator Thomas. Aye.

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. Baucus?
Senator Baucus. Aye.
The Clerk. Mr. Rockefeller?
Senator Rockefeller. Aye.
The Clerk. Mr. Daschle?
Senator Daschle. Aye.
The Clerk. Mr. Breaux?
Senator Breaux. Aye.
The Clerk. Mr. Conrad?
Senator Conrad. Aye.
The Clerk. Mr. Graham?
Senator Graham. Aye.
The Clerk. Mr. Jeffords?
Senator Jeffords. Aye.
The Clerk. Mr. Bingaman?
Senator Bingaman. Aye.
The Clerk. Mr. Kerry?
[Mr. Kerry votes aye by proxy.]
The Clerk. Mrs. Lincoln?
Senator Lincoln. Aye.
The Clerk. Mr. Chairman?

The Chairman. Aye.

The Clerk. Mr. Chairman, the vote is 21 ayes, zero nays.

The Chairman. The ayes have it. The motion is passed.

I now move that the committee favorably consider H.R. 982, a bill to clarify the tax treatment of bonds issued by the government of American Samoa.

The Clerk will call the roll.

The Clerk. Mr. Hatch?

Senator Hatch. Aye.

The Clerk. Mr. Nickles?

Senator Nickles. Aye.

The Clerk. Mr. Lott?

Senator Lott. Aye.

The Clerk. Ms. Snowe?

Senator Snowe. Aye.

The Clerk. Mr. Kyl?

Senator Kyl. Aye.

The Clerk. Mr. Thomas?

Senator Thomas. Aye.

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. Baucus?

Senator Baucus. Aye.

The Clerk. Mr. Rockefeller?

Senator Rockefeller. Aye.

The Clerk. Mr. Daschle?

Senator Daschle. Aye.

The Clerk. Mr. Breaux?

Senator Breaux. Aye.

The Clerk. Mr. Conrad?

Senator Conrad. Aye.

The Clerk. Mr. Graham?

Senator Graham. Aye.

The Clerk. Mr. Jeffords?

Senator Jeffords. Aye.

The Clerk. Mr. Bingaman?

Senator Bingaman. Aye.

The Clerk. Mr. Kerry?

[Mr. Kerry votes aye by proxy.]

The Clerk. Mrs. Lincoln?

Senator Lincoln. Aye.

The Clerk. Mr. Chairman?

The Chairman. Aye.

The Clerk. Mr. Chairman, the vote is 21 ayes, zero nays.

The Chairman. The ayes have it. The motion is passed.

I now move that the committee consider favorably reporting the following nominations en bloc: Timothy Bitsberger, to be Assistant Secretary for Financial Markets, U.S. Department of Treasury; Patrick P. O'Carroll, Jr., to be Inspector General, Social Security Administration; Paul B. Jones, Member, IRS Oversight Board; and Charles L. Kolbe, Member, IRS Oversight Board.

The Clerk will call the roll.

The Clerk. Mr. Hatch?

Senator Hatch. Aye.

The Clerk. Mr. Nickles?

Senator Nickles. Aye.

The Clerk. Mr. Lott?

Senator Lott. Aye.

The Clerk. Ms. Snowe?

Senator Snowe. Aye.

The Clerk. Mr. Kyl?

Senator Kyl. Aye.

The Clerk. Mr. Thomas?

Senator Thomas. Aye.

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. Baucus?
Senator Baucus. Aye.
The Clerk. Mr. Rockefeller?
Senator Rockefeller. Aye.
The Clerk. Mr. Daschle?
Senator Daschle. Aye.
The Clerk. Mr. Breaux?
Senator Breaux. Aye.
The Clerk. Mr. Conrad?
Senator Conrad. Aye.
The Clerk. Mr. Graham?
Senator Graham. Aye.
The Clerk. Mr. Jeffords?
Senator Jeffords. Aye.
The Clerk. Mr. Bingaman?
Senator Bingaman. Aye.
The Clerk. Mr. Kerry?

[Mr. Kerry votes aye by proxy.]

The Clerk. Mrs. Lincoln?

Senator Lincoln. Aye.

The Clerk. Mr. Chairman?

The Chairman. Aye.

The Clerk. Mr. Chairman, the vote is 21 ayes, zero nays.

The Chairman. The ayes have it. The motion is carried.

[Whereupon, at 2:37 p.m. the meeting was concluded.]

I N D E X

PAGE

Gilmour
7-20-04
20 pp.

U.S. SENATE COMMITTEE ON
Finance
SENATOR CHUCK GRASSLEY, OF IOWA - CHAIRMAN
http://finance.senate.gov

Senator Charles E. Grassley
Statement on the Finance Committee Informal Consideration of Implementing Legislation in the Mock Markup for the Australia Free Trade Agreement

Over the past several days, some prominent Democrats seem intent on perpetuating a myth that the Finance Committee did not follow normal Trade Promotion Authority procedures when considering the U.S.-Australia Free Trade Agreement Implementation Act. I would like to take a moment to respond to these allegations.

First, let me say that I am especially disappointed by these turns of events. When the Finance Committee considered the first two trade agreements, the U.S.-Chile and U.S.-Singapore FTAs under TPA authority last year, I went to extraordinary lengths as Chairman of the Finance Committee to ensure that the TPA process was as open and transparent as possible. This was done despite external pressure to conduct the mock mark-up process in an informal manner behind closed doors. I resisted those efforts. Thus, even though not required by TPA, I chose to conduct the mock mark-up process just like any other mark-up. Even though not required, I chose to follow the standard committee rules of forty-eight hours notice, operating in executive session subject to a quorum, posting documents on the Internet and making every aspect of the proceedings open to the public.

I also strove to ensure that extraneous material was not included in the implementing legislation, statement of administrative action, or committee report. TPA procedures are unique. They limit debate and amendment. Thus, the implementing legislation and committee reports should not contain material that is not necessary or appropriate to implement the bill.

In my mind, the process used to implement the Chile and Singapore free trade agreements was the most open, transparent, and clean process ever conducted by the Finance Committee in implementing a trade agreement.

In implementing these agreements we worked with the administration and Democratic Members to develop legislation prior to submitting it to the Finance Committee for further consideration. We worked out differences between the Chairman and Ranking member before going to the committee, so we could approach the mock mark-up process with bipartisan support for the implementing bill and the SAA. We noticed the mock mark-up forty-eight hours in advance, debated the implementing legislation and SAA, and then made recommendations to the administration on the implementing bills. The administration then formally sent the documents to the Finance Committee where they were formally reported by the committee to the full Senate.

This is exactly the process the Finance Committee used in considering the U.S.-Australia implementing bill. Now, some Democrats are utilizing politically charged rhetoric to try to discredit this open and transparent process. Politically expedient terms such as "skipping steps," "short-changing the process," and "getting sloppy" are recklessly thrown about without any substantive basis. I simply don't understand why some Democrats have chosen such a divisive and partisan approach.

Now, let's turn to exactly what the issue is at stake – the committee's consideration of proposed legislation implementing the U.S.-Australia Free Trade Agreement. As the committee report to the Trade Act of 2002 states, once the President enters into a trade agreement, we expect that the administration will work closely with the Senate Finance and House Ways and Means committees to develop draft implementing legislation and a draft statement of administrative action.

And that is what we did. Working with the Ranking Member, we developed draft legislation to implement the agreement that included beef safeguards which could be waived in rare circumstances. Senator Baucus expressed some concerns about the waiver. So, to appease those concerns we worked with the administration to strengthen the notice and consultation procedures. I had certainly hoped that we would have worked together to defend the bipartisan product presented to the Finance Committee which resulted from the give and take of our negotiations.

That is why I was surprised when every single Democrat and Senator Snowe supported an unconstitutional amendment to our bipartisan product. This amendment would have required approval from both the Senate Finance Committee and from the House Ways and Means Committee before the USTR could waive a beef safeguard measure. A memorandum from the non-partisan Congressional Research Service was provided to the committee which outlined the constitutional infirmities with the amendment. I ask that the memorandum, a letter from Ambassador Zoellick, and a letter from the American-Australian Free Trade Agreement Coalition dated July 6, 2004 be included in the record. Yet, despite being put on notice that the amendment was unconstitutional, every single Democrat voted to include the amendment in the Finance Committee's recommendations. Now, there is some question about whether each Member's proxy vote on the amendment was legitimate, but I do not wish to debate that here.

This political maneuvering put the Finance Committee and its Members in the impossible situation of having to make unconstitutional recommendations to the President. Had this occurred, the administration would have been faced with including the unconstitutional provision, which they surely could not do, or rejecting the amendment. And let's be clear here -- the administration's rejection of this unconstitutional amendment would have been used by the Democrats to argue that the TPA process was flawed, that the administration ignored the will of the Finance Committee. They also would have argued that the administration did not do enough to protect the U.S. beef industry from imports, an allegation which anyone who actually reads the agreement can see is totally false. So either way, adopting the amendment gave the Democrats a nice political issue. It also provided a way for them to delay further consideration of the bill.

As Chairman, I did not want that to happen. My objectives were clear. I did not want to further delay consideration of the agreement. I did not want the Finance Committee to approve unconstitutional trade provisions. And, most of all, I did not want to give some individuals an opportunity for more political gamesmanship. So, the majority of the Finance Committee voted against approving the committee's recommendations.

Let's be clear. While trade promotion authority procedures seek to ensure the opportunity for extensive consultation and input from the Finance Committee throughout the process, no formal recommendation or action is required by the committee before the bill is formally reported by the committee.

Thus, the committee's informal consideration of implementing legislation for the Australia free trade agreement is in no way inconsistent with the trade promotion authority procedures. In fact, it went far beyond what is required by TPA. And, this has been confirmed with the Senate parliamentarian.

In fact, the Morocco agreement represents an example of the way the process should work. Senator Conrad's staff contacted my staff very late on Friday afternoon, asking for revisions to the draft statement of administrative action for Morocco. My staff worked over the weekend to try and accommodate Senator Conrad, and, together with folks at USTR, were able to work out a compromise. That compromise, which I note does not raise any constitutional questions, has been incorporated in the draft SAA.

That's how the process should work. That's how the committee can work together to fulfill its responsibility to recommend an implementation package to the administration. By working together to address legitimate concerns, the process will work as it should. But if the process is subverted for political purposes, as it was in the case of the Australia agreement, by attaching unconstitutional provisions in an effort to politically embarrass the administration. Well, that's when the process breaks down. I am disappointed that some are now trying to politicize the process. As Chairman of the Finance Committee I strive to be fair and open. It is disappointing that some are now trying to use the very process I sought so hard to enshrine to score what I see as short-term political points.

Markup of the U.S.-Australia FTA Implementing Legislation
and
Mock Markup of the U.S.-Morocco FTA Implementing Legislation

Opening Statement of Senator Max Baucus
July 14, 2004

Today we will continue the process of considering legislation to implement the U.S.-Australia Free Trade Agreement. We will also begin the process on legislation to implement the U.S.-Morocco Free Trade Agreement.

As we all know, no amendments are in order on the Australia legislation. Our job now is to vote whether to report the legislation out of the Finance Committee as the Administration presented it to the Congress.

I anticipate that the Committee will vote to approve the Australia legislation. I worked hard on it, and I intend to vote for it.

It's a good agreement. We negotiated for strong access to the Australian market for U.S. products while at the same time taking care of our sensitivities.

I do have to say that I wish the process on Australia had gone a little more smoothly.

Looking ahead, we have some very complex agreements confronting us. There will surely be amendments offered during the mock process, and some may win Committee approval. I hope that we allow that process to play out as it has in the past.

I believe we do ourselves and the Congress a disservice by derailing the informal process if the Administration's legislation is altered in a way not to its liking.

I worked hard to pass the Trade Act of 2002 and give the President fast track negotiating authority. I am concerned that shortchanging the process may give those who oppose fast track ammunition to fight its renewal next year.

As we've worked through the Morocco legislation, Senator Grassley and I have worked hard to address the concerns of Members of the Committee. I appreciate the help of the Chairman and other Members of the Committee to work constructively throughout this process.

There are no proposed amendments today, and I expect that the Morocco agreement will receive strong support in the Committee and in the Senate as a whole.

The agreement gives the United States the same access to Morocco that the Europeans now enjoy. In particular, I fought to make sure that the agreement ultimately

will allow U.S. wheat producers and their EU competitors to compete in Morocco on a level playing field.

The agreement also guarantees that U.S. wheat will always enjoy preferential access versus future Moroccan FTA partners.

The agreement is a good deal for the United States, and a good deal for Morocco. I urge Members to support it.

Thank you, Mr. Chairman.

UNITED STATES SENATE
COMMITTEE ON FINANCE

Charles E. Grassley, Chairman

Wednesday, July 14, 2004
215 Dirksen Senate Office Building

Agenda for Business Meeting

I. **Proposed legislation implementing the U.S. – Morocco Free Trade Agreement**

II. **S. 2610, the U.S. – Australia Free Trade Agreement Implementation Act**

AAFTAC
The American-Australian
Free Trade Agreement Coalition

July 6, 2004

The Honorable Charles Grassley
Chairman
Senate Committee on Finance
Washington, DC 20510

VIA FACSIMILE: 202-228-0554

Dear Chairman Grassley:

On behalf of the American-Australian Free Trade Agreement Coalition (AAFTAC), we would like to thank you for your continued leadership and support of the U.S.-Australian Free Trade Agreement. AAFTAC has 292 members (list attached) representing every major sector of the U.S. economy including agriculture, manufacturing, automotive intellectual property, entertainment and financial services to name a few. The completion of the Australian FTA will benefit all Americans by creating new jobs, eliminating tariffs and boosting our exports.

We are pleased the Finance Committee acted quickly to review the proposed implementing legislation and complete its informal consideration of the bill prior to the July 4 recess. As you know, we opposed amendments to the implementing language as stated in our June 22, 2004 letter to you. We were disappointed that an unconstitutional amendment regarding beef safeguard waivers was adopted, by a narrow margin, during informal committee mark up.

While this action is non-binding on the Administration, inclusion of an unconstitutional amendment in the Committee's recommendations to the Administration would set a bad precedent for future free trade agreements. It would also be a poor signal to our trading partners about our commitment to the U.S.-Australia Free Trade Agreement. We very much appreciate your leadership in ensuring that such a recommendation was not made by the Finance Committee.

We look forward to the formal introduction of legislation implementing the U.S.-Australia FTA in early July. We strongly urge all members of the Finance Committee to support the FTA legislation when it is formally marked up by the Committee.
Thank you for your consideration.

Sincerely,

R.D. Folsom
Executive Director

1317 F Street, NW Suite 600 Washington DC 20004
tel 202.393.5625 fax 202.783.0329 www.aaftac.org

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

The Honorable Charles Grassley
Chairman
Committee on Finance
United States Senate
Washington, DC 20510

JUN 22 2004

Dear Mr. Chairman:

I understand that an amendment may be offered during the mark-up of the proposed draft bill implementing the United States-Australia Free Trade Agreement (FTA) related to the operation of the beef safeguards under the FTA. We oppose any amendment that would effectively eliminate the discretion called for in the Agreement not to apply these safeguards.

Agriculture safeguard language in the WTO Agriculture Agreement and our other FTAs has an element of discretion that applies in all cases. These existing agreements would provide, for example, that "A Party may apply a safeguard...".

In the U.S.-Australia FTA, the United States insisted on a different approach for the beef safeguards in order to achieve more automatic application of the two beef safeguards and to provide greater certainty to the U.S. beef industry and the Congress on this issue. The FTA requires automatic application of the beef safeguards, but also provides that the United States must have the discretion not to apply a safeguard. This is a reasonable approach, particularly since it is nearly impossible to project conditions in the U.S. beef market in 9 years when the quantity-based safeguard goes into effect or in 19 years when the price-based safeguard goes into effect.

We plan to implement these more stringent safeguards in the following way. The quantity-based and price-based beef safeguards will be applied automatically. The quantity-based safeguard will be incorporated as specific tariff lines in the U.S. Harmonized Tariff Schedule. We plan for the price-based beef safeguard to be triggered electronically through data transmission between the Department of Agriculture and U.S. customs officials.

Under the proposed legislation, the United States Trade Representative (USTR) is authorized to waive application of the quantity-based and price-based beef safeguards only if the USTR determines that extraordinary market conditions demonstrate that a waiver would be in the national interest of the United States. We would expect such situations to be rare. USTR would notify the Senate Finance Committee and the Ways and Means Committee of the House (Trade Committees) of any request for a waiver and consult with private sector advisors and the Trade Committees regarding the scope and duration of any proposed waiver. These consultations would take place at least 5 working days before a waiver would go into effect.

Eliminating the waiver provisions for the quantity and price-based safeguards would preclude the United States from exercising the discretion required under the Agreement. Requiring

Congressional approval to waive the beef safeguards would make the waiver unworkable due to the delay that this would introduce and raises serious Constitutional issues under INS vs Chada. If the United States does not have the discretion not to apply a beef safeguard measure, or if a waiver process is unworkable, Australia could argue that the United States is in violation of the Agreement or has nullified or impaired its rights under the Agreement.

I appreciate your strong support for the U.S.-Australia FTA and look forward to working with you on implementation of this FTA, the U.S.-Morocco Free Trade Agreement, and other Agreements.

Sincerely,

Robert B. Zoellick

Congressional Research Service

Memorandum June 22, 2004

TO: Senate Committee on Finance
Attention: Stephen Schaefer

FROM: Johnny H. Killian
Senior Specialist, American Constitutional Law
American Law Division

SUBJECT: Validity of Provision Conditioning Executive Action on Congressional Committee Approval

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This memorandum is in response to your request to review a provision proposed to be added to the Australian FTA. The particular sections authorize quantity and price-based safeguards on beef whenever certain conditions apply. The sections provide for USTR waivers of application of the safeguards "if the Trade Representative determines that extraordinary market conditions demonstrate that a waiver would be in the national interest of the United States" and USTR consults with private sector advisors and the Finance and Ways and Means Committees. The proposed amendment would add a requirement that the Senate Finance Committee and the House Ways and Means Committee both affirmatively approve a proposed waiver before USTR can waive the application of the safeguards.

There is a constitutional difficulty with the committee approval device, which flows from the decision in *INS v. Chadha*, 462 U.S. 919 (1983). In that case, the Court held unconstitutional a provision of the immigration laws that authorized either the Senate or the House of Representatives, by simple resolution, to disapprove the decision of the Attorney General to allow a particular deportable alien to remain in the country. The infirmity of the provision, according to the Court, was that "the exercise[s] of legislative power" by Congress or by one House had to comply with the Constitution's lawmaking prescription under Article I, § 1 and Article I, § 7, that is, passage by both Houses and presentment to the President for his approval or veto. In order to determine whether a congressional action is an exercise of legislative power, one must look to see if "it ha[s] the purpose and effect of altering the legal rights, duties and relations of persons, including [in this case] the Attorney General, Executive Branch officials and Chadha, all outside the legislative branch." Id., 952.

Although *Chadha* concerned a one-House simple resolution, the analysis of the Court made clear that two-House vetoes, with regard to presentment, and committee veto devices suffered from the same constitutional difficulty. (Needless to say, no constitutional significance attaches to whether the device is cast as a veto or a necessary approval). And,

indeed, the Court shortly thereafter summarily affirmed two decisions by the District of Columbia Circuit, which had acted pre-*Chadha*, striking down two-House vetoes. *Process Gas Consumers Group v. Consumer Energy Council*, 463 U.S. 1215 (1983), *summarily affg.* 691 F.2d 575 (D.C.Cir., 1982)(*en banc*), and 673 F.2d 425 (D.C.Cir., 1982). Although the Supreme Court has not passed on a provision giving congressional committees veto power or necessary approval like that contained in the proposed amendment, the D. C. Circuit, contemporaneously with the two cited cases, invalidated a section of an appropriations law largely identical to the proposal. *AFGE v. Pierce*, 697 F.2d 303 (D.C.Cir., 1982)(panel composed of now-Justice Ginsburg and Judges Bork and Bazelon).

In *Pierce*, the court had before it a limitation on the use of funds in an HUD Appropriations Act to implement a RIF "without the prior approval of the Committees on Appropriations." According to the court, the provision could be interpreted in one or another of two ways. First, it could be read to empower either Appropriations Committee to prevent otherwise authorized expenditures of funds. Second, it could be read as prohibiting the agency from using appropriated funds for certain purposes but empowering both Committees, acting together, to lift the prohibition and to authorize the agency to make such use of the funds. Under either construction, the court stated, the provision was unconstitutional. If the first reading was correct, the section conferred a one-House veto on the Committees; if the second reading prevailed, the directive was a grant of legislative power to the two Committees. Legislative power, either way, had to be exercised bicamerally and through presidential presentment.

Little doubt exists that *Chadha* confirms the D. C. Circuit's analysis of such committee provisions of law.

Now, it is true that Congress has not foresworn use of legislative veto devices in the aftermath of *Chadha*. By one authoritative but now dated count, "Congress [has] enacted more than two hundred new legislative vetoes." Fisher, *The Legislative Veto: Invalidated, It Survives*, 56 L. & Contemp. Prob. 273, 288 (1993). Most of these provisions of law are authorizations to committees, often the Appropriations Committees, to approve certain executive expenditures before they can take place. Id., 288, n. 83. Because of the comity the agencies must display to the Appropriations Committees, these provisions are rarely challenged, certainly not in court. However, Presidents in signing statements have typically complained about the measures and announced their intentions to ignore them. The format of these presidential statements usually follow one highlighted by Dr. Fisher of President George H. W. Bush. The President protested that the sections "constitute legislative vetoes similar to those declared unconstitutional by the Supreme Court in *INS v. Chadha*. Accordingly, I will treat them as having no legal force or effect in this or any other legislation in which they appear." 27 Weekly Comp. Pres. Docs. 1525 (Oct. 28, 1991).

In most instances, disputes between Congress and Executive over the use of such devices may fail to give rise to litigation, or, at least, litigation that enables court to reach the merits, because of the absence of Member standing, cf. *Raines v. Byrd*, 521 U.S. 811 (1997), and the lack of standing by private parties, and there will be political accommodation. But regardless of the justiciability of the question in any particular case, the amendment before us now certainly appears to meet the judicial definition of an impermissible exercise of legislative power and to be subject to invalidation in the event of a suit in which the merits are reached.

STINSON SEAFOOD BROOKLYN, INC.

CONNORS BRUNSWICK, LLC

July 14, 2004

The Honorable Olympia J. Snowe
United States Senate
154 Russell Senate Office Building
Washington, D.C. 20510-1903

By Fax: 202-228-1071

Dear Senator Snowe:

Thank you for the opportunity to clarify Stinson Seafood / Bumble Bee Seafood's position on the pending Morocco/U.S. Free Trade Agreement (FTA).

We support your approval of this trade agreement since we received the most favorable treatment under the agreement for the oil-packed sardines that we produce. The agreement provides for a 9-year phase out, in equal annual stages, of the 15% U.S. duty on sardines packed in oil, not smoked, (HTS 160413.20), as we requested.

We appreciate the good working relationship that we have developed with the Office of the United States Trade Representative during the negotiations on the Moroccan FTA and also appreciate your continued support for and interest in our sardine canning business in Maine.

Please do not hesitate to contact me at any time if I can provide you with additional information.

With best regards,

Jeff Kaelin
Government Relations
Stinson Seafood / Bumble Bee Seafoods

Connors Brunswick, LLC • P.O. Box 440 Winterport, ME 04496
Phone/Fax: 207-223-9013 • E-mail: j.h.kaelin@att.net

p.2 207-223-9013 Jeff Kaelin Jul 14 04 08:10a

INTERNATIONAL PAPER

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Lyn.withey@ipaper.com

July 13, 2004

The Honorable Olympia Snowe
United States Senate
Washington, DC 20510

Dear Olympia:

As you consider the US-Australia and US-Morocco Free Trade Agreements, I want you to know of International Paper's support for these agreements.

For more than a decade, International Paper and the US forest products industry have worked with US government officials and with foreign officials to achieve agreements to eliminate tariffs on paper and wood products on a reciprocal basis. The competitive position of our industry has been hampered by the existence of high tariffs in foreign markets on our value added products, while US tariffs on similar products have been nil or very low. This has resulted in lost export opportunities and increased import pressure in our own market, particularly when the dollar has been overvalued. We have sought through multilateral, regional, and bilateral trade negotiations to level the tariff field to zero, which would allow us to compete on a more even basis at home and abroad.

The US-Australia FTA achieves this important objective—immediate tariff elimination on all wood and paper products. This will open up new market opportunities for our businesses, including printing papers, packaging, and Arizona Chemical. In addition to new direct sales opportunities, increased trade in goods which use our products will also help grow our sales. We also hope that the elimination of tariffs in the forest products sector, which is now part of agreements with Australia, Chile and Singapore, will encourage other countries in the Pacific Rim to further open their markets to free trade in this sector. We expect demand for our products in these countries to grow at a faster rate than in the US or other developed markets.

The US-Morocco FTA, while not eliminating tariffs immediately in our sector, does reduce those tariffs and bring them into parity with tariffs on competing products from the EU. This is important to us, so that we can compete on a more even basis. As the Morocco economy grows, and as trade in numerous products increases as a result of this agreement, we expect demand for paper, packaging and wood products to increase, and we certainly want to be able to grow our sales into that market.

In short, these agreements provide important new market opportunities for our products. The ability to increase our sales abroad will strengthen the company and our ability to sustain good jobs, such as we have in Maine and across the U.S. We urge your support for both of these agreements.

Sincerely,

Lyn

JUL. 13. 2004 2:49PM INTERNATIONAL PAPER NO. 4304 P. 2

MAINE POTATOES

Maine Potato Board
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Presque Isle, ME 04769
(207) 769-5061
FAX 764-4148
mainepotatoes.com

July 13, 2004

The Honorable Olympia J. Snowe
154 Russell Senate Office Building
Washington, D.C. 20510-1903

Dear Senator Snowe:

I am writing regarding the approval of the Free Trade Agreement with Morocco. The Maine Potato Board and the National Potato Council support this Agreement as a way to open and expand markets for potatoes and potato products. As with any free trade agreement, it must also be a fair agreement.

Trade agreements, such as the Morocco Free Trade Agreement, must include specific negotiating objectives for agriculture that are consistent with the U.S. potato industry's trade priorities. Negotiating goals should be to eliminate all tariffs on potatoes and potato products, eliminate any phytosanitary barriers to trade, and support implementation of those agreements that minimize the impact of shifts in production on planted potato acres.

The potato industry in Maine and the United States is a mature industry and the long-term success of our industry will rely on the development of new markets for our potatoes and potato products. We ask that you support the Free Trade Agreement with Morocco.

If I can provide any additional information, please contact me.

Sincerely,

Donald E. Flannery
Executive Director

Cc: Maine Potato Board

For Record Sen. Conrad 7/14/04

Congressional Research Service

Memorandum

July 13, 2004

TO: Honorable Kent Conrad
Attention: Tom Marr

FROM: Johnny H. Killian
Senior Specialist, American Constitutional Law
American Law Division

SUBJECT: Actions by Congress Disapproving Executive Actions

This memorandum is in response to your request that we consider certain proposals by which you wish to provide for congressional disapproval, initiated by the Senate Committee on Finance and the House Committee on Ways and Means, of certain actions taken by the United States Trade Representative as authorized under the Australia Free Trade Agreement (AFTA) implementing legislation. Our response supplements our first memorandum on this issue, dated June 22, 2004, and addressed to the Senate Committee on Finance. In that memorandum, we concluded that the proposal for disapproval of certain waiver authority by the USTR by action of the two Committees would fall afoul of the decision in *INS v. Chadha*, 464 U.S. 919 (1983).

You have forwarded to us two modifications to the Committee disapproval process, and you asked whether the same constitutional questions might be raised against these. The constitutional challenge in all instances is based on the doctrine of separation of powers, and it is raised by any proposal under which legislative action by Congress would be effective upon (1) action by one House of Congress or a Committee thereof or (2) action by both Houses of Congress without submission to the President under the presentment clause of the Constitution. That is, the only valid actions of Congress having legislative force outside Congress are actions that are approved bicamerally and then submitted to the President for his approval or, if disapproved, are again passed by both Houses of Congress by the requisite supermajorities.

In that context, we believe that either modification, so long as each is construed to conform to this model, as the first can be, or construed not to be a congressional imposition on the Executive, but a commitment by the Executive to conform to obtaining Committees approval, would be sufficient to withstand constitutional challenge.

First, you point to the existing Jackson-Vanik amendment for fast-track congressional disapproval resolutions whenever the President proposes to provide normal trade relations to a country subject to Jackson-Vanik. 19 U.S.C. § 2192. The *Chadha* decision is not implicated by this provision or its expansion to include your proposal. The resolution of disapproval provided for is a joint resolution, which requires favorable consideration by both Houses of Congress, and submission to the President for his signature or his veto. This is precisely the model called for by *Chadha*.

Second, you then point to an alternative. Before the Committee is the SSA outlining how the Administration proposes to implement the trade agreement. The SAA includes a provision that, with respect to the AFTA, the Administration commits itself to notify the Finance and Ways and Means Committees at least five business days before the USTR waives particular provisions to be included in the AFTA. You inquire whether the SAA could be amended to commit the Administration to obtaining the approval of the Committees before the waiver could be implemented. The answer with respect to the constitutional issue here would depend upon how this proposal is construed. If what is meant is congressional adoption of a binding obligation to obtain the approval of the Committees, we believe that a constitutional challenge would lie. We do not believe that substituting a requirement of Committees approval before the waiver could be implemented in place of an affirmative obligation of Committees disapproval would be meaningful for constitutional purposes. If the Committees are to act without additional actions by both Houses, it makes no difference whether the action of the Committees is not designated as a disapproval but the vitality of the waiver depends upon Committees approval. The effect is absolutely the same. In a different context, the Supreme Court has warned against giving dispositive constitutional effect to the "labeling of an activity." *Mistretta v. United States*, 488 U.S. 361, 392 (1989). An affirmative vote of disapproval or the failure to vote approval by the Committees both operate to prevent the USTR from exercising a delegated power. Nothing in *Chadha* indicates that mere formalism would have resulted in a different analysis.

Now, it should be noticed that it would be valid to provide, as Congress has done in the Rules Enabling Acts, authorizing judicial promulgation of rules guiding the courts, that a proposed rule will be submitted to Congress and will lay over for a period of time, such as 90 days, or 120 days, or whatever, to go into effect at the end of the period unless Congress by normal legislative activity, action by both Houses and submission to the President, has enacted changes in the proposal. This kind of "report-and-wait" notification has been approved by the Supreme Court. *Sibbach v. Wilson*, 312 U.S. 1 (1937). The advantage of this relatively simple device is that it keeps the executive action from going into effect for a period of time while Congress ponders whether to set it aside permanently through lawmaking.

You have assured us, however, that this is not how the proposal is to be construed, and a construction along another path would change the analysis. We are informed that the SAA is the voluntary commitment of the Administration to implement the trade agreement in a particular way. In the past, the Finance and the Ways and Means Committees had adopted amendments that make changes to the SAA. The change contemplated is that the Administration, in addition to notification, would obtain the approval of the Committees before waiving the beef provision in question. The Committee amendment of the SAA does not become law, does not impose a binding obligation on the Administration; if the Administration accepts the change, it has simply obligated itself to observe the need to seek approval. It would not be legally binding, only politically binding.

Clearly, if all that is involved here is the Administration's agreement to bind itself to seek approval, there is no separation of powers problem. The constitutional problem arises only if Congress has enacted a legally binding provision. If because of political or policy strategy the Administration chooses to commit itself to that very same requirement, that would constitute but a waiver of a constitutional right by the President, with the same impact as the waiver of a constitutional right by any individual. An example of this kind of waiver in another context is the decision by a criminal defendant to plead guilty to a charged offense and to forego his right to require the prosecutor to prove to a jury his commission of the offense by proof beyond a reasonable doubt.

Now, of course, because the provision is not legally binding, the Administration could at any time reject the obligation, disregard it, in fact. The Administration might pay a political price for doing so, but the constitutional analysis would not be altered at all, anymore than the fact that the Administration chose to agree to adhere to the provision in the first place because of the political balance requires a change in analysis.

July 14, 2004

Proposed Legislation To Implement the U.S. – Morocco Free Trade Agreement

The Finance Committee met in open executive session to consider favorably approving the Committee's recommendation for proposed legislation to implement the United States–Morocco Free Trade Agreement.
The recorded vote was 20 ayes, 1 nay.
Ayes: Grassley, Hatch, Nickles, Lott, Snowe, Kyl, Thomas, Santorum, Frist, Smith, Bunning, Baucus (proxy), Daschle, Breaux, Conrad (proxy), Graham, Jeffords, Bingaman, Kerry (proxy), Lincoln
Nays: Rockefeller

The Finance Committee met in open executive session to consider favorably reporting S. 2610, the United States–Australia Free Trade Agreement Implementation Act.
The recorded vote was 17 ayes, 4 nays.
Ayes: Grassley, Hatch, Nickles, Lott, Kyl, Thomas, Santorum, Frist, Smith, Bunning, Baucus (proxy), Breaux, Graham, Jeffords, Bingaman, Kerry (proxy), Lincoln
Nays: Snowe, Rockefeller, Daschle, Conrad (proxy)

SENATE FINANCE COMMITTEE REPUBLICAN STAFF
SUMMARY OF THE UNITED STATES-MOROCCO
FREE TRADE AGREEMENT IMPLEMENTATION ACT
7-7-2004

Sec. 1 Short Title; Table of Contents

This section provides that the short title of the Act is the "United States-Morocco Free Trade Agreement Implementation Act."

Sec. 2 Purposes

This section provides the purposes of the Act, *e.g.*, to approve and implement the United States-Morocco Free Trade Agreement (the Agreement).

Sec. 3 Definitions

This section provides definitions for the Act.

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

Sec. 101 Approval and Entry into Force of the Agreement

This section provides Congressional approval for the Agreement and its accompanying Statement of Administrative Action. It also authorizes the President to exchange notes with the Government of Morocco to provide for the entry into force of the Agreement on or after January 1, 2005.

Sec. 102 Relationship of the Agreement to United States and State Law

This section establishes the relationship between the Agreement and U.S. law. It clarifies that no provision of the Agreement will be given effect under domestic law if it is inconsistent with federal law.

This section also clarifies the relationship between the Agreement and state law and 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.

Sec. 103 Implementing Actions in Anticipation of Entry into Force and Initial Regulations

This section provides the authority for the President to proclaim such actions, and for regulations to be issued, that are necessary to ensure that any provision of the Act that takes effect on the date that the Agreement enters into force is implemented on such date.

Sec. 104 Consultation and Layover Provisions for, and Effective Date of, Proclaimed Actions

This section sets forth traditional consultation and layover procedures that must precede the President's implementation of any tariff modifications by proclamation. Under the consultation and layover provisions, the President must obtain the advice of the private sector advisory committees and the U.S. International Trade Commission (ITC) on a proposed action. The President must submit a report to the Senate Committee on Finance and the House Committee on Ways and Means setting forth the action proposed, the reasons therefore, and the advice of the private sector and the ITC. The Act sets aside a 60 day period following the date of transmittal of the report for the President to consult with the Committees on the proposed action.

Sec. 105 Administration of Dispute Settlement Proceedings

This section authorizes the President to establish within the Department of Commerce an office responsible for providing administrative assistance to dispute settlement panels established under Chapter 20 of the Agreement. This section also authorizes the appropriation of funds to support this office.

Sec. 106 Arbitration of Claims

This section authorizes the United States to utilize binding arbitration to resolve investment claims covered by the Agreement that involve government contracts.

Sec. 107 Effective Dates; Effect of Termination

This section provides effective dates for the Act. Section 107 also provides that the provisions of the Act will no longer be in effect should the Agreement cease to be in force.

TITLE II – CUSTOMS PROVISIONS

Sec. 201 Tariff Modifications

This section authorizes the President to implement by proclamation the continuation, modification or elimination of tariffs as the President determines to be necessary or appropriate to carry out the terms of the Agreement. Pursuant to Section 201, Morocco's designation as a beneficiary developing country under the Generalized System of Preferences program shall be terminated once the Agreement enters into force.

Sec. 202 Additional Duties on Certain Agricultural Goods

Section 202 implements the agricultural safeguard provisions of the Agreement, under which additional duties will be assessed on imports of certain agricultural goods if the unit import price is less than the specified trigger price for that good set forth in Annex 3-

A of the Agreement. Section 202 also terminates the applicability of the safeguard mechanism to a good on the day such good becomes duty free under the Tariff Schedule of the United States to Annex IV of the Agreement.

Sec. 203 Rules of Origin

This section provides the rules of origin for goods under the Agreement and authorizes the President to modify some of the Agreement's rules of origin by proclamation, subject to the consultation and layover provisions of Section 104 of the Act. This section also includes definitions for terms used in determining the origin of goods under the Agreement.

A good qualifies for preferential treatment under the terms of the Agreement if it is imported directly from Morocco into the United States or vice versa and it is either: (1) "wholly the growth, product, or manufacture of Morocco, the United States, or both"; (2) a "new or different article or commerce" that has been grown, produced, or manufactured in Morocco, the United States, or both and a 35% content value test is satisfied; or (3) a good covered by product-specific rules set forth in Annex 4-A or annex 5-A of the Agreement and satisfies all other applicable requirements of section 203.

Sec. 204 Enforcement Relating to Trade in Textile and Apparel Goods

This section authorizes the President to suspend liquidation of entries of textile or apparel goods produced or exported by a person based upon a reasonable suspicion of unlawful activity, pending verification that the person is complying with all applicable customs rules and regulations. The section also authorizes the President to suspend liquidation of entries of textile or apparel goods pending verification that such goods qualify for preferential treatment under the Agreement.

If the President is unable to verify within twelve months that the person producing or exporting the textile or apparel good is complying with applicable customs rules and regulations this section authorizes the President to deny preferential treatment and/or entry to textile or apparel goods produced by or exported by that person.

Additionally, if the President is unable to verify within twelve months that the textile or apparel good qualifies for preferential treatment this section authorizes the President to deny preferential treatment and/or entry to those goods.

Sec. 205 Regulations

This section requires the Secretary of the Treasury to prescribe regulations necessary to implement the rules of origin provisions of the Agreement.

TITLE III – RELIEF FROM IMPORTS

Sec. 301 Definitions

This section contains definitions for this title.

Subtitle A – Relief from Imports Benefiting from the Agreement

Sec. 311 Commencing of Action for Relief

This section sets forth provisions regarding the commencement of bilateral safeguard investigations. Pursuant to the Agreement, Section 311 exempts from investigation under this section Moroccan articles that previously have been subject to safeguard relief under this subtitle.

Sec. 312 Commission Action on Petition

This section establishes deadlines for U.S. International Trade Commission (ITC) determinations following the initiation of a bilateral safeguard investigation. Section 312 also provides that, if the ITC makes an affirmative determination or a determination that the President may consider to be an affirmative determination, the ITC 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.

Sec. 313 Provision of Relief

This section authorizes the President to provide relief under the bilateral safeguard provisions of the Act. The period of initial relief may not exceed 3 years. The total period of relief, including any extension of relief, may not exceed 5 years in the aggregate. This section also specifies the rules for determining the applicable rate of duty after such relief terminates.

Sec. 314 Termination of Relief Authority

This section terminates the President's authority to take action under the bilateral safeguard provision after 5 years from the date on which the article subject to relief becomes duty free under the terms of the Agreement. The President may still take such action under the bilateral safeguard provision after such 5 year period, but only to the extent the President determines that the Government of Morocco consents to such action.

Sec. 315 Compensation Authority

This section authorizes the President to provide trade compensation to Morocco when the United States imposes relief through a bilateral safeguard action.

Sec. 316 Confidential Business Information

This section incorporates existing procedures regarding the release of confidential business information to apply in bilateral safeguard investigations under the Agreement.

Subtitle B – Textile and Apparel Safeguard Measures

Sec. 321 Commencement of Action for Relief

This section sets forth procedures regarding the commencement of actions under the Agreement's safeguard mechanism available to domestic textile and apparel industries.

Sec. 322 Determination and Provision of Relief

This section sets forth procedures regarding the President's determination as to whether a domestic industry is eligible for relief under the textile and apparel safeguard mechanism.

Sec. 323 Period of Relief

This section provides that the initial period of relief under the textile and apparel safeguard shall be no longer than three years. That period may be extended by up to two years if the President determines that an extension is necessary to remedy or prevent serious damage and to facilitate adjustment to import competition and that the domestic industry is making a positive adjustment to import competition.

Sec. 324 Articles Exempt from Relief

This section exempts textile and apparel articles from relief under the textile and apparel safeguard if relief previously has been granted to such articles under this safeguard or such articles are currently subject to import relief under the global safeguard provisions of Section 201 of the Trade Act of 1974.

Sec. 325 Rate after Termination of Import Relief

This section provides that the duty rate applicable to a textile or apparel article after import relief expires will be the duty rate that would have been in effect on that date but for such import relief.

Sec. 326 Termination of Relief Authority

This section provides that authority to provide relief under the textile and apparel safeguard will expire ten years after the date on which duties on the relevant article are eliminated under the Agreement.

Sec. 327 Compensation Authority

This section authorizes the President to provide trade compensation to Morocco when the United States imposes relief pursuant to the Agreement's textile and apparel safeguard provisions.

Sec. 328 Business Confidential Information

This section sets forth provisions concerning the release of business confidential information submitted to the President in connection with a request for action pursuant to the textile and apparel safeguard provisions of the Agreement.

THE UNITED STATES-MOROCCO FREE TRADE AGREEMENT IMPLEMENTATION ACT

STATEMENT OF ADMINISTRATIVE ACTION

This Statement of Administrative Action 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 United States-Morocco Free Trade Agreement ("Agreement"). The bill approves and makes statutory changes necessary or appropriate to implement the Agreement, which the United States Trade Representative signed on June 15, 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 Morocco. Article 1.2.3 does suspend Articles VI and VII of the *Treaty Between the United States of America and the Kingdom of Morocco Concerning the Encouragement and Reciprocal Protection of Investments*, with *Protocol*, signed at Washington on July 22, 1985, concerning investor-to-state and state-to-state dispute settlement, respectively. However, Article 1.2.4 of the Agreement preserves, for ten years, the option of invoking dispute settlement under the Treaty with respect to investments covered by the Treaty prior to entry into force of the Agreement. If the Agreement terminates, the dispute settlement provisions of the Treaty will automatically resume operation.

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 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 and Definitions)
Eighteen (Transparency)
Nineteen (Administration of the Agreement)
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

Article 22.6 of the Agreement requires the United States and Morocco to exchange written notifications that their respective internal requirements for the entry into force of the Agreement have been fulfilled. The exchange of notifications is a necessary condition for the Agreement's entry into force. Section 101(b) of the implementing bill authorizes the President to exchange notes with Morocco to provide for entry into force of the Agreement with respect to the United States on or after January 1, 2005. The exchange of notes is conditioned on a determination by the President that Morocco has taken measures necessary to comply with those of its obligations that are to take effect at the time the Agreement enters into force.

Certain rules pertaining to intellectual property rights become effective no later than one year after the Agreement's entry into force. In addition, certain general transparency rules apply to Morocco beginning one year after the Agreement's entry into force, and a government procurement rule relating to domestic review of supplier challenges applies to Morocco no later than one year after the Agreement enters into force. Other provisions relating to customs administration and financial services become effective with respect to Morocco no later than two years after the Agreement's entry into force. Finally, the transparency provisions of Chapter Seven (Technical Barriers to Trade) become effective no later than five years after the Agreement's entry 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 levels. 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 do not succeed.

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 might 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 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 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 20.3 of the Agreement. This office will not be an "agency" within the meaning of 5 U.S.C. 552, consistent with treatment provided under the United States-Chile Free Trade Agreement, the United States-Singapore Free Trade Agreement, the North American Free Trade Agreement ("NAFTA"), and the United States-Canada Free Trade Agreement. 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).

Section 106 of the bill concerns arbitration of certain disputes between Moroccan investors (or investments in the United States of such investors) and the United States and is discussed in connection with Chapter Ten (Investment), below.

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 and the amendments to other statutes made by the bill will cease to be effective on the date on which the Agreement terminates.

2. Administrative Action

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

Article 19.1.1 of the Agreement requires each government to designate a contact point to facilitate bilateral communications regarding the Agreement. The Office of the United States Trade Representative ("USTR") will serve as the U.S. contact point for this purpose. In addition, Article 19.2 establishes a Joint Committee to oversee the implementation of the Agreement, issue interpretations of its provisions, and consider necessary amendments, among other tasks. In a side letter to Chapter Nineteen, Morocco and the United States agreed to establish subcommittees on Agricultural Trade, Environmental Affairs, Financial Services, Labor Affairs, Sanitary and Phytosanitary Matters, Trade in Goods, and Cross-Border Trade in Services. These subcommittees will report to the Joint Committee.

Under Article 20.7.4, before the Agreement enters into force, the United States and Morocco will agree on a "reserve list" of qualified individuals to serve on dispute settlement panels in instances in which either country fails to appoint a panelist within the allotted time. 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 the reserve list.

Chapter Two (National Treatment and Market Access for Goods)

1. Implementing Bill

Section 201(a) of the bill grants the President authority to implement by proclamation U.S. rights and obligations under Chapter Two of the Agreement through the application or elimination of customs duties. Section 201(a) 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 2.3, 2.5, 2.6, 4.1, and 4.3.9, 4.3.10, 4.3.11, 4.3.13, 4.3.14, and 4.3.15, and Annexes IV and 4-B of the Agreement.

The proclamation authority with respect to Articles 2.3 and 4.1 authorizes the President to provide for the continuation, phase-out, or elimination, according to the Tariff Schedule of the United States to Annex IV of the Agreement, of customs duties on imports from Morocco that meet the Agreement's rules of origin. The proclamation authority with respect to Annex 4-B authorizes the President to provide for the implementation and administration of tariff-rate quotas according to Annex 4-B of the Agreement.

The proclamation authority with respect to Articles 2.5 and 2.6 authorizes the President to provide for the elimination of duties on particular categories of imports from Morocco. Article 2.5 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 2.6 pertains to the importation of goods: (1) returned to the United States after undergoing repair or alteration in Morocco; or (2) sent from Morocco for repair or alteration in the United States.

The proclamation authority with respect to Article 4.3.9, 4.3.10, 4.3.11, 4.3.13, 4.3.14, and 4.3.15 authorizes the President to provide preferential tariff treatment to certain textile and apparel goods that do not qualify as "originating goods" (*i.e.*, goods that satisfy the Agreement's rules of origin), where such goods have been formed, assembled, or carded and combed in either country, depending on the good at issue. For certain such goods subject to these tariff preference levels, this treatment may be applied only up to annual quantitative limits set forth in that Article for the various goods.

Section 201(a)(2) of the implementing bill requires the President to withdraw beneficiary status under the Generalized System of Preferences program from Morocco once the Agreement enters into force.

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

- modify or continue any duty;
- modify the staging of any duty elimination under the Agreement pursuant to an agreement with Morocco under Annex IV;
- 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 Morocco 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 private sector advisory committees (pursuant to section 135 of the Trade Act of 1974) and the U.S. International Trade Commission ("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 Trade Committees to consult with the President 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 Morocco under Article 4.3.3 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.)

2. Administrative Action

As discussed above, section 201(a) of the bill authorizes the President to proclaim duty-free treatment for certain goods to carry out Article 2.5 (temporary admission of certain goods) and Article 2.6 (repair or alteration of certain goods) of the Agreement. Implementing the proclamation will require regulations, which will be issued by the Secretary of the Treasury.

Chapter Three (Agriculture and Sanitary and Phytosanitary Measures)

1. Implementing Bill

Section 202 of the bill implements the agricultural safeguard provisions of Article 3.5 and Annex 3-A of the Agreement. Article 3.5 permits the United States to impose an "agricultural safeguard measure," in the form of additional duties, on imports from Morocco of an agricultural good listed in the U.S. Agricultural Safeguard List to Annex 3-A of the Agreement. The U.S. Agricultural Safeguard List includes horticultural goods such as canned olives, dried onion and garlic, canned fruit, processed tomato products, and orange juice.

Section 202(a) defines certain terms relevant to the safeguard rules. For example, section 202(a)(2) defines the applicable normal trade relations (most-favored-nation) ("NTR (MFN)") rate of duty for purposes of the agricultural safeguards. Under the Agreement, the sum of the duties assessed under an agricultural safeguard and the applicable rate of duty in the U.S. schedule may not exceed the general NTR (MFN) rate of duty. The remainder of section 202(a) defines terms such as "agricultural safeguard good," "schedule rate of duty," "unit import price," and "trigger price."

Section 202(b) of the bill contains provisions regarding the imposition of safeguard measures on imports of agricultural goods specified in Annex 3-A of the Agreement. Section 202(b)(1) establishes the basic authority for such safeguards. Section 202(b)(2) of the bill explains how the additional duties are to be calculated. The United States may apply the additional duties to shipments of any such good whose price is below the threshold ("trigger price") for the good set out in Annex 3-A. The rate of additional duty under the safeguard increases as the difference increases between the unit import price of a shipment and the trigger price specified in Annex 3-A.

Section 202(b)(3) of the bill implements Article 3.5.3 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 measure under the bilateral safeguard mechanism established under 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(b)(4) of the bill provides that agricultural safeguard provisions cease to apply with respect to a good on the date on which duty-free treatment must be provided to that good under the Agreement.

Section 202(b)(5) of the bill provides that if an agricultural safeguard good is subject to a tariff-rate quota, any additional agricultural safeguard duties may be applied only on over-quota imports of the good.

Section 202(b)(6) of the bill implements Article 3.5.5 of the Agreement by directing the Secretary of the Treasury to notify Morocco and provide Morocco with supporting data within 60 days of assessing agricultural safeguard duties on a good.

2. Administrative Action

The Secretary of the Treasury is authorized to issue regulations to implement the safeguard provisions of section 202. It is the Administration's intent that these safeguard measures will be applied whenever the conditions specified in the Agreement exist.

Annex 3B of the agreement allows Morocco to establish a license program for imports of high quality U.S. beef. The annex also specifies that Morocco shall not use the licenses as a way to impede filling the U.S. quota for high quality beef. The Administration will monitor any license program that Morocco establishes to ensure that it does not serve as a barrier to US high quality beef exports otherwise permitted under the agreement.

Annex 3C of the agreement permits Morocco to establish an auction system for licenses to import U.S. wheat. The Administration will monitor any auction program that Morocco may establish to ensure that the program does not serve as a barrier to U.S. wheat exports otherwise permitted under the agreement.

Chapter Four (Textiles and Apparel)

1. Implementing Bill

a. Enforcement of Textile and Apparel Rules of Origin

In addition to lowering barriers to bilateral 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 4.4 of the Agreement provides for facility inspections, examinations of records, and other forms of verification to determine the accuracy of claims of origin for textile and apparel goods and to determine that exporters and producers are complying with applicable laws, regulations, and procedures regarding trade in textile and apparel goods.

Under Articles 4.4.2 and 4.4.3, the United States may request that Morocco conduct a verification, allow the United States to conduct a verification, or collaborate with the United States in conducting a verification with respect to an Moroccan exporter or producer. The object of a verification under Article 4.4.2 is to determine that a claim of origin for a textile or apparel good is accurate. The object of a verification under Article 4.4.3 is to determine that an exporter or producer is complying with applicable customs laws, regulations, and procedures and that claims of origin for textile or apparel goods exported or produced by that person are accurate.

Under Article 4.4.6 of the Agreement, the United States may take appropriate action during a verification, including suspending the application of preferential tariff treatment to textile or apparel goods exported or produced by the person subject to the verification. Under Article 4.4.8, the United States also may take appropriate action if, after 12 months, it is unable to make the requisite determination. In general, there are two situations in which the United States would be unable to make the required determination. One would involve a lack of cooperation on the part of the exporter or producer. The second would occur when the United States has sufficient information, and based on that information determines that: (1) a claim of origin is not accurate; or (2) an exporter or producer is not complying with applicable customs laws, regulations, and procedures, and therefore that claims of origin for textile or apparel goods produced by that person are not accurate.

Under current law, the Secretary of the Treasury may request that Morocco conduct a verification, allow the United States to conduct a verification, or collaborate with the United States in conducting a verification under Article 4.4 of the Agreement. Section 204(a) authorizes the President to direct the Secretary of the Treasury to take "appropriate action" while a verification requested by the Secretary is being conducted. The purpose of such verification is to

determine compliance with applicable customs law or to determine the accuracy of a claim that a particular good is an originating good or a "good of Morocco." Under section 204(b), such action may include, but is not limited to, suspension of liquidation of entries of textile or apparel goods exported or produced by the person that is the subject of the verification.

Under section 204(c), if the Secretary is unable to confirm within 12 months of making a verification request that a claim of origin for a good is accurate or, more generally, that a Moroccan exporter or producer is complying with applicable customs laws, regulations, and procedures regarding trade in textile or apparel goods, the President may determine what further "appropriate action" to take. Under section 204(d), such further action may include publishing the name and address of the person subject to the verification and, in the case of a verification under Article 4.4.3 of the Agreement, denying preferential tariff treatment under the Agreement to any textile or apparel goods exported or produced by the person subject to the verification, and denying entry of such goods into the United States. In the case of a verification under Article 4.4.2 of the Agreement, the further action referred to in section 204(d) of the bill may include denying preferential tariff treatment to a textile or apparel good for which a claim has been made that is the subject of the verification and denying entry of such a good into the United States. Such further appropriate action may remain in effect until the Secretary receives information sufficient to make a determination under section 204(a) or until such earlier date as the President may direct.

b. Textile and Apparel Safeguard

Article 4.2 of the Agreement establishes a special procedure and 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 that receive preferential tariff treatment under the Agreement. The Administration does not anticipate that the Agreement will result in damaging increases in textile or apparel imports from Morocco. Nevertheless, the Agreement's textile and apparel safeguard procedure will ensure that relief is available if needed.

The safeguard mechanism applies when, as a result of the elimination of a customs duty under the Agreement, textile or apparel goods from Morocco that receive preferential tariff treatment 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 4.2 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 on the day before the Agreement entered into force.

Section 301(2) of the bill defines the term "Moroccan textile or apparel article" as an article listed in the Annex to the WTO Agreement on Textiles and Clothing that is also a Moroccan article, as defined in section 301(1).

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

Section 321(a) of the bill provides that an interested party may file with the President a request for a textile or apparel safeguard measure. The President is to review a request initially 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 business confidential information, if any, the full text of the request will be made available on the Department of Commerce, International Trade Administration's website.

If the President determines under section 321 that a request contains the information necessary for it to be considered, then 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 elimination of a duty provided for under the Agreement, a Moroccan textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions 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. This determination corresponds to the determination required under Article 4.2.1 of the Agreement. Section 322(a)(2) of the bill includes criteria for determining serious damage or actual threat thereof, consistent with Article 4.2.2 of the Agreement.

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 duties to the lower of: (1) the NTR (MFN) duty rate in place for the textile or apparel article at the time the relief is granted; or (2) the NTR (MFN) duty rate for that article on the day before the Agreement enters into force.

Section 323 of the bill provides that the maximum period of relief under the textile or apparel safeguard is three years. However, the President may extend the period of import relief for an additional two 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. A safeguard measure may not be imposed for an aggregate period greater than five years.

Section 324 of the bill provides that relief may not be granted to an article under the textile or apparel safeguard if: (1) relief previously has been granted to that article; or (2) the article is subject, or becomes subject, to a safeguard measure under Chapter 1 of Title II of the Trade Act of 1974.

Section 325 of the bill provides that on the date of termination of import relief, imports of the textile or apparel article that was subject to the safeguard action will return 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 with respect to any Moroccan article will expire 10 years after duties on the article are eliminated.

Under Article 4.2.6 of the Agreement, if the United States provides relief to a domestic industry under the textile or apparel safeguard, it must provide Morocco "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 action." If the United States and Morocco are unable to agree on trade liberalizing compensation, Morocco may increase customs duties equivalently on U.S. goods. The obligation to provide compensation terminates upon termination of the safeguard relief.

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 business confidential 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 business confidential information in a textile or apparel safeguard proceeding must submit a non-confidential version of the information or a summary of the information.

2. Administrative Action

a. Enforcement of Textile and Apparel Rules of Origin

Section 204 of the bill governs situations in which U.S. customs officials request that Morocco initiate verifications regarding enforcement of textile and apparel rules of origin. Following a U.S. request for a verification, the Committee for the Implementation of Textile Agreements ("CITA"), an interagency entity created by Executive Order 11651 that carries out certain textile trade policies for the United States by delegation of authority from the President, may direct U.S. officials to take appropriate action described in section 204(b) of the bill while the verification is being conducted. U.S. customs officials will determine whether the exporter or producer that is subject to the verification is complying with applicable customs rules, and whether statements regarding the origin of textile or apparel goods exported or produced by that firm are accurate. If U.S. customs officials determine that an exporter or producer is not complying with applicable customs rules or that it is making false statements regarding the origin of textile or apparel goods, they will report their findings to CITA. Similarly, if U.S. customs officials are unable to make the necessary determination (*e.g.*, due to lack of cooperation by the exporter or producer), they will report that fact to CITA. CITA may direct U.S. officials to take

appropriate action described in section 204(d) in the case of an adverse determination or a report that customs officials are unable to make the necessary determination. If the appropriate action includes denial of preferential tariff treatment or denial of entry, CITA will issue an appropriate directive.

Section 204 of the bill provides the exclusive basis in U.S. law for CITA to direct appropriate action implementing Article 4.4 of the Agreement.

b. Textile and Apparel Safeguard

The function of receiving requests for textile and 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) will be performed by CITA, pursuant to a delegation of the President's authority under the bill. 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).

Chapter Five (Rules of Origin)

1. Implementing Bill

a. General

Section 203 of the implementing bill codifies the general rules of origin set forth in Chapter Five 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 of Morocco for the purposes of this bill would not necessarily be a good of, or import from, Morocco for the purposes of other U.S. laws or regulations.

For a good entering the United States to qualify as an originating good, it must be imported directly from Morocco. Additionally, it must be covered by one of three specified categories. First, a good is an originating good if it is "wholly the growth, product, or manufacture of Morocco, the United States, or both." The term "good wholly the growth, product, or manufacture of Morocco, the United States, or both" is defined in section 203(i)(3) of the bill and includes, for example, minerals extracted in either country, animals born and raised in either country, and waste and scrap derived from production of goods that takes place in the territory of either or both countries.

The term "good wholly the growth, product, or manufacture of Morocco, the United States, or both" includes "recovered goods." These are parts resulting from the disassembly of used goods, which are brought into good working condition, in order to be combined with other recovered goods and other materials to form "remanufactured goods." The term "remanufactured goods" is separately defined in section 203(i)(9) to mean industrial goods assembled in the territory of Morocco or the United States that: (1) are comprised entirely or

partially of recovered goods; (2) have similar life expectancies to, and meet similar performance standards as, like goods that are new; and (3) enjoy similar factory warranties as such like goods.

Second, a good is an "originating good" if it is a "new or different article of commerce" that has been grown, produced, or manufactured in Morocco, the United States, or both. Under this category, the sum of: (1) the value of the materials produced in Morocco, the United States, or both; and (2) the "direct costs of processing operations" performed in Morocco, the United States, or both, must be at least 35 percent of the appraised value of the good at the time it is entered into the territory of either country. This category does not apply to goods specified in Annex 4-A or Annex 5-A of the Agreement.

This second category incorporates two defined terms. The term "new or different article of commerce" is defined under section 203(i)(7) of the bill as "a good that has been substantially transformed from a good or material that is not wholly the growth, product, or manufacture of Morocco, the United States, or both, and [that] has a new name, character, or use distinct from the good or material from which it was transformed." The term "direct costs of processing operations," defined in section 203(i)(1) of the bill, refers to costs directly incurred in, or that can be reasonably allocated to, the growth, production, or manufacture of a good. It includes a variety of types of costs, such as labor costs, depreciation on machinery or equipment, research and development, inspection costs, and packaging costs, among others.

Third, a good is an "originating good" if it meets the product-specific rules set out in Annex 4-A or Annex 5-A of the Agreement and satisfies all other applicable requirements of section 203. In general, Annex 4-A and Annex 5-A of the Agreement require that non-originating materials used in the production of a good undergo a change in tariff classification, as specified in each Annex, as a result of production occurring entirely in the territory of Morocco, the United States, or both.

The remainder of section 203 of the implementing bill sets forth specific rules that supplement the rules for qualifying under the second and third categories just described. For example, section 203(e) provides that "[p]ackaging and packing containers for retail sale and shipment shall be disregarded in determining whether a good qualifies as an originating good, except to the extent that the value of such packaging and packing materials and containers may be counted toward satisfying the requirements in subsection (b)(2), where applicable." Other provisions in section 203 address valuation of materials and rules regarding indirect materials, transit and transshipment, and a variety of other matters.

b. Proclamation Authority

Section 203(j)(1) of the bill authorizes the President to proclaim the specific rules of origin in Annex 4-A and Annex 5-A 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(j)(2) 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* discussion under item 1.a of Chapter Two, above.)

Various provisions of the Agreement expressly contemplate modifications to the rules of origin. For example, Article 4.3.3 calls for the United States and Morocco to consult at either government's request to consider whether rules of origin for particular textile or apparel goods should be revised in light of the availability of fibers, yarns, or fabrics in their respective territories. In addition, Article 5.13 provides that, at an appropriate time, the United States and Morocco will enter into discussions with a view to deciding the extent to which materials that are products of countries in the Middle East or North Africa may be counted for purposes of satisfying the Agreement's rules of origin.

Section 203(j)(2) 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-A of the Agreement). Those rules of origin may be modified by proclamation in only two circumstances: (1) to implement an agreement with Morocco pursuant to Article 4.3.6 of the Agreement to address the commercial availability of particular fibers, yarns, or fabrics; and (2) to correct typographical, clerical, or other non-substantive technical errors within one year of enactment of the implementing bill.

2. Administrative Action

The rules of origin in Chapter Five of the Agreement are intended to direct the benefits of customs duty elimination under the Agreement principally to firms producing or manufacturing goods in Morocco and the United States. For this reason, the rules ensure that, in general, a good is eligible for benefits under the Agreement only if it: (1) is wholly grown, produced, or manufactured in one or both countries; (2) has been substantially transformed from a good or material that is not wholly grown, produced, or manufactured in one or both countries; or (3) meets specific "tariff shift" rules identified for particular products.

a. Claims for Preferential Tariff Treatment

Section 205 of the bill authorizes the Secretary of the Treasury to prescribe regulations necessary to carry out the tariff-related provisions of the bill, including the rule of origin provisions. The Department of the Treasury will use this authority in part to promulgate any regulations necessary to implement the Agreement's provisions governing claims for preferential tariff treatment. Under Article 5.10(a) of the Agreement, an importer claiming preferential tariff treatment is deemed to have certified that the good qualifies for such treatment. Under Article 5.10(b), an importer may be requested to explain in a detailed declaration the basis for such a claim. Article 5.11.1 requires that a claim for preferential tariff treatment be granted unless customs officials have information indicating that the importer's claim fails to comply with the Agreement's rules of origin. Article 5.11.3 requires customs officials to provide a written determination, with factual and legal findings, if they deny a claim.

b. Verification

Under Article 5.11.2, customs officials may verify claims that goods imported from

Morocco satisfy the Agreement's rules of origin. Article 4.4 sets out special procedures for verifying claims that textile or apparel goods imported from Morocco meet the Agreement's origin rules. U.S. officials will carry out verifications under Articles 5.11.2 and 4.4 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 Six (Customs Administration)

1. Implementing Bill

No statutory changes will be required to implement Chapter Six.

2. Administrative Action

a. Inquiry Point

Article 6.1.2 of the Agreement requires each government to designate an inquiry point for inquiries from interested persons on customs matters. The U.S. Bureau of Customs and Border Protection (BCBP) will serve as the U.S. inquiry point for this purpose. Consistent with Article 6.1.2, the BCBP 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 6.10 of the Agreement (on classification, valuation, duty drawback, qualification as an "originating good," and duty-free treatment of goods returned to the United States after repair or alteration in Morocco) parallel in most respects existing regulations in Part 177 of the Customs Regulations for obtaining advance rulings. Consistent with Article 6.10.2 of the Agreement, advance rulings must be issued within 150 days of receipt of all information reasonably required to process the application for the ruling.

Chapter Seven (Technical Barriers to Trade)

1. Implementing Bill

No statutory changes will be required to implement Chapter Seven.

2. Administrative Action

Article 7.7 of the Agreement calls for each government to designate an official to coordinate with interested parties in its territory on bilateral issues and initiatives regarding

technical barriers to trade ("TBT"), and to communicate with the other government on such matters. A USTR official responsible for TBT matters or trade relations with Morocco will serve as the U.S. Chapter Seven coordinator.

Chapter Eight (Safeguards)

1. Implementing Bill

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

Sections 311 through 316 of the bill authorize the President to suspend duty reductions or impose duties temporarily at NTR (MFN) rates on a "Moroccan article" when, after an investigation, the ITC determines that 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 out in sections 201 through 204 of the Trade Act of 1974.

Section 301(1) defines the term "Moroccan article" for purposes of the safeguard provisions to mean a good qualifying as an "originating good" under section 203(b) of the bill or a textile or apparel good containing non-originating fabric or yarn that receives preferential tariff treatment under Article 4.3.9-4.3.14 or 4.3.15 of the Agreement.

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

In addition, section 311(a)(2) permits a petitioning entity to request provisional relief as if the petition had been filed under section 202(a) of the Trade Act of 1974.

Section 311(a)(3) requires that any claim of "critical circumstances" with respect to a surge of imports from Morocco be included in the petition for relief. A claim of critical circumstances is a necessary element in a claim for provisional relief. It also is a necessary element in a claim for provisional relief under section 202(d)(2) of the Trade Act of 1974, which is made applicable to bilateral safeguards under the Agreement through section 311(c) of the bill.

Section 311(b) sets out the standard to be used by the ITC in undertaking an investigation and making a determination in bilateral 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 provisional relief provisions in section 202(d), 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 a Moroccan article that has been subject to a safeguard measure under Subtitle A of Title III of the bill after the Agreement's entry into force. In other words, a safeguard measure under Subtitle A of Title III of the bill may be applied only once for a particular good.

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 (or 180 days if critical circumstances are alleged).

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 injury determination, or a determination that the President may consider to be an affirmative determination under section 312(b), 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 may be recommended by the ITC 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: (1) the ITC's determination under section 312(a) and the reasons supporting it; (2) 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 (3) 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*.

Under section 313(a) of the bill, the President is directed, 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 found by the ITC 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.

Section 313(c)(1) also sets out a special rule for duties applied to an article on a seasonal basis.

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 initial period for import relief under the bilateral safeguard may not exceed three years. The President may extend the period of import relief 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 by the ITC to the same effect. However, the aggregate period of import relief, including extensions, may not exceed five years.

Section 313(e) specifies the duty rate to be applied to Moroccan articles after termination of a bilateral safeguard action. On the termination of relief, the rate of duty on that article is the rate that would have been in effect, but for the provision of such relief, on the date the relief terminates.

Section 313(f) exempts from relief any article that is, at the time of the President's determination on whether to provide relief, already subject to import relief under the agricultural safeguard provision set out in Section 202(b) of the bill. Section 313(f) also provides that an article cannot be subject to import relief more than once under the bill's bilateral safeguard provision.

Section 314 provides that the President's authority to take action under the bilateral safeguards provision with respect to any good normally expires five years after the date on which the United States must eliminate duties on the good pursuant to Annex IV of the Agreement. The President may take action under the bilateral safeguards provision after that period, but only if the President determines that the Government of Morocco consents.

Section 315 allows the President to provide trade compensation to Morocco, as required under Article 8.5 of the Agreement, when the United States imposes relief through a bilateral 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 bilateral 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.

2. Administrative Action

No administrative changes will be required to implement Chapter Eight.

Chapter Nine (Government Procurement)

1. Implementing Bill

No statutory changes will be required to implement Chapter Nine.

2. Administrative Action

In order to comply with its obligations under Chapter Nine, the United States must waive the application of certain 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. The bill implementing the United States-Australia Free Trade Agreement 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 a party to a free trade agreement that entered into force for the United States after December 31, 2003 and prior to January 2, 2005, an "eligible product" means "a product or service of that country or instrumentality which is covered under the free trade 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 for non-discriminatory procurement of products and services

of Morocco pursuant to Chapter Nine of the United States-Morocco Free Trade Agreement, provided the Agreement enters into force during the specified time period.

Annex 9-A-1 of the Agreement establishes dollar thresholds for procurements above which U.S. government procuring entities must allow Moroccan suppliers to bid in accordance with the rules set forth in Chapter Nine of the Agreement. USTR will notify the Federal Acquisition Regulation ("FAR") Council of the thresholds that pertain to Morocco under the Agreement. The FAR Council will then incorporate those thresholds into the FAR.

Chapter Ten (Investment)

1. Implementing Bill

Section 106 of the bill authorizes the United States to use binding arbitration to resolve claims by Moroccan investors or by their covered investments in the United States under Article 10.15(1)(a)(i)(C) or Article 10.15(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 10.15. Provisions allowing arbitration of contract claims have regularly been included in U.S. bilateral investment treaties over recent decades, including the 1985 United States-Morocco investment treaty, and were included in the free trade agreements with Chile and Singapore.

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)

108TH CONGRESS
2D SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

M. _____ (for himself and _____) (by request) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To implement the United States-Morocco 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 "United States-Morocco 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 and Morocco entered into under the authority of section 2103(b)

of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3803(b));

(2) to strengthen and develop economic relations between the United States and Morocco for their mutual benefit;

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

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

SEC. 3. DEFINITIONS.

In this Act:

(1) AGREEMENT.—The term "Agreement" means the United States-Morocco Free Trade Agreement approved by Congress under section 101(a)(1).

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

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

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

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

(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), Congress approves—

(1) the United States-Morocco Free Trade Agreement entered into on June 15, 2004, with Morocco and submitted to Congress on [_____, 2004];

(2) the statement of administrative action proposed to implement the Agreement that was submitted to Congress on [_____, 2004].

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

entry into force, on or after January 1, 2005, of the Agreement with respect to the United States.

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

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

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

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

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

(B) to limit any authority conferred under any law of the United States,

unless specifically provided for in this Act.

(b) RELATIONSHIP OF AGREEMENT TO STATE LAW.—

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

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

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

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

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

(c) EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.—No person other than the United States—

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

(2) may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of the United States, 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 effective date earlier than the date the Agreement enters into force.

(2) EFFECTIVE DATE OF CERTAIN PROCLAIMED ACTIONS.—Any action proclaimed by the President under the authority of this Act that is not subject to the consultation and layover provisions under section 104 may not take effect before the 15th day after the date on which the text of the proclamation is published in the Federal Register.

(3) WAIVER OF 15-DAY RESTRICTION.—The 15-day restriction in paragraph (2) on the taking effect of proclaimed actions is waived to the extent that the application of such restriction would prevent the

taking effect on the date the Agreement enters into force 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 United States International Trade Commission;

(2) the President has submitted to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report that sets forth—

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

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

(3) a period of 60 calendar days, beginning on the first day on which the requirements set forth in paragraphs (1) and (2) have been met has expired; and

(4) the President has consulted with such Committees regarding the proposed action during the period referred to in paragraph (3).

SEC. 105. ADMINISTRATION OF DISPUTE SETTLEMENT PROCEEDINGS.

(a) ESTABLISHMENT OR DESIGNATION OF OFFICE.—The President is authorized to establish or designate within the Department of Commerce an office that shall be

responsible for providing administrative assistance to panels established under chapter 20 of the Agreement. The office may not be considered to be an agency for purposes of section 552 of title 5, United States Code.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each fiscal year after fiscal year 2004 to the Department of Commerce such sums as may be necessary for the establishment and operations of the office under subsection (a) and for the payment of the United States share of the expenses of panels established under chapter 20 of the Agreement.

SEC. 106. ARBITRATION OF CLAIMS.

The United States is authorized to resolve any claim against the United States covered by article 10.15.1(a)(i)(C) or article 10.15.1(b)(i)(C) of the Agreement, pursuant to the Investor-State Dispute Settlement procedures set forth in section B of chapter 10 of the Agreement.

SEC. 107. EFFECTIVE DATES; EFFECT OF TERMINATION.

(a) EFFECTIVE DATES.—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 THE AGREEMENT.—On the date on which the Agreement terminates, the provisions of this Act (other than this subsection) and the amendments made by this Act shall cease to be effective.

TITLE II—CUSTOMS PROVISIONS

SEC. 201. TARIFF MODIFICATIONS.

(a) TARIFF MODIFICATIONS PROVIDED FOR IN THE AGREEMENT.—

(1) PROCLAMATION AUTHORITY.—The President may proclaim—

(A) such modifications or continuation of any duty,

(B) such continuation of duty-free or excise treatment, or

(C) such additional duties,

as the President determines to be necessary or appropriate to carry out or apply articles 2.3, 2.5, 2.6, 4.1, 4.3.9, 4.3.10, 4.3.11, 4.3.13, 4.3.14, and 4.3.15, and Annex IV of the Agreement.

(2) EFFECT ON MOROCCAN GSP STATUS.—Notwithstanding section 502(a)(1) of the Trade Act of 1974 (19 U.S.C. 2462(a)(1)), the President shall terminate the designation of Morocco as a beneficiary developing country for purposes of title V of

the Trade Act of 1974 on the date of entry into force of the Agreement.

(b) OTHER TARIFF MODIFICATIONS.—Subject to the consultation and layover provisions of section 104, the President may proclaim—

(1) such modifications or continuation of any duty,

(2) such modifications as the United States may agree to with Morocco regarding the staging of any duty treatment set forth in Annex IV of the Agreement,

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

(4) such additional duties,

as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Morocco provided for by the Agreement.

(c) CONVERSION TO AD VALOREM RATES.—For purposes of subsections (a) and (b), with respect to any good for which the base rate in the Tariff Schedule of the United States to Annex IV of the Agreement is a specific or compound rate of duty, the President may substitute for the base rate an ad valorem rate that the President determines to be equivalent to the base rate.

SEC. 202. ADDITIONAL DUTIES ON CERTAIN AGRICULTURAL GOODS.

(a) DEFINITIONS.—In this section:

(1) AGRICULTURAL SAFEGUARD GOOD.—The term "agricultural safeguard good" means a good—

(A) that qualifies as an originating good under section 203;

(B) that is included in the U.S. Agricultural Safeguard List set forth in Annex 3-A of the Agreement; and

(C) for which a claim for preferential treatment under the Agreement has been made.

(2) APPLICABLE NTR (MFN) RATE OF DUTY.—The term "applicable NTR (MFN) rate of duty" means, with respect to an agricultural safeguard good, a rate of duty that is the lesser of—

(A) the column 1 general rate of duty that would have been imposed under the HTS on the same agricultural safeguard good entered, without a claim for preferential tariff treatment, on the date on which the additional duty is imposed under subsection (b); or

(B) the column 1 general rate of duty that would have been imposed under the HTS on the same agricultural safeguard good entered, with-

out a claim for preferential tariff treatment, on December 31, 2004.

(3) F.O.B.—The term "F.O.B." means free on board, regardless of the mode of transportation, at the point of direct shipment by the seller to the buyer.

(4) SCHEDULE RATE OF DUTY.—The term "schedule rate of duty" means, with respect to an agricultural safeguard good, the rate of duty for that good set out in the Tariff Schedule of the United States to Annex IV of the Agreement.

(5) TRIGGER PRICE.—The "trigger price" for a good means the trigger price indicated for that good in the U.S. Agricultural Safeguard List set forth in Annex 3–A of the Agreement or any amendment thereto.

(6) UNIT IMPORT PRICE.—The "unit import price" of a good means the price of the good determined on the basis of the F.O.B. import price of the good, expressed in either dollars per kilogram or dollars per liter, whichever unit of measure is indicated for the good in the U.S. Agricultural Safeguard List set forth in Annex 3–A of the Agreement.

(b) ADDITIONAL DUTIES ON AGRICULTURAL SAFEGUARD GOODS.—

(1) ADDITIONAL DUTIES.—In addition to any duty proclaimed under subsection (a) or (b) of section 201, and subject to paragraphs (3), (4), (5), and (6) of this subsection, the Secretary of the Treasury shall assess a duty on an agricultural safeguard good, in the amount determined under paragraph (2), if the Secretary determines that the unit import price of the good when it enters the United States is less than the trigger price for that good.

(2) CALCULATION OF ADDITIONAL DUTY.—The additional duty assessed under this subsection on an agricultural safeguard good shall be an amount determined in accordance with the following table:

If the excess of the trigger price over the unit import price is:	The additional duty is an amount equal to:
Not more than 10 percent of the trigger price	0.
More than 10 percent but not more than 40 percent of the trigger price	30 percent of the excess of the applicable NTR (MFN) rate of duty over the schedule rate of duty.
More than 40 percent but not more than 60 percent of the trigger price	50 percent of such excess.
More than 60 percent but not more than 75 percent of the trigger price	70 percent of such excess.
More than 75 percent of the trigger price	100 percent of such excess.

(3) EXCEPTIONS.—No additional duty shall be assessed on a good under this subsection if, at the time of entry, the good is subject to import relief under—

(A) subtitle A of title III of this Act; or

(B) chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.).

(4) TERMINATION.—The assessment of an additional duty on a good under this subsection shall cease to apply to that good on the date on which duty-free treatment must be provided to that good under the Tariff Schedule of the United States to Annex IV of the Agreement.

(5) TARIFF-RATE QUOTAS.—If an agricultural safeguard good is subject to a tariff-rate quota under the Agreement, any additional duty assessed under this subsection shall be applied only to over-quota imports of the good.

(6) NOTICE.—Not later than 60 days after the date on which the Secretary of the Treasury assesses an additional duty on a good under this subsection, the Secretary shall notify the Government of Morocco in writing of such action and shall provide to the Government of Morocco data supporting the assessment of additional duties.

SEC. 203. RULES OF ORIGIN.

(a) APPLICATION AND INTERPRETATION.—In this section:

(1) TARIFF CLASSIFICATION.—The basis for any tariff classification is the HTS.

(2) REFERENCE TO HTS.—Whenever in this section there is a reference to a heading or sub-

heading, such reference shall be a reference to a heading or subheading of the HTS.

(b) ORIGINATING GOODS.—

(1) IN GENERAL.—For purposes of this Act and for purposes of implementing the preferential tariff treatment provided for under the Agreement, a good is an originating good if—

(A) the good is imported directly—

(i) from the territory of Morocco into the territory of the United States; or

(ii) from the territory of the United States into the territory of Morocco; and

(B)(i) the good is a good wholly the growth, product, or manufacture of Morocco, the United States, or both;

(ii) the good (other than a good to which clause (iii) applies) is a new or different article of commerce that has been grown, produced, or manufactured in Morocco, the United States, or both, and meets the requirements of paragraph (2); or

(iii)(I) the good is a good covered by Annex 4–A or 5–A of the Agreement;

(II)(aa) each of the nonoriginating materials used in the production of the good under-

goes an applicable change in tariff classification specified in such Annex as a result of production occurring entirely in the territory of Morocco or the United States, or both; or

(bb) the good otherwise satisfies the requirements specified in such Annex; and

(III) the good satisfies all other applicable requirements of this section.

(2) REQUIREMENTS.—A good described in paragraph (1)(B)(ii) is an originating good only if the sum of—

(A) the value of each material produced in the territory of Morocco or the United States, or both, and

(B) the direct costs of processing operations performed in the territory of Morocco or the United States, or both,

is not less than 35 percent of the appraised value of the good at the time the good is entered into the territory of the United States.

(c) CUMULATION.—

(1) ORIGINATING GOOD OR MATERIAL INCORPORATED INTO GOODS OF OTHER COUNTRY.—An originating good or a material produced in the territory of Morocco or the United States, or both, that

is incorporated into a good in the territory of the other country shall be considered to originate in the territory of the other country.

(2) MULTIPLE PROCEDURES.—A good that is grown, produced, or manufactured in the territory of Morocco or the United States, or both, by 1 or more producers, is an originating good if the good satisfies the requirements of subsection (b) and all other applicable requirements of this section.

(d) VALUE OF MATERIALS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the value of a material produced in the territory of Morocco or the United States, or both, includes the following:

(A) The price actually paid or payable for the material by the producer of such good.

(B) The freight, insurance, packing, and all other costs incurred in transporting the material to the producer's plant, if such costs are not included in the price referred to in subparagraph (A).

(C) The cost of waste or spoilage resulting from the use of the material in the growth, production, or manufacture of the good, less the value of recoverable scrap.

(D) Taxes or customs duties imposed on the material by Morocco, the United States, or both, if the taxes or customs duties are not remitted upon exportation from the territory of Morocco or the United States, as the case may be.

(2) EXCEPTION.—If the relationship between the producer of a good and the seller of a material influenced the price actually paid or payable for the material, or if there is no price actually paid or payable by the producer for the material, the value of the material produced in the territory of Morocco or the United States, or both, includes the following:

(A) All expenses incurred in the growth, production, or manufacture of the material, including general expenses.

(B) A reasonable amount for profit.

(C) Freight, insurance, packing, and all other costs incurred in transporting the material to the producer's plant.

(e) PACKAGING AND PACKING MATERIALS AND CONTAINERS FOR RETAIL SALE AND FOR SHIPMENT.—Packaging and packing materials and containers for retail sale and shipment shall be disregarded in determining whether a good qualifies as an originating good, except to the ex-

tent that the value of such packaging and packing materials and containers have been included in meeting the requirements set forth in subsection (b)(2).

(f) INDIRECT MATERIALS.—Indirect materials shall be disregarded in determining whether a good qualifies as an originating good, except that the cost of such indirect materials may be included in meeting the requirements set forth in subsection (b)(2).

(g) TRANSIT AND TRANSSHIPMENT.—A good shall not be considered to meet the requirement of subsection (b)(1)(A) if, after exportation from the territory of Morocco or the United States, the good undergoes production, manufacturing, or any other operation outside the territory of Morocco or the United States, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of the United States or Morocco.

(h) TEXTILE AND APPAREL GOODS.—

(1) DE MINIMIS AMOUNTS OF NONORIGINATING MATERIALS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), a textile or apparel good that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tar-

iff classification of the good do not undergo an applicable change in tariff classification set out in Annex 4–A of the Agreement shall be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than 7 percent of the total weight of that component.

(B) CERTAIN TEXTILE OR APPAREL GOODS.—A textile or apparel good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed in the territory of Morocco or the United States.

(C) YARN, FABRIC, OR GROUP OF FIBERS.—For purposes of this paragraph, in the case of a textile or apparel good that is a yarn, fabric, or group of fibers, the term "component of the good that determines the tariff classification of the good" means all of the fibers in the yarn, fabric, or group of fibers.

(2) GOODS PUT UP IN SETS FOR RETAIL SALE.—Notwithstanding the rules set forth in Annex 4–A of the Agreement, textile or apparel goods classifiable as goods put up in sets for retail sale as pro-

vided for in General Rule of Interpretation 3 of the HTS shall not be considered to be originating goods unless each of the goods in the set is an originating good or the total value of the nonoriginating goods in the set does not exceed 10 percent of the value of the set determined for purposes of assessing customs duties.

(i) DEFINITIONS.—In this section:

(1) DIRECT COSTS OF PROCESSING OPERATIONS.—

(A) IN GENERAL.—The term "direct costs of processing operations", with respect to a good, includes, to the extent they are includable in the appraised value of the good when imported into Morocco or the United States, as the case may be, the following:

(i) All actual labor costs involved in the growth, production, or manufacture of the good, including fringe benefits, on-the-job training, and the costs of engineering, supervisory, quality control, and similar personnel.

(ii) Tools, dies, molds, and other indirect materials, and depreciation on ma-

chinery and equipment that are allocable to the good.

(iii) Research, development, design, engineering, and blueprint costs, to the extent that they are allocable to the good.

(iv) Costs of inspecting and testing the good.

(v) Costs of packaging the good for export to the territory of the other country.

(B) EXCEPTIONS.—The term "direct costs of processing operations" does not include costs that are not directly attributable to a good or are not costs of growth, production, or manufacture of the good, such as—

(i) profit; and

(ii) general expenses of doing business that are either not allocable to the good or are not related to the growth, production, or manufacture of the good, such as administrative salaries, casualty and liability insurance, advertising, and sales staff salaries, commissions, or expenses.

(2) GOOD.—The term "good" means any merchandise, product, article, or material.

(3) GOOD WHOLLY THE GROWTH, PRODUCT, OR MANUFACTURE OF MOROCCO, THE UNITED STATES, OR BOTH.—The term "good wholly the growth, product, or manufacture of Morocco, the United States, or both" means—

(A) a mineral good extracted in the territory of Morocco or the United States, or both;

(B) a vegetable good, as such a good is provided for in the HTS, harvested in the territory of Morocco or the United States, or both;

(C) a live animal born and raised in the territory of Morocco or the United States, or both;

(D) a good obtained from live animals raised in the territory of Morocco or the United States, or both;

(E) a good obtained from hunting, trapping, or fishing in the territory of Morocco or the United States, or both;

(F) a good (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with Morocco or the United States and flying the flag of that country;

(G) a good produced from goods referred to in subparagraph (F) on board factory ships

registered or recorded with Morocco or the United States and flying the flag of that country;

(H) a good taken by Morocco or the United States or a person of Morocco or the United States from the seabed or beneath the seabed outside territorial waters, if Morocco or the United States has rights to exploit such seabed;

(I) a good taken from outer space, if such good is obtained by Morocco or the United States or a person of Morocco or the United States and not processed in the territory of a country other than Morocco or the United States;

(J) waste and scrap derived from—

(i) production or manufacture in the territory of Morocco or the United States, or both; or

(ii) used goods collected in the territory of Morocco or the United States, or both, if such goods are fit only for the recovery of raw materials;

(K) a recovered good derived in the territory of Morocco or the United States from used

goods and utilized in the territory of that country in the production of remanufactured goods; and

(L) a good produced in the territory of Morocco or the United States, or both, exclusively—

(i) from goods referred to in subparagraphs (A) through (J), or

(ii) from the derivatives of goods referred to in clause (i),

at any stage of production.

(4) INDIRECT MATERIAL.—The term "indirect material" means a good used in the growth, production, manufacture, testing, or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the growth, production, or manufacture of a good, including—

(A) fuel and energy;

(B) tools, dies, and molds;

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

(D) lubricants, greases, compounding materials, and other materials used in the growth,

production, or manufacture of a good or used to operate equipment and buildings;

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

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

(G) catalysts and solvents; and

(H) any other goods that are not incorporated into the good but the use of which in the growth, production, or manufacture of the good can reasonably be demonstrated to be a part of that growth, production, or manufacture.

(5) MATERIAL.—The term "material" means a good, including a part or ingredient, that is used in the growth, production, or manufacture of another good that is a new or different article of commerce that has been grown, produced, or manufactured in Morocco, the United States, or both.

(6) MATERIAL PRODUCED IN THE TERRITORY OF MOROCCO OR THE UNITED STATES, OR BOTH.—The term "material produced in the territory of Morocco or the United States, or both" means a good that is either wholly the growth, product, or manufacture of Morocco, the United States, or both, or a

new or different article of commerce that has been grown, produced, or manufactured in the territory of Morocco or the United States, or both.

(7) NEW OR DIFFERENT ARTICLE OF COMMERCE.—

(A) IN GENERAL.—The term "new or different article of commerce" means, except as provided in subparagraph (B), a good that—

(i) has been substantially transformed from a good or material that is not wholly the growth, product, or manufacture of Morocco, the United States, or both; and

(ii) has a new name, character, or use distinct from the good or material from which it was transformed.

(B) EXCEPTION.—A good shall not be considered a new or different article of commerce by virtue of having undergone simple combining or packaging operations, or mere dilution with water or another substance that does not materially alter the characteristics of the good.

(8) RECOVERED GOODS.—The term "recovered goods" means materials in the form of individual parts that result from—

(A) the complete disassembly of used goods into individual parts; and

(B) the cleaning, inspecting, testing, or other processing of those parts that is necessary for improvement to sound working condition.

(9) REMANUFACTURED GOOD.—The term "remanufactured good" means an industrial good that is assembled in the territory of Morocco or the United States and that—

(A) is entirely or partially comprised of recovered goods;

(B) has a similar life expectancy to, and meets similar performance standards as, a like good that is new; and

(C) enjoys a factory warranty similar to that of a like good that is new.

(10) SIMPLE COMBINING OR PACKAGING OPERATIONS.—The term "simple combining or packaging operations" means operations such as adding batteries to electronic devices, fitting together a small number of components by bolting, gluing, or soldering, or packing or repacking components together.

(11) SUBSTANTIALLY TRANSFORMED.—The term "substantially transformed" means, with re-

spect to a good or material, changed as the result of a manufacturing or processing operation so that—

(A)(i) the good or material is converted from a good that has multiple uses into a good or material that has limited uses;

(ii) the physical properties of the good or material are changed to a significant extent; or

(iii) the operation undergone by the good or material is complex by reason of the number of processes and materials involved and the time and level of skill required to perform those processes; and

(B) the good or material loses its separate identity in the manufacturing or processing operation.

(j) PRESIDENTIAL PROCLAMATION AUTHORITY.—

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

(A) the provisions set out in Annex 4–A and Annex 5–A of the Agreement; and

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

(2) MODIFICATIONS.—

(A) IN GENERAL.—Subject to the consultation and layover provisions of section 104, the President may proclaim modifications to the provisions proclaimed under the authority of paragraph (1)(A), other than provisions of chapters 50 through 63 of the HTS, as included in Annex 4–A of the Agreement.

(B) ADDITIONAL PROCLAMATIONS.—Notwithstanding subparagraph (A), and subject to the consultation and layover provisions of section 104, the President may proclaim—

(i) modifications to the provisions proclaimed under the authority of paragraph (1)(A) as are necessary to implement an agreement with Morocco pursuant to article 4.3.6 of the Agreement; and

(ii) before the end of the 1-year period beginning on the date of the enactment of this Act, modifications to correct any typographical, clerical, or other nonsubstantive technical error regarding the provisions of chapters 50 through 63 of the HTS, as included in Annex 4–A of the Agreement.

SEC. 204. ENFORCEMENT RELATING TO TRADE IN TEXTILE AND APPAREL GOODS.

(a) ACTION DURING VERIFICATION.—

(1) IN GENERAL.—If the Secretary of the Treasury requests the Government of Morocco to conduct a verification pursuant to article 4.4 of the Agreement for purposes of making a determination under paragraph (2), the President may direct the Secretary to take appropriate action described in subsection (b) while the verification is being conducted.

(2) DETERMINATION.—A determination under this paragraph is a determination—

(A) that an exporter or producer in Morocco is complying with applicable customs laws, regulations, procedures, requirements, or practices affecting trade in textile or apparel goods; or

(B) that a claim that a textile or apparel good exported or produced by such exporter or producer—

(i) qualifies as an originating good under section 203 of this Act, or

(ii) is a good of Morocco,

is accurate.

(b) APPROPRIATE ACTION DESCRIBED.—Appropriate action under subsection (a)(1) includes—

(1) suspension of liquidation of the entry of any textile or apparel good exported or produced by the person that is the subject of a verification referred to in subsection (a)(1) regarding compliance described in subsection (a)(2)(A), in a case in which the request for verification was based on a reasonable suspicion of unlawful activity related to such goods; and

(2) suspension of liquidation of the entry of a textile or apparel good for which a claim has been made that is the subject of a verification referred to in subsection (a)(1) regarding a claim described in subsection (a)(2)(B).

(c) ACTION WHEN INFORMATION IS INSUFFICIENT.—If the Secretary of the Treasury determines that the information obtained within 12 months after making a request for a verification under subsection (a)(1) is insufficient to make a determination under subsection (a)(2), the President may direct the Secretary to take appropriate action described in subsection (d) until such time as the Secretary receives information sufficient to make a determination under subsection (a)(2) or until such earlier date as the President may direct.

(d) APPROPRIATE ACTION DESCRIBED.—Appropriate action referred to in subsection (c) includes—

(1) publication of the name and address of the person that is the subject of the verification;

(2) denial of preferential tariff treatment under the Agreement to—

(A) any textile or apparel good exported or produced by the person that is the subject of a verification referred to in subsection (a)(1) regarding compliance described in subsection (a)(2)(A); or

(B) a textile or apparel good for which a claim has been made that is the subject of a verification referred to in subsection (a)(1) regarding a claim described in subsection (a)(2)(B); and

(3) denial of entry into the United States of—

(A) any textile or apparel good exported or produced by the person that is the subject of a verification referred to in subsection (a)(1) regarding compliance described in subsection (a)(2)(A); or

(B) a textile or apparel good for which a claim has been made that is the subject of a verification referred to in subsection (a)(1) re-

garding a claim described in subsection (a)(2)(B).

SEC. 205. REGULATIONS.

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

(1) subsections (a) through (i) of section 203;

(2) amendments to existing law made by the subsections referred to in paragraph (1); and

(3) proclamations issued under section 203(j).

TITLE III—RELIEF FROM IMPORTS

SEC. 301. DEFINITIONS.

In this title:

(1) MOROCCAN ARTICLE.—The term "Moroccan article" means an article that qualifies as an originating good under section 203(b) of this Act or receives preferential tariff treatment under paragraphs 9 through 15 of article 4.3 of the Agreement.

(2) MOROCCAN TEXTILE OR APPAREL ARTICLE.—The term "Moroccan textile or apparel article" means an article that—

(A) is listed in the Annex to the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(4)); and

(B) is a Moroccan article.

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

Subtitle A—Relief From Imports Benefiting From the Agreement

SEC. 311. COMMENCING OF ACTION FOR RELIEF.

(a) FILING OF PETITION.—

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

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

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

(b) INVESTIGATION AND DETERMINATION.—Upon the filing of a petition under subsection (a), the Commission, unless subsection (d) applies, shall promptly initiate an investigation to determine whether, as a result of the reduction or elimination of a duty provided for under the Agreement, a Moroccan article is being imported into the United States in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that imports of the Moroccan article constitute a substantial cause of serious injury or threat thereof to the domestic industry producing an article that is like, or directly competitive with, the imported article.

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

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

(2) Subsection (c).

(3) Subsection (d).

(4) Subsection (i).

(d) ARTICLES EXEMPT FROM INVESTIGATION.—No investigation may be initiated under this section with respect to any Moroccan article if, after the date on which the Agreement enters into force, import relief has been

provided with respect to that Moroccan article under this subtitle.

SEC. 312. COMMISSION ACTION ON PETITION.

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

(b) APPLICABLE PROVISIONS.—For purposes of this subtitle, the provisions of paragraphs (1), (2), and (3) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d) (1), (2), and (3)) shall be applied with respect to determinations and findings made under this section as if such determinations and findings were made under section 202 of the Trade Act of 1974 (19 U.S.C. 2252).

(c) ADDITIONAL FINDING AND RECOMMENDATION IF DETERMINATION AFFIRMATIVE.—If the determination made by the Commission under subsection (a) with respect to imports of an article is affirmative, or if the President may consider a determination of the Commission to be an affirmative determination as provided for under paragraph (1) of section 330(d) of the Tariff Act of 1930) (19 U.S.C. 1330(d)), the Commission shall find, and recommend to the President in the report required under subsection (d), the amount of import relief that is necessary to remedy

or prevent the injury found by the Commission in the determination and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. The import relief recommended by the Commission under this subsection shall be limited to that described in section 313(c). Only those members of the Commission who voted in the affirmative under subsection (a) are eligible to vote on the proposed action to remedy or prevent the injury found by the Commission. Members of the Commission who did not vote in the affirmative may submit, in the report required under subsection (d), separate views regarding what action, if any, should be taken to remedy or prevent the injury.

(d) REPORT TO PRESIDENT.—Not later than the date that is 30 days after the date on which a determination is made under subsection (a) with respect to an investigation, the Commission shall submit to the President a report that includes—

(1) the determination made under subsection (a) and an explanation of the basis for the determination;

(2) if the determination under subsection (a) is affirmative, any findings and recommendations for import relief made under subsection (c) and an explanation of the basis for each recommendation; and

(3) any dissenting or separate views by members of the Commission regarding the determination and recommendation referred to in paragraphs (1) and (2).

(e) PUBLIC NOTICE.—Upon submitting a report to the President under subsection (d), the Commission shall promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

SEC. 313. PROVISION OF RELIEF.

(a) IN GENERAL.—Not later than the date that is 30 days after the date on which the President receives the report of the Commission in which the Commission's determination under section 312(a) is affirmative, or which contains a determination under section 312(a) that the President considers to be affirmative under paragraph (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)(1)), the President, subject to subsection (b), shall provide relief from imports of the article that is the subject of such determination to the extent that the President determines necessary to remedy or prevent the injury found by the Commission and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition.

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

(c) NATURE OF RELIEF.—

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

(A) The suspension of any further reduction provided for under Annex IV of the Agreement in the duty imposed on such article.

(B) An increase in the rate of duty imposed on such article to a level that does not exceed the lesser of—

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

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

(C) In the case of a duty applied on a seasonal basis to such article, an increase in the

rate of duty imposed on the article to a level that does not exceed the lesser of—

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

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

(2) PROGRESSIVE LIBERALIZATION.—If the period for which import relief is provided under this section is greater than 1 year, the President shall provide for the progressive liberalization of such relief at regular intervals during the period in which the relief is in effect.

(d) PERIOD OF RELIEF.—

(1) IN GENERAL.—Subject to paragraph (2), any import relief that the President provides under this section may not be in effect for more than 3 years.

(2) EXTENSION.—

(A) IN GENERAL.—Subject to subparagraph (C), the President, after receiving an affirmative determination from the Commission

under subparagraph (B), may extend the effective period of any import relief provided under this section if the President determines that—

(i) the import relief continues to be necessary to remedy or prevent serious injury and to facilitate adjustment by the domestic industry to import competition; and

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

(B) ACTION BY COMMISSION.—(i) Upon a petition on behalf of the industry concerned that is filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date any action taken under subsection (a) is to terminate, the Commission shall conduct an investigation to determine whether action under this section continues to be necessary to remedy or prevent serious injury and to facilitate adjustment by the domestic industry to import competition and whether there is evidence that the industry is making a positive adjustment to import competition.

(ii) The Commission shall publish notice of the commencement of any proceeding under this subparagraph in the Federal Register and shall, within a reasonable time thereafter, hold a public hearing at which the Commission shall afford interested parties and consumers an opportunity to be present, to present evidence, and to respond to the presentations of other parties and consumers, and otherwise to be heard.

(iii) The Commission shall transmit to the President a report on its investigation and determination under this subparagraph not later than 60 days before the action under subsection (a) is to terminate, unless the President specifies a different date.

(C) PERIOD OF IMPORT RELIEF.—Any import relief provided under this section, including any extensions thereof, may not, in the aggregate, be in effect for more than 5 years.

(e) RATE AFTER TERMINATION OF IMPORT RELIEF.—When import relief under this section is terminated with respect to an article, the rate of duty on that article shall be the rate that would have been in effect,

but for the provision of such relief, on the date on which the relief terminates.

(f) ARTICLES EXEMPT FROM RELIEF.—No import relief may be provided under this section on any article that—

(1) is subject to an assessment of additional duty under section 202(b); or

(2) has been subject to import relief under this subtitle after the date on which the Agreement enters into force.

SEC. 314. TERMINATION OF RELIEF AUTHORITY.

(a) GENERAL RULE.—Subject to subsection (b), no import relief may be provided under this subtitle with respect to a good after the date that is 5 years after the date on which duty-free treatment must be provided by the United States to that good pursuant to Annex IV of the Agreement.

(b) PRESIDENTIAL DETERMINATION.—Import relief may be provided under this subtitle in the case of a Moroccan article after the date on which such relief would, but for this subsection, terminate under subsection (a), if the President determines that Morocco has consented to such relief.

SEC. 315. COMPENSATION AUTHORITY.

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 United States-Morocco 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 reduction or elimination of a duty under the Agreement, a Moroccan textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article.

(2) SERIOUS DAMAGE.—In making a determination under paragraph (1), the President—

(A) shall examine the effect of increased imports on the domestic industry, as reflected in changes in such relevant economic factors as output, productivity, utilization of capacity, inventories, market share, exports, wages, em-

ployment, domestic prices, profits, and investment, none of which is necessarily decisive; and

(B) shall not consider changes in technology or consumer preference as factors supporting a determination of serious damage or actual threat thereof.

(b) PROVISION OF RELIEF.—

(1) IN GENERAL.—If a determination under subsection (a) is affirmative, the President may provide relief from imports of the article that is the subject of such determination, as described in paragraph (2), to the extent that the President determines necessary to remedy or prevent the serious damage and to facilitate adjustment by the domestic industry to import competition.

(2) NATURE OF RELIEF.—The relief that the President is authorized to provide under this subsection with respect to imports of an article is an increase in the rate of duty imposed on the article to a level that does not exceed the lesser of—

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

(B) the column 1 general rate of duty imposed under the HTS on like articles on the

day before the date on which the Agreement enters into force.

SEC. 323. PERIOD OF RELIEF.

(a) IN GENERAL.—Subject to subsection (b), the import relief that the President provides under subsection (b) of section 322 may not, in the aggregate, be in effect for more than 3 years.

(b) EXTENSION.—

(1) IN GENERAL.—Subject to paragraph (2), the President may extend the effective period of any import relief provided under this subtitle for a period of not more than 2 years, if the President determines that—

(A) the import relief continues to be necessary to remedy or prevent serious damage and to facilitate adjustment by the domestic industry to import competition; and

(B) there is evidence that the industry is making a positive adjustment to import competition.

(2) LIMITATION.—Any relief provided under this subtitle, including any extensions thereof, may not, in the aggregate, be in effect for more than 5 years.

SEC. 324. ARTICLES EXEMPT FROM RELIEF.

The President may not provide import relief under this subtitle with respect to any article if—

(1) the article has been subject to import relief under this subtitle after the date on which the Agreement enters into force; or

(2) the article is subject to import relief under 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, on the date on which the relief terminates.

SEC. 326. TERMINATION OF RELIEF AUTHORITY.

No import relief may be provided under this subtitle with respect to any article after the date that is 10 years after the date on which duties on the article are eliminated pursuant to the Agreement.

SEC. 327. COMPENSATION AUTHORITY.

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

SEC. 328. BUSINESS CONFIDENTIAL INFORMATION.

The President may not release information which is submitted in a proceeding under this subtitle and which the President considers to be confidential business information unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released, or such party subsequently consents to the release of the information. To the extent a party submits confidential business information to the President in a proceeding under this subtitle, the party also shall submit a nonconfidential version of the information, in which the confidential business information is summarized or, if necessary, deleted.

THE UNITED STATES-AUSTRALIA 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 United States-Australia Free Trade Agreement ("Agreement"). The bill approves and makes statutory changes necessary or appropriate to implement the Agreement, which the United States Trade Representative signed on May 18, 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 Australia.

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 and Twenty through Twenty-Three) 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 (Establishment of a Free Trade Area and Definitions)
Twenty (Transparency)
Twenty-One (Institutional Arrangements and Dispute Settlement)
Twenty-Two (General Provisions and Exceptions)
Twenty-Three (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

Article 23.4 of the Agreement requires the United States and Australia to exchange written notifications that their respective internal requirements for the entry into force of the Agreement have been fulfilled. The exchange of notifications is a necessary condition for the Agreement's entry into force. Section 101(b) of the implementing bill authorizes the President to exchange notes with Australia to provide for entry into force of the Agreement with respect to the United States on or after January 1, 2005. The exchange of notes is conditioned on a determination by the President that Australia has taken measures necessary to comply with those of its obligations that are to take effect at the time the Agreement enters into force. Certain rules pertaining to intellectual property rights become effective no later than two years after the Agreement's entry 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 Thirteen, relating to financial services) do apply to state measures regulating the insurance business, although "grandfathering" provisions in Chapter Thirteen 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 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 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 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-One of the Agreement. This provision enables the United States to implement its obligations under Article 21.3.1(a) of the Agreement. This office will not be an "agency" within the meaning of 5 U.S.C. 552, consistent with treatment provided under the U.S.-Chile Free Trade Agreement, the U.S.-Singapore Free Trade Agreement, the North American Free Trade Agreement ("NAFTA"), and the U.S.-Canada Free Trade Agreement. 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-One 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 106(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 106(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 106(c) provides that the provisions of the bill and the amendments to other statutes made by the bill will cease to be effective on the date on which the Agreement terminates.

2. Administrative Action

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

Article 20.1.1 of the Agreement requires each government to designate a contact point to facilitate bilateral communications regarding the Agreement. The Office of the United States Trade Representative ("USTR") will serve as the U.S. contact point for this purpose.

Before the Agreement enters into force, the United States and Australia will agree on a "contingent list" of qualified individuals to serve on dispute settlement panels if the Parties cannot agree on panelists. 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 the contingent list.

Chapter Two (National Treatment and Market Access for Goods)

1. Implementing Bill

a. Proclamation Authority

Section 201(a) of the bill grants the President authority to implement by proclamation U.S. rights and obligations under Chapter Two of the Agreement through the application or elimination of customs duties and tariff-rate quotas. Section 201(a) 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 2.3, 2.5, and 2.6, and Annex 2-B of the Agreement.

The proclamation authority with respect to Article 2.3 authorizes the President to provide for the continuation, phase-out and elimination, according to the U.S. schedule in Annex 2-B, of customs duties on imports from Australia that meet the Agreement's rules of origin.

The proclamation authority with respect to Articles 2.5 and 2.6 authorizes the President to provide for the elimination of duties on particular categories of imports from Australia. Article 2.5 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 2.6 pertains to the importation of goods: (1) returned to the United States after undergoing repair or alteration in Australia; or (2) sent from Australia for repair or alteration in the United States.

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

- modify or continue any duty;
- modify the staging of any duty elimination under the Agreement pursuant to an agreement with Australia under Annex 2-B;
- 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 Australia provided by the Agreement.

Section 104(a) 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 private sector advisory committees (pursuant to section 135 of the Trade Act of 1974) and the U.S. International Trade Commission ("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 Trade Committees to consult with the President 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(a) 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 Australia under Article 4.2.3 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. Customs User Fees

Section 204 of the bill implements U.S. commitments under Article 2.12 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 Five 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.

2. Administrative Action

As discussed above, section 201(a) of the bill authorizes the President to proclaim duty-free treatment for certain goods to carry out Article 2.5 (temporary admission of certain goods) and Article 2.6 (repair or alteration of certain goods) of the Agreement. Implementing the proclamation will require regulations, which will be issued by the Secretary of the Treasury.

Annex 2-C of the Agreement relates to market access for pharmaceuticals. Under this Annex, U.S. federal health care programs will apply transparent procedures if they list new pharmaceuticals or indications for reimbursement purposes, or set the amount of reimbursement for pharmaceuticals through other than market-based means. This Annex also establishes a baseline for dissemination of information by pharmaceutical manufacturers to health professionals and consumers over the Internet, and the United States and Australia are free to permit dissemination of additional information. Chapter Fifteen of the Agreement (and not Annex 2-C) addresses government procurement of pharmaceutical products, including formulary development and management. No change in U.S. regulation or practice is required to implement the Agreement's provisions described in this paragraph.

Chapter Three (Agriculture)

1. Implementing Bill

Section 202 of the bill implements the agricultural safeguard provisions of Article 3.4 and Annex 3-A of the Agreement. Article 3.4 permits the United States to impose an "agricultural safeguard measure," in the form of additional duties, on imports from Australia of an agricultural good listed in the U.S. schedule to Annex 3-A of the Agreement. The U.S. schedule, in turn, provides for three different types of agricultural safeguards. The first (set out in Section A of Annex 3-A) applies to horticulture goods specified in the Annex. The second (set out in Section B of Annex 3-A) applies to certain beef goods imported into the United States above specified quantities during the period from January 1, 2013 through December 31, 2022. The third (set out in Section C of Annex 3-A) applies to the same categories of beef goods imported into the United States above specified quantities and the monthly average index price in the United States falls below the specified "trigger" price beginning January 1, 2023.

Section 202(a) of the bill provides the overall contour of the safeguard rules, including definitions of terms used in respect of the three safeguard provisions. Section 202(a)(2) defines the applicable normal trade relations/most-favored-nation ("NTR/MFN") rate of duty for the purposes of the agricultural safeguards. Under the Agreement, the sum of the duties assessed under an agricultural safeguard and the applicable rate of duty in the U.S. schedule may not exceed the general NTR/MFN rate of duty.

Section 202(a)(3) defines the "schedule rate of duty" for purposes of the horticulture safeguard and the quantity-based beef safeguard as the rate of duty for a good set out in the U.S. schedule to Annex 2-B of the Agreement.

Section 202(a)(4) defines "safeguard good" for the purpose of this subsection.

Section 202(a)(5) of the bill implements Article 3.4.3 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 measure under the bilateral safeguard mechanism established under 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 in Section A of Annex 3-A of the Agreement for horticulture goods and the quantity-based beef safeguard provision in Section B of Annex 3-A cease to apply with respect to a good on the date on which duty free treatment must be provided to that good under the Agreement. No beef product receives duty free treatment prior to January 1, 2023. (The safeguard measure set out in Section C of Annex 3-A is a function of both the quantity of imports and the average price of certain goods in the U.S. market beginning January 1, 2023 and has no termination date.)

Section 202(a)(7) implements Article 3.4.5 of the Agreement by directing the Secretary of the Treasury to notify Australia and provide Australia with supporting data within 60 days of assessing agricultural safeguard duties on a good.

Section 202(b) of the bill contains provisions regarding the imposition of safeguard measures on imports of horticulture goods specified in Section A of Annex 3-A. Section 202(b)(1) contains definitions of key terms, including "horticulture safeguard good," "unit import price," and "trigger price."

Section 202(b)(2) establishes the basic authority for such safeguards. Section 202(b)(3) of the bill explains how the additional duties are to be calculated. The United States may apply the additional duties to shipments of any such good whose price is below the threshold ("trigger price") for the good set out in Section A of Annex 3-A. The rate of additional duty under the safeguard increases as the difference increases between the unit import price of a shipment and a trigger price specified in Annex 3-A.

Section 202(c) of the bill contains provisions regarding the imposition of safeguard measures on imports of beef goods of Australia based on the *quantity* of imports during the period January 1, 2013 through December 31, 2022. Section 202(c)(1) defines the term "beef safeguard good" for purposes of this subsection. Section 202(c)(2) establishes the basic authority for such measures and the circumstances under which they must be imposed. Section 202(c)(3) explains how the additional duties are to be calculated. Section 202(c)(4) provides that the United States Trade Representative may waive the application of section 202(c) if he determines that extraordinary market conditions demonstrate that a waiver would be in the U.S. national interest, after satisfying the requirements set forth in subparagraph (B) of this subsection. Under subparagraph (B), the United States Trade Representative is required to notify the Trade Committees promptly after receipt of a request for a waiver from an agency, member of Congress or interested person, and consult with the appropriate private sector advisory committees and the Trade Committees regarding the reasons supporting a determination

to grant a waiver and the proposed scope and duration of any waiver prior to making a determination under this subsection. Such consultations shall occur no less than five business days prior to the effective date of a waiver. Upon granting a waiver, the United States Trade Representative must notify the Secretary of the Treasury of the effective dates of any such waiver and publish notice in the *Federal Register*. Finally, section 202(c)(5) provides that quantity-based beef safeguard measures are applicable during the period January 1, 2013 through December 31, 2022, corresponding to years nine through 18 of the Agreement, which is based on entry into force of the Agreement on January 1, 2005.

Section 202(d) of the bill contains provisions regarding the imposition of safeguard measures on imports of beef goods of Australia that exceed certain quantities based on *price*, as provided for in Section C of Annex 3-A. Section 202(d)(1) defines certain terms, including "beef safeguard good," "monthly average index price," and "24-month trigger price" for purposes of this subsection. Section 202(d)(2) establishes the basic authority for such measures and the circumstances under which they may be imposed. Section 202(d)(3) explains how the additional duties are to be calculated. Section 202(d)(4) provides that such safeguards may only be applied if aggregate import quantities in the calendar year in question have reached certain levels. Section 202(d)(5) provides that the United States Trade Representative may waive the application of Section 202(d) if he determines that extraordinary market conditions demonstrate that a waiver would be in the U.S. national interest, after satisfying the requirements of subparagraph (B) of this subsection. Under subparagraph (B), the United States Trade Representative is required to notify the Trade Committees promptly after receipt of a request for a waiver from an agency, member of Congress or interested person, and consult with the appropriate private sector advisory committees and the Trade Committees regarding the reasons supporting a determination to grant a waiver and the proposed scope and duration of any waiver prior to making a determination under this subsection. Such consultations shall occur no less than five business days prior to the effective date of a waiver. Upon granting a waiver, the United States Trade Representative must notify the Secretary of the Treasury of the effective dates of any such waiver and publish notice in the *Federal Register*. Section 202(d)(6) provides that price-based beef safeguard measures are applicable beginning on January 1, 2023, which is based on entry into force of the Agreement on January 1, 2005. The Agreement provides no termination date for this type of agricultural safeguard measure.

2. Administrative Action

As noted above, the Secretary of the Treasury is authorized to issue regulations to implement the safeguard provisions of section 202. It is the Administration's intent that these safeguard measures will be applied whenever the conditions specified in the Agreement exist. In the case of the price-based beef safeguard set out in section 202(d) of the bill, identifying the existence of such conditions will require the Bureau of Customs and Border Protection to rely on certain pricing information reported by the Department of Agriculture. Section 202(d)(1)(C) refers to "the simple average, as determined by the Secretary of Agriculture, for a calendar month of the daily average index prices for Wholesale Boxed Beef Cut-Out Value Select 1-3 Central U.S. 600-750 lbs., or its equivalent, as such simple average is reported by the

Agricultural Marketing Service of the Department of Agriculture in Report LM_XB459" or any equivalent report.

Currently, the Agricultural Marketing Service ("AMS") issues a regular weekly report in which it reports a simple average of the preceding week's five daily prices for National Boxed Beef Cut-Out Value Select 600-750 lbs. This simple average is equivalent to a simple average of the daily average index prices for Wholesale Boxed Beef Cut-Out Value Select 1-3 Central U.S. 600-750 lbs. These daily averages are found in AMS report LM_XB459. Report LM_XB459 is not printed in hard copy, but can be accessed via the Internet at http://www.ams.usda.gov/mnreports/lm_xb459.txt. Currently, report LM_XB459 does not contain monthly average prices for National Boxed Beef Cut-Out Value Select 600-750 lbs. Beginning on or before January 1, 2022, AMS will calculate on a monthly basis a simple average of the daily National Boxed Beef Cut-Out Value Select 600-750 lbs. prices for the preceding calendar month and will transmit this special report in a timely manner to the Bureau of Customs and Border Protection for the purpose of implementing the price-based beef safeguard.

Although Section C of Annex 3-A refers to export certificates issued by the government of Australia, in applying the authority provided under subsections 202(c) and (d), the total quantity of beef goods imported into the United States from Australia in specified tariff categories, whether or not such goods are accompanied by a certificate issued by Australia, will be counted toward meeting the quantity-based element of these safeguards. Under subsection (d), once the quantity threshold of the safeguard is crossed, additional duties will be applied to any imports once the trigger price element of this safeguard measure, which is set out in the bill, is met.

Chapter Four (Textiles and Apparel)

1. Implementing Bill

a. Enforcement of Textile and Apparel Rules of Origin

In addition to lowering barriers to bilateral 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 4.3 of the Agreement provides for facility inspections, examinations of records and other forms of verification to determine the accuracy of claims of origin for textile and apparel goods and to determine that exporters and producers are complying with applicable laws, regulations, and procedures regarding trade in textile and apparel goods.

Under Articles 4.3.2 and 4.3.3, the United States may make a request to Australia that Australia, the United States, or both, conduct a verification with respect to an Australian exporter or producer. The object of a verification under Article 4.3.2 is to determine that a claim of origin for a textile or apparel good is accurate. The object of a verification under Article 4.3.3 is to determine that an exporter or producer is complying with applicable customs laws, regulations,

and procedures and that claims of origin for textile or apparel goods exported or produced by that person are accurate.

Under Article 4.3.7 of the Agreement, the United States may take appropriate action during a verification, including suspending the application of preferential treatment to textile or apparel goods exported or produced by the person subject to the verification. Under Article 4.3.8, the United States also may take appropriate action if, after 12 months, it is unable to make the requisite determination. Generally speaking, there are two situations in which the United States would be unable to make the required determination. One would be, *e.g.*, due to lack of cooperation on the part of the exporter or producer. The second would be when the United States has sufficient information, and based on that information determines that: (1) a claim of origin is not accurate; or (2) an exporter or producer is not complying with applicable customs laws, regulations, and procedures, and therefore that claims of origin for textile or apparel goods produced by that person are not accurate.

Under current law, the Secretary of the Treasury may make a request to Australia to conduct a verification under Article 4.3 of the Agreement. Section 206(a) authorizes the President to direct the Secretary of the Treasury to take "appropriate action" while a verification requested by the Secretary is being conducted. The purpose of such verification is to determine compliance with applicable customs law or to determine the accuracy of a claim that a particular good is an originating good or a "good of Australia." Under section 206(b), such action may include, but is not limited to, suspension of liquidation of entries of textile or apparel goods exported or produced by the person that is the subject of the verification.

Under section 206(c), if the Secretary is unable to confirm within 12 months of making a verification request that a claim of origin for a good is accurate or, more generally, that an Australian exporter or producer is complying with applicable customs laws, regulations, and procedures regarding trade in textile or apparel goods, the President may determine what further "appropriate action" to take. Under section 206(d), such further action may include publishing the name and address of the person subject to the verification and, in the case of a verification under Article 4.3.3 of the Agreement, denying preferential treatment under the Agreement to any textile or apparel goods exported or produced by the person subject to the verification, and denying entry of such goods into the United States. In the case of a verification under Article 4.3.2 of the Agreement, the further action referred to in section 206(d) of the bill may include denying preferential treatment to a textile or apparel good for which a claim has been made that is the subject of the verification and denying entry of such a good into the United States. Such further appropriate action may remain in effect until the Secretary receives information sufficient to make a determination under section 206(a) or until such earlier date as the President may direct.

b. Textile and Apparel Safeguard

Article 4.1 of the Agreement establishes a special procedure and 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 that enjoy preferential duty rates under

the Agreement. The Administration does not anticipate that the Agreement will result in damaging increases in textile or apparel imports from Australia. Nevertheless, the Agreement's textile and apparel safeguard procedure will ensure that relief is available, if needed.

The safeguard mechanism applies when, as a result of the elimination of a customs duty under the Agreement, textile or apparel goods from Australia 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 4.1 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 on the day before the Agreement entered into force.

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

Section 321(a) of the bill provides that an interested party may file with the President a request for a textile or apparel safeguard measure. The President is to review a request initially to determine whether to commence consideration of the request on its merits.

Section 321(b) of the bill allows an interested party filing such a request to allege that "critical circumstances" exist such that to delay providing relief would cause damage to a U.S. industry that would be difficult to repair. If the President finds that such critical circumstances exist, the President may provide provisional relief, as described below.

Under section 321(c), 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 business confidential information, if any, the full text of the request will be made available on the Department of Commerce, International Trade Administration's website.

If the President determines under section 321 that a request contains the information necessary for it to be considered, then section 322 sets out the procedures to be followed in considering the request. Section 322(a) of the bill provides for the President to determine whether, as a result of the elimination of a duty provided for under the Agreement, an Australian textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions that imports of the article cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article. This determination corresponds to the determination required under Article 4.1.1 of the Agreement. Section 322(a) of the bill includes criteria for determining serious damage or actual threat thereof, consistent with Article 4.1.2 of the Agreement.

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 duties to the lower of: (1) the NTR/MFN duty rate in place for the textile or apparel article at the time the relief is granted; or (2) the NTR/MFN duty rate for that article on the day before the Agreement enters into force.

Section 322(c) of the bill concerns provisional relief. Where a requester has alleged the existence of critical circumstances, section 322(c) provides that within 60 days of filing of the request the President shall determine whether there is clear evidence of the existence of such circumstances. If the determination is affirmative, the President may provide provisional relief for a period of up to 200 days. If the President provides such provisional relief, then liquidation of entries of the articles subject to such relief shall be suspended during the period of such relief. Section 322(c) further provides for circumstances triggering the termination of the provisional relief and actions to be taken upon such termination.

Section 323 of the bill provides that the maximum period of relief (including provisional relief) under the textile or apparel safeguard shall be two years. However, the President may extend the period of import relief for an additional two 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. A safeguard measure may not be imposed for an aggregate period greater than four years.

Section 324 of the bill provides that relief may not be granted to an article under the textile or apparel safeguard if relief previously has been granted to that article under: (1) these special provisions; (2) Chapter Nine of the Agreement (corresponding to Subtitle A to Title III of the bill); or (3) chapter 1 of title II of the Trade Act of 1974.

Section 325 of the bill provides that on the date of termination of import relief, imports of the textile or apparel article that was subject to the safeguard action will return 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 with respect to any Australian article will expire 10 years after duties on the article are eliminated.

Under Article 4.1.7 of the Agreement, if the United States provides relief to a domestic industry under the textile or apparel safeguard, it must provide Australia "mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional customs duties expected to result from the [safeguard] action." If the United States and Australia are unable to agree on trade liberalizing compensation, Australia may increase customs duties equivalently on U.S. goods. The obligation to provide compensation terminates upon termination of the safeguard relief.

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 business confidential 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 business confidential information in a textile or apparel safeguard proceeding must submit a non-confidential version of the information or a summary of the information.

2. Administrative Action

a. Enforcement of Textile and Apparel Rules of Origin

Under section 206 of the bill, U.S. customs officials may request Australia to initiate verifications and work with Australian officials in conducting them. Following a U.S. request for a verification, the Committee for the Implementation of Textile Agreements ("CITA"), an interagency entity created by Executive Order 11651 that carries out certain textile trade policies for the United States by delegation of authority from the President, may direct U.S. officials to take appropriate action described in section 206(b) of the bill while the verification is being conducted. U.S. customs officials will determine whether the exporter or producer that is subject to the verification is complying with applicable customs rules, and whether statements regarding the origin of textile or apparel goods exported or produced by that firm are accurate. If U.S. customs officials determine that an exporter or producer is not complying with applicable customs rules or that it is making false statements regarding the origin of textile or apparel goods, they will report their findings to CITA. Similarly, if U.S. customs officials are unable to make the necessary determination (*e.g.*, due to lack of cooperation by the exporter or producer), they will report that fact to CITA. CITA may direct U.S. officials to take appropriate action described in section 206(d) in the case of an adverse determination or a report that customs officials are unable to make the necessary determination. If the appropriate action includes denial of preferential treatment or denial of entry, CITA will issue an appropriate directive.

Section 206 of the bill provides the exclusive basis in U.S. law for CITA to direct appropriate action implementing Article 4.3 of the Agreement.

b. Textile and Apparel Safeguard

The function of receiving requests for textile and 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) and (c) will be performed by CITA, pursuant to a delegation of the President's authority under the bill. 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) and (c).

Chapter Five (Rules of Origin)

1. Implementing Bill

a. General

Section 203 of the implementing bill codifies the general rules of origin set forth in Chapter Five 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 of Australia for the purposes of this bill would not necessarily be a good of or import from Australia for the purposes of other U.S. laws or regulations.

Under the general rules, there are four basic ways for a good of Australia 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 an originating good if it is "wholly obtained or produced entirely in the territory of Australia, the United States, or both." The term "good wholly obtained or produced entirely in the territory of Australia, the United States, or both" is defined in section 203(n)(5) of the bill and includes, for example, minerals extracted in either country, animals born and raised in either country, and waste and scrap derived from production of goods that takes place in the territory of either or both countries.

The term "good wholly obtained or produced entirely in the territory of Australia, the United States, or both" includes "recovered goods." These are parts resulting from the disassembly of used goods, which 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)(19) to mean an industrial good assembled in the territory of Australia or the United States 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, 8516, or any of headings 8701 through 8706) that: (1) is comprised entirely or partially of recovered goods; (2) has a similar life expectancy to, and meets the same performance standards as, like a good that is new; and (3) enjoys a similar factory warranty to such a like good.

Second, the general rules of origin provide that a good is an "originating good" if the good is produced in the United States, Australia, or both, and the materials used to produce the good that are not themselves originating goods are transformed in such a way as to cause their classification to change and to meet other requirements, as specified in Annex 4-A or Annex 5-A of the Agreement. Such additional requirements include, for example, performing certain processes or operations related to textile or apparel goods in the United States or Australia 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 an "originating good" if the good is produced entirely in the territory of Australia, the United States, or both exclusively from materials that themselves qualify as originating goods.

Fourth, the general rules of origin provide that a good is an "originating good" if it meets specific requirements set forth in other provisions of section 203 of the bill.

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) 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. Section 203(e) implements provisions in Annex 5-A 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 in the case of certain automotive goods. Other provisions in section 203 address valuation of materials and determination of the originating or non-originating status of fungible goods and materials, 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-A and Annex 5-A 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)(2) 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(a) of the bill. (*See* discussion under item 1.a of Chapter Two, above.)

Various provisions of the Agreement expressly contemplate modifications to the rules of origin. Article 5.16.2 calls for the two governments to consult regularly after the Agreement's entry into force to discuss necessary amendments to Chapter Five and Annex 5-A. In addition, as noted above, Article 4.2.3 calls for the United States and Australia to consult at either government's request to consider whether rules of origin for particular textile and apparel goods should be revised in light of the availability of fibers, yarns, or fabrics in their respective territories.

Section 203(o)(2) of the bill expressly limits the President's authority to modify by proclamation specific rules of origin pertaining to textile and apparel goods (listed in Chapters 50 through 63 of the HTS and identified in Annex 4-A of the Agreement). Those rules of origin may be modified by proclamation in only two circumstances: first, to implement an agreement with Australia pursuant to Article 4.2.5 of the Agreement to address commercial availability of particular fibers, yarns, or fabrics; and second, within one year of enactment of the implementing bill, to correct typographical, clerical, or other non-substantive technical errors.

c. Correction of Invalid Claims

Under Article 5.13.4(a) of the Agreement, neither government may impose a penalty on an importer who makes an invalid claim for preferential tariff treatment under the Agreement if, after discovering that the claim is invalid, the importer promptly and voluntarily corrects the claim and pays any duty owing. Article 5.13.4(b) provides for importers to have at least a 12-month grace period after submitting an invalid claim in which to correct it. Section 205 of the bill implements this requirement for the United States by amending section 592(c) of the Tariff Act of 1930 (19 U.S.C. 1592(c)).

2. Administrative Action

The rules of origin in Chapter Five of the Agreement are intended to direct the benefits of customs duty elimination under the Agreement principally to firms producing or manufacturing goods in Australia and the United States. For this reason, the rules ensure that, in general, a good is eligible for benefits under the Agreement only if it is: (1) wholly produced or obtained in one or both countries; or (2) undergoes both substantial processing and substantial change in one or both countries.

a. Claims for Preferential Treatment

Section 207 of the bill authorizes the Secretary of the Treasury to prescribe regulations necessary to carry out the tariff-related provisions of the bill, including the rule of origin and customs user fee provisions. The Department of the Treasury will use this authority in part to promulgate any regulations necessary to implement the Agreement's provisions governing claims for preferential treatment. Under Article 5.12.1 of the Agreement, an importer may claim preferential treatment for particular goods if the importer knows or possesses information that the goods satisfy the Agreement's rules of origin. Under Article 5.12.2, an importer may be requested to explain in writing the basis for its claim. Article 5.13 requires that a claim for preferential treatment be granted unless customs officials have information that the claim is invalid or the importer fails to satisfy the Agreement's origin rules. Article 5.13 also requires that a written determination, with factual and legal findings, be provided if a claim is denied.

b. Verification

Under Article 5.15, customs officials may use a variety of methods to verify claims that goods imported from Australia satisfy the Agreement's rules of origin. Article 4.3 sets out special procedures for verifying claims that textile or apparel goods imported from Australia meet the Agreement's origin rules. U.S. officials will carry out verifications under Articles 5.15 and 4.3 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 Six (Customs Administration)

1. Implementing Bill

No statutory changes will be required to implement Chapter Six.

2. Administrative Action

a. Inquiry Point

Article 6.1.2 of the Agreement requires each government to designate an inquiry point for inquiries from interested persons on customs matters. The U.S. Bureau of Customs and Border Protection (BCBP) will serve as the U.S. inquiry point for this purpose. Consistent with Article 6.1.2, the BCBP 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 6.3 of the Agreement (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 120 days of receipt of all information reasonably required to process the application for the ruling.

Chapter Seven (Sanitary and Phytosanitary Measures)

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

Chapter Eight (Technical Barriers to Trade)

1. Implementing Bill

No statutory changes will be required to implement Chapter Eight.

2. Administrative Action

Article 8.9 of the Agreement calls for each government to designate an official to coordinate with interested parties in its territory on bilateral issues and initiatives regarding technical barriers to trade ("TBT"), and to communicate with the other government on such

matters. A USTR official for TBT matters or trade relations with Australia will serve as the U.S. Chapter Eight coordinator.

Chapter Nine (Safeguards)

1. Implementing Bill

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

a. Bilateral Safeguard Measures

Sections 311 through 316 of the bill authorize the President, after an investigation and affirmative determination by the U.S. International Trade Commission ("ITC"), to suspend duty reductions or impose duties temporarily at NTR/MFN rates on "Australian articles" 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.

Section 301(1) defines the term "Australian article" for purposes of the safeguard provisions to mean a good qualifying as an "originating good" under section 203(b) of the bill.

Section 301(2) defines the term "Australian textile or apparel article" as an article listed in the Annex to the World Trade Organization ("WTO") Agreement on Textiles and Clothing that is also an Australian article, as defined in section 301(1).

Section 311 provides for the filing of petitions with the ITC and for the ITC to conduct bilateral safeguard investigations. Section 311(a)(1) provides that a petition requesting a bilateral 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.

In addition, section 311(a)(2) permits a petitioning entity to request provisional relief as if the petition had been filed under section 202(a) of the Trade Act of 1974.

Section 311(a)(3) requires that any claim of "critical circumstances" with respect to a surge of imports from Australia be included in the petition for relief. A claim of critical circumstances is a necessary element in a claim for provisional relief. It also is a necessary

element in a claim for provisional relief under section 202(d)(2) of the Trade Act of 1974, which is made applicable to bilateral safeguards under the Agreement through section 311(c) of the bill.

Section 311(b) sets out the standard to be used by the ITC in undertaking an investigation and making a determination in bilateral 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 provisional relief provisions in section 202(d), 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 Australian articles that have been the basis previously for according relief to an industry, after the Agreement's entry into force, under Subtitle A of Title III of the bill.

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 (or 180 days if critical circumstances are alleged).

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 may be recommended by the ITC 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: (1) the ITC's determination under section 312(a) and the reasons supporting it; (2) 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 (3) 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*.

Under section 313(a) of the bill, the President is directed, 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 found by the ITC 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.

Section 313(c)(1) also sets out a special rule for duties applied to an article on a seasonal basis.

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 initial period for import relief under the bilateral safeguard may not exceed two years. The President may extend the period of import relief 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 by the ITC to the same effect. However, the aggregate period of import relief, including extensions, may not exceed four years.

Section 313(e) specifies the duty rate to be applied to Australian articles after termination of a bilateral 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 U.S. duty phase-out schedule; or

- in a manner that eliminates the tariff in equal annual stages ending on the date set out in that schedule.

Section 313(f) exempts from relief any article that is, at the time of the President's determination on whether to provide relief, subject to import relief under the textile or apparel safeguard, set out in Subtitle B of Title III of the bill, or under one of the agricultural safeguards, set out in Section 202(b), (c), and (d) of the bill. Section 313(f) also exempts from relief any article that has been, at any time after entry into force of the Agreement, subject to import relief under Subtitle A of Title III of the bill.

Section 314 provides that the President's authority to take action under the bilateral safeguards provision expires ten years after the date on which the Agreement enters into force, unless the period for elimination of duties on a good exceeds 10 years. In such case, no relief may be provided after expiration of the period for elimination of duties. The President may take action under the bilateral safeguards provision after the period provided for, but only to the extent the President determines that the Government of Australia consents.

Section 315 allows the President to provide trade compensation to Australia, as required under Chapter Nine of the Agreement, when the United States imposes relief through a bilateral 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 bilateral 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 9.5 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 from Australia when certain conditions are present.

Section 331(a) requires the ITC to make special findings with respect to imports from Australia 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. In that case, the ITC must find and report to the President whether imports from Australia are a substantial cause of serious injury or threat thereof. Under section 331(b), if the President in turn finds that imports from Australia are not a

substantial cause of serious injury, the President may exclude imports from Australia from a global safeguard action. The term "imports from Australia" as used in this section differs from the terms "originating good" and "Australian article" used elsewhere in the implementing bill. The Administration intends to interpret "imports from Australia" in the same manner as it interprets "imports from Singapore" as provided in section 331 of the United States-Singapore Free Trade Area Implementation Act and "imports from a NAFTA country" as provided in section 312 of the North American Free Trade Agreement Implementation Act.

2. **Administrative Action**

No administrative changes will be required to implement Chapter Nine.

Chapter Ten (Cross-Border Trade in Services)

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

Chapter Eleven (Investment)

1. **Implementing Bill**

No statutory changes will be required to implement Chapter Eleven.

2. **Administrative Action**

Article 11.16.1 of the Agreement contemplates the possibility that at some point in the future there may be a change in circumstances affecting the settlement of disputes related to investment in the territory of one country by investors of the other country. Where either the United States or Australia believes that such a change in circumstances has occurred, it may request consultations with the other country on whether to amend the Agreement to provide for investor-state arbitration.

Chapter Twelve (Telecommunications)

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

Chapter Thirteen (Financial Services)

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

Chapter Fourteen (Competition Policy)

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

Chapter Fifteen (Government Procurement)

1. Implementing Bill

Chapter Fifteen of the Agreement establishes rules that certain government entities, listed in Annex 15-A 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 15-A.

In order to comply with its obligations under Chapter Fifteen, 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 Fifteen, Australia is 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 NAFTA. 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 a party to a free trade agreement that entered into force for the United States after December 31, 2003 and prior to January 2, 2005, an "eligible product" means "a product or service of that country or instrumentality which is covered under the free trade 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 Agreement Act will allow procurement of products and services of Australia and other Parties to FTAs that entered into force during the specified time period.

2. Administrative Action

As noted above, Annex 15-A of the Agreement provides that U.S. government entities subject to Chapter 15 must apply the Chapter's rules to goods and services from Australia when a procurement is valued above certain dollar thresholds. USTR will notify the Federal Acquisition Regulation ("FAR") Council of the thresholds that pertain to Australia under the Agreement. The FAR Council will then incorporate those thresholds into the FAR.

Chapter Sixteen (Electronic Commerce)

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

Chapter Seventeen (Intellectual Property Rights)

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

Chapter Eighteen (Labor)

1. Implementing Bill

No statutory changes will be required to implement Chapter Eighteen.

2. Administrative Action

Article 18.4.2 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 Bureau of International Affairs will serve as the U.S. contact point for this purpose.

Chapter Nineteen (Environment)

1. Implementing Bill

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

2. Administrative Action

Article 19.7.1 of the Agreement provides that either Party may request consultations with the other concerning any matter arising under the Chapter and contemplates that each Party shall designate a contact point to receive such requests. USTR's Office of Environment and Natural Resources will serve as the U.S. contact point for this purpose.

108th CONGRESS
2D SESSION

S. 2610

To implement the United States-Australia Free Trade Agreement.

IN THE SENATE OF THE UNITED STATES

JULY 14, 2004

Mr. GRASSLEY (for himself, Mr. BAUCUS, and Mr. FRIST) (by request) introduced the following bill; which was read twice and referred to the Committee on Finance pursuant to section (b)(3) of Public Law 107–210

A BILL

To implement the United States-Australia 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 "United States-Australia 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 and Australia, entered into under the authority of section 2103(b) of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3803(b));

(2) to strengthen and develop economic relations between the United States and Australia for their mutual benefit;

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

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

SEC. 3. DEFINITIONS.

In this Act:

(1) AGREEMENT.—The term "Agreement" means the United States-Australia Free Trade Agreement approved by Congress under section 101(a)(1).

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

(3) TEXTILE OR APPAREL GOOD.—The term "textile or apparel good" means a good listed in the Annex to the Agreement on Textiles and Clothing

referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(4)).

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

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

(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), Congress approves—

(1) the United States-Australia Free Trade Agreement entered into on May 18, 2004, with the Government of Australia and submitted to Congress on [_____, 2004]; and

(2) the statement of administrative action proposed to implement the Agreement that was submitted to Congress on [_____, 2004].

(b) CONDITIONS FOR ENTRY INTO FORCE OF THE AGREEMENT.—At such time as the President determines that Australia has taken measures necessary to bring it into compliance with those provisions of the Agreement that are to take effect on the date on which the Agreement enters into force, the President is authorized to exchange

notes with the Government of Australia providing for the entry into force, on or after January 1, 2005, of the Agreement with respect to the United States.

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

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

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

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

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

(B) to limit any authority conferred under any law of the United States,

unless specifically provided for in this Act.

(b) RELATIONSHIP OF AGREEMENT TO STATE LAW.—

(1) LEGAL CHALLENGE.—No State law, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the

Agreement, except in an action brought by the United States for the purpose of declaring such law or application invalid.

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

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

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

(c) EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.—No person other than the United States—

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

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

SEC. 103. IMPLEMENTING ACTIONS IN ANTICIPATION OF ENTRY INTO FORCE AND INITIAL REGULATIONS.

(a) IMPLEMENTING ACTIONS.—

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

(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 effective date earlier than the date on which the Agreement enters into force.

(2) EFFECTIVE DATE OF CERTAIN PROCLAIMED ACTIONS.—Any action proclaimed by the President under the authority of this Act that is not subject to the consultation and layover provisions under section 104, may not take effect before the 15th day after the date on which the text of the proclamation is published in the Federal Register.

(3) WAIVER OF 15-DAY RESTRICTION.—The 15-day restriction 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 United States International Trade Commission;

(2) the President has submitted a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives that sets forth—

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

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

(3) a period of 60 calendar days, beginning on the first day on which the requirements set forth in paragraphs (1) and (2) have been met has expired; and

(4) the President has consulted with such Committees regarding the proposed action during the period referred to in paragraph (3).

SEC. 105. ADMINISTRATION OF DISPUTE SETTLEMENT PROCEEDINGS.

(a) ESTABLISHMENT OR DESIGNATION OF OFFICE.—The President is authorized to establish or designate within the Department of Commerce an office that shall be

responsible for providing administrative assistance to panels established under chapter 21 of the Agreement. The office may not be considered to be an agency for purposes of section 552 of title 5, United States Code.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each fiscal year after fiscal year 2004 to the Department of Commerce such sums as may be necessary for the establishment and operations of the office under subsection (a) and for the payment of the United States share of the expenses of panels established under chapter 21 of the Agreement.

SEC. 106. EFFECTIVE DATES; EFFECT OF TERMINATION.

(a) EFFECTIVE DATES.—Except as provided in subsection (b), the provisions of this Act and the amendments made by this Act take effect on the date on which the Agreement enters into force.

(b) EXCEPTIONS.—Sections 1 through 3 and this title take effect on the date of the enactment of this Act.

(c) TERMINATION OF THE AGREEMENT.—On the date on which the Agreement terminates, the provisions of this Act (other than this subsection) and the amendments made by this Act shall cease to be effective.

TITLE II—CUSTOMS PROVISIONS

SEC. 201. TARIFF MODIFICATIONS.

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

(1) such modifications or continuation of any duty,

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

(3) such additional duties,

as the President determines to be necessary or appropriate to carry out or apply articles 2.3, 2.5, and 2.6, and Annex 2–B of the Agreement.

(b) OTHER TARIFF MODIFICATIONS.—Subject to the consultation and layover provisions of section 104, the President may proclaim—

(1) such modifications or continuation of any duty,

(2) such modifications as the United States may agree to with Australia regarding the staging of any duty treatment set forth in Annex 2–B of the Agreement,

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

(4) such additional duties,

as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Australia provided for by the Agreement.

(c) CONVERSION TO AD VALOREM RATES.—For purposes of subsections (a) and (b), with respect to any good for which the base rate in the Schedule of the United States to Annex 2–B of the Agreement is a specific or compound rate of duty, the President may substitute for the base rate an ad valorem rate that the President determines to be equivalent to the base rate.

SEC. 202. ADDITIONAL DUTIES ON CERTAIN AGRICULTURAL GOODS.

(a) GENERAL PROVISIONS.—

(1) APPLICABILITY OF SUBSECTION.—This subsection applies to additional duties assessed under subsections (b), (c), and (d).

(2) APPLICABLE NTR (MFN) RATE OF DUTY.—For purposes of subsections (b), (c), and (d), the term "applicable NTR (MFN) rate of duty" means, with respect to a safeguard good, a rate of duty that is the lesser of—

(A) the column 1 general rate of duty that would have been imposed under the HTS on the same safeguard good entered, without a claim

for preferential treatment, at the time the additional duty is imposed under subsection (b), (c), or (d), as the case may be; or

(B) the column 1 general rate of duty that would have been imposed under the HTS on the same safeguard good entered, without a claim for preferential treatment, on December 31, 2004.

(3) SCHEDULE RATE OF DUTY.—For purposes of subsections (b) and (c), the term "schedule rate of duty" means, with respect to a safeguard good, the rate of duty for that good set out in the Schedule of the United States to Annex 2–B of the Agreement.

(4) SAFEGUARD GOOD.—In this subsection, the term "safeguard good" means—

(A) a horticulture safeguard good described subsection (b)(1)(B); or

(B) a beef safeguard good described in subsection (c)(1) or subsection (d)(1)(A).

(5) EXCEPTIONS.—No additional duty shall be assessed on a good under subsection (b), (c), or (d) if, at the time of entry, the good is subject to import relief under—

(A) subtitle A of title III of this Act; or

(B) chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.).

(6) TERMINATION.—The assessment of an additional duty on a good under subsection (b) or (c), whichever is applicable, shall cease to apply to that good on the date on which duty-free treatment must be provided to that good under the Schedule of the United States to Annex 2–B of the Agreement.

(7) NOTICE.—Not later than 60 days after the date on which the Secretary of the Treasury assesses an additional duty on a good under subsection (b), (c), or (d), the Secretary shall notify the Government of Australia in writing of such action and shall provide to that Government data supporting the assessment of the additional duty.

(b) ADDITIONAL DUTIES ON HORTICULTURE SAFEGUARD GOODS.—

(1) DEFINITIONS.—In this subsection:

(A) F.O.B.—The term "F.O.B." means free on board, regardless of the mode of transportation, at the point of direct shipment by the seller to the buyer.

(B) HORTICULTURE SAFEGUARD GOOD.—The term "horticulture safeguard good" means a good—

(i) that qualifies as an originating good under section 203;

(ii) that is included in the United States Horticulture Safeguard List set forth in Annex 3–A of the Agreement; and

(iii) for which a claim for preferential treatment under the Agreement has been made.

(C) UNIT IMPORT PRICE.—The "unit import price" of a good means the price of the good determined on the basis of the F.O.B. import price of the good, expressed in either dollars per kilogram or dollars per liter, whichever unit of measure is indicated for the good in the United States Horticulture Safeguard List set forth in Annex 3–A of the Agreement.

(D) TRIGGER PRICE.—The "trigger price" for a good is the trigger price indicated for that good in the United States Horticulture Safeguard List set forth in Annex 3–A of the Agreement or any amendment thereto.

(2) ADDITIONAL DUTIES.—In addition to any duty proclaimed under subsection (a) or (b) of section 201, and subject to subsection (a) of this section, the Secretary of the Treasury shall assess a

duty on a horticulture safeguard good, in the amount determined under paragraph (3), if the Secretary determines that the unit import price of the good when it enters the United States is less than the trigger price for that good.

(3) CALCULATION OF ADDITIONAL DUTY.—The additional duty assessed under this subsection on a horticulture safeguard good shall be an amount determined in accordance with the following table:

If the excess of the trigger price over the unit import price is:	The additional duty is an amount equal to:
Not more than 10 percent of the trigger price	0.
More than 10 percent but not more than 40 percent of the trigger price	30 percent of the excess of the applicable NTR (MFN) rate of duty over the schedule rate of duty.
More than 40 percent but not more than 60 percent of the trigger price	50 percent of such excess.
More than 60 percent but not more than 75 percent of the trigger price	70 percent of such excess.
More than 75 percent of the trigger price	100 percent of such excess.

(c) ADDITIONAL DUTIES ON BEEF SAFEGUARD GOODS BASED ON QUANTITY OF IMPORTS.—

(1) DEFINITION.—In this subsection, the term "beef safeguard good" means a good—

(A) that qualifies as an originating good under section 203;

(B) that is listed in paragraph 3 of Annex I of the General Notes to the Schedule of the United States to Annex 2–B of the Agreement; and

(C) for which a claim for preferential treatment under the Agreement has been made.

(2) ADDITIONAL DUTIES.—In addition to any duty proclaimed under subsection (a) or (b) of section 201, and subject to subsection (a) of this section and paragraphs (4) and (5) of this subsection, the Secretary of the Treasury shall assess a duty, in the amount determined under paragraph (3), on a beef safeguard good imported into the United States in a calendar year if the Secretary determines that, prior to such importation, the total volume of beef safeguard goods imported into the United States in that calendar year is equal to or greater than 110 percent of the volume set out for beef safeguard goods in the corresponding year in the table contained in paragraph 3(a) of Annex I of the General Notes to the Schedule of the United States to Annex 2–B of the Agreement. For purposes of this subsection, the years 1 through 19 set out in the table contained in paragraph 3(a) of such Annex I correspond to the calendar years 2005 through 2023.

(3) CALCULATION OF ADDITIONAL DUTY.—The additional duty on a beef safeguard good under this subsection shall be an amount equal to 75 percent

of the excess of the applicable NTR (MFN) rate of duty over the schedule rate of duty.

(4) WAIVER.—

(A) IN GENERAL.—The United States Trade Representative is authorized to waive the application of this subsection, if the Trade Representative determines that extraordinary market conditions demonstrate that the waiver would be in the national interest of the United States, after the requirements of subparagraph (B) are met.

(B) NOTICE AND CONSULTATIONS.—Promptly after receiving a request for a waiver of this subsection, the Trade Representative shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, and may make the determination provided for in subparagraph (A) only after consulting with—

(i) appropriate private sector advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155); and

(ii) the Committee on Ways and Means of the House of Representatives

and the Committee on Finance of the Senate regarding—

(I) the reasons supporting the determination to grant the waiver; and

(II) the proposed scope and duration of the waiver.

(C) NOTIFICATION OF THE SECRETARY OF THE TREASURY AND PUBLICATION.—Upon granting a waiver under this paragraph, the Trade Representative shall promptly notify the Secretary of the Treasury of the period in which the waiver will be in effect, and shall publish notice of the waiver in the Federal Register.

(5) EFFECTIVE DATES.—This subsection takes effect on January 1, 2013, and shall not be effective after December 31, 2022.

(d) ADDITIONAL DUTIES ON BEEF SAFEGUARD GOODS BASED ON PRICE.—

(1) DEFINITIONS.—In this subsection:.

(A) BEEF SAFEGUARD GOOD.—The term "beef safeguard good" means a good—

(i) that qualifies as an originating good under section 203;

(ii) that is classified under subheading 0201.10.50, 0201.20.80, 0201.30.80, 0202.10.50, 0202.20.80, or 0202.30.80 of the HTS; and

(iii) for which a claim for preferential treatment under the Agreement has been made.

(B) CALENDAR QUARTER.—

(i) IN GENERAL.—The term "calendar quarter" means any 3-month period beginning on January 1, April 1, July 1, or October 1 of a calendar year.

(ii) FIRST CALENDAR QUARTER.—The term "first calendar quarter" means the calendar quarter beginning on January 1.

(iii) SECOND CALENDAR QUARTER.—The term "second calendar quarter" means the calendar quarter beginning on April 1.

(iv) THIRD CALENDAR QUARTER.—The term "third calendar quarter" means the calendar quarter beginning on July 1.

(v) FOURTH CALENDAR QUARTER.—The term "fourth calendar quarter" means

the calendar quarter beginning on October 1.

(C) MONTHLY AVERAGE INDEX PRICE.—The term "monthly average index price" means the simple average, as determined by the Secretary of Agriculture, for a calendar month of the daily average index prices for Wholesale Boxed Beef Cut-Out Value Select 1–3 Central U.S. 600–750 lbs., or its equivalent, as such simple average is reported by the Agricultural Marketing Service of the Department of Agriculture in Report LM—XB459 or any equivalent report.

(D) 24-MONTH TRIGGER PRICE.—The term "24-month trigger price" means, with respect to any calendar month, the average of the monthly average index prices for the 24 preceding calendar months, multiplied by 0.935.

(2) ADDITIONAL DUTIES.—In addition to any duty proclaimed under subsection (a) or (b) of section 201, and subject to subsection (a) of this section and paragraphs (4) through (6) of this subsection, the Secretary of the Treasury shall assess a duty, in the amount determined under paragraph

(3), on a beef safeguard good imported into the United States if—

(A)(i) the good is imported in the first calendar quarter, second calendar quarter, or third calendar quarter of a calendar year; and

(ii) the monthly average index price, in any 2 calendar months of the preceding calendar quarter, is less than the 24-month trigger price; or

(B)(i) the good is imported in the fourth calendar quarter of a calendar year; and

(ii)(I) the monthly average index price, in any 2 calendar months of the preceding calendar quarter, is less than the 24-month trigger price; or

(II) the monthly average index price, in any of the 4 calendar months preceding January 1 of the succeeding calendar year, is less than the 24-month trigger price.

(3) CALCULATION OF ADDITIONAL DUTY.—The additional duty on a beef safeguard good under this subsection shall be an amount equal to 65 percent of the applicable NTR (MFN) rate of duty for that good.

(4) LIMITATION.—An additional duty shall be assessed under this subsection on a beef safeguard good imported into the United States in a calendar year only if, prior to the importation of that good, the total quantity of beef safeguard goods imported into the United States in that calendar year is equal to or greater than the sum of—

(A) the quantity of goods of Australia eligible to enter the United States in that year specified in Additional United States Note 3 to Chapter 2 of the HTS; and

(B)(i) in 2023, 70,420 metric tons; or

(ii) in 2024, and in each year thereafter, a quantity that is 0.6 percent greater than the quantity provided for in the preceding year under this subparagraph.

(5) WAIVER.—

(A) IN GENERAL.—The United States Trade Representative is authorized to waive the application of this subsection, if the Trade Representative determines that extraordinary market conditions demonstrate that the waiver would be in the national interest of the United States, after the requirements of subparagraph (B) are met.

(B) NOTICE AND CONSULTATIONS.—Promptly after receiving a request for a waiver of this subsection, the Trade Representative shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, and may make the determination provided for in subparagraph (A) only after consulting with—

(i) appropriate private sector advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155); and

(ii) the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding—

(I) the reasons supporting the determination to grant the waiver; and

(II) the proposed scope and duration of the waiver.

(C) NOTIFICATION OF THE SECRETARY OF THE TREASURY AND PUBLICATION.—Upon granting a waiver under this paragraph, the Trade Representative shall

promptly notify the Secretary of the Treasury of the period in which the waiver will be in effect, and shall publish notice of the waiver in the Federal Register.

(6) EFFECTIVE DATE.—This subsection takes effect on January 1, 2023.

SEC. 203. RULES OF ORIGIN.

(a) APPLICATION AND INTERPRETATION.—In this section:

(1) TARIFF CLASSIFICATION.—The basis for any tariff classification is the HTS.

(2) REFERENCE TO HTS.—Whenever in this section there is a reference to a heading or subheading, such reference shall be a reference to a heading or subheading of the HTS.

(3) COST OR VALUE.—Any cost or value referred to in this section shall be recorded and maintained in accordance with the generally accepted accounting principles applicable in the territory of the country in which the good is produced (whether Australia or the United States).

(b) ORIGINATING GOODS.—For purposes of this Act and for purposes of implementing the preferential treatment provided for under the Agreement, a good is an originating good if—

(1) the good is a good wholly obtained or produced entirely in the territory of Australia, the United States, or both;

(2) the good—

(A) is produced entirely in the territory of Australia, the United States, or both, and—

(i) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in Annex 4–A or Annex 5–A of the Agreement;

(ii) the good otherwise satisfies any applicable regional value-content requirement referred to in Annex 5–A of the Agreement; or

(iii) the good meets any other requirements specified in Annex 4–A or Annex 5–A of the Agreement; and

(B) the good satisfies all other applicable requirements of this section;

(3) the good is produced entirely in the territory of Australia, the United States, or both, exclusively from materials described in paragraph (1) or (2); or

(4) the good otherwise qualifies as an originating good under this section.

(c) 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 5–A 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 required change in tariff classification,

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 of the HTS or in subheading 1901.90 that is used in the production of a good provided for in chapter 4 of the HTS.

(B) A nonoriginating material provided for in chapter 4 of the HTS or in subheading 1901.90 that is used in the production of a good provided for in subheading 1901.10, 1901.20, or 1901.90, heading 2105, or subheading 2106.90, 2202.90, or 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 subheading 2106.90 or 2202.90.

(D) A nonoriginating material provided for in chapter 15 of the HTS that is used in the production of a good provided for in any of headings 1501.00.00 through 1508, or in heading 1512, 1514, or 1515.

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

(F) A nonoriginating material provided for in chapter 17 of the HTS or heading 1805.00.00 that is used in the production of a good provided for in subheading 1806.10.

(G) A nonoriginating material provided for in any of headings 2203 through 2208 that is used in the production of a good provided for in heading 2207 or 2208.

(H) A nonoriginating material used in the production of a good provided for in any of chapters 1 through 21 of the HTS unless the nonoriginating material is provided for in a different subheading than the good for which origin is being determined under this section.

(3) TEXTILE AND APPAREL GOODS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), a textile or apparel good that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex 4–A of the Agreement shall be considered to be an originating good if the total weight of all such fibers or yarns in that com-

ponent is not more than 7 percent of the total weight of that component.

(B) CERTAIN TEXTILE OR APPAREL GOODS.—A textile or apparel good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed in the territory of Australia or the United States.

(C) YARN, FABRIC, OR FIBER.—For purposes of this paragraph, in the case of a textile or apparel good that is a yarn, fabric, or group of fibers, the term "component of the good that determines the tariff classification of the good" means all of the fibers in the yarn, fabric, or group of fibers.

(d) ACCUMULATION.—

(1) ORIGINATING MATERIALS USED IN PRODUCTION OF GOODS OF OTHER COUNTRY.—Originating materials from the territory of Australia or the United States that are used in the production of a good in the territory of the other country shall be considered to originate in the territory of the other country.

(2) MULTIPLE PROCEDURES.—A good that is produced in the territory of Australia, the United States, or both, by 1 or more producers, is an originating good if the good satisfies the requirements of subsection (b) and all other applicable requirements of this section.

(c) REGIONAL VALUE-CONTENT.—

(1) IN GENERAL.—For purposes of subsection (b)(2), the regional value-content of a good referred to in Annex 5–A of the Agreement, except for goods to which paragraph (4) applies, shall be calculated by the importer, exporter, or producer of the good, on the basis of the build-down method described in paragraph (2) or the build-up method described in paragraph (3).

(2) BUILD-DOWN METHOD.—

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

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

(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 5–A of the Agreement shall be calculated by the importer, exporter, or producer of the good, on the basis of the following net cost method:

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

(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 one of the categories described in clause (ii); or

(II) with respect to all motor vehicles in any such category that are exported to the territory of the United States or Australia.

(ii) CATEGORIES.—A category is described in this clause if it—

(I) is the same model line of motor vehicles, is in the same class of vehicles, and is produced in the same plant in the territory of Australia or the United States, as the good de-

scribed in clause (i) for which regional value-content is being calculated;

(II) is the same class of motor vehicles, and is produced in the same plant in the territory of Australia or the United States, as the good described in clause (i) for which regional value-content is being calculated; or

(III) is the same model line of motor vehicles produced in either the territory of Australia or the United States, as the good described in clause (i) for which regional value-content is being calculated.

(D) 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 one or more motor vehicle producers; or

(iii) make a separate determination under clause (i) or (ii) for automotive goods that are exported to the territory of the United States or Australia.

(E) CALCULATING NET COST.—Consistent with the provisions regarding allocation of costs set out in generally accepted accounting principles, the net cost of the automotive good under subparagraph (B) shall be calculated by—

(i) calculating the total cost incurred with respect to all goods produced by the producer of the automotive good, subtracting any sales promotion, marketing

and after-sales service costs, royalties, shipping and packing costs, and nonallowable interest costs that are included in the total cost of all such goods, and then reasonably allocating the resulting net cost of those goods to the automotive good;

(ii) calculating the total cost incurred with respect to all goods produced by that producer, reasonably allocating the total cost to the automotive good, and then subtracting any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and nonallowable interest costs that are included in the portion of the total cost allocated to the automotive good; or

(iii) reasonably allocating each cost that forms part of the total cost incurred with respect to the automotive good so that the aggregate of these costs does not include any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, or nonallowable interest costs.

(f) VALUE OF MATERIALS.—

(1) IN GENERAL.—For the purpose of calculating the regional value-content of a good under subsection (e), and for purposes of applying the de minimis rules under subsection (e), 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 Australia, the United States, or both, to the location of the producer.

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of Australia, the United States, or both, other than duties or taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable.

(iii) The cost of waste and spoilage resulting from the use of the material in the

production of the good, less the value of renewable scrap or 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 Australia, the United States, or both, to the location of the producer.

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of Australia, the United States, or both, other than duties or taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable.

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or byproducts.

(iv) The cost of processing incurred in the territory of Australia, the United States, or both, in the production of the nonoriginating material.

(v) The cost of originating materials used in the production of the nonoriginating material in the territory of Australia, the United States, or both.

(g) ACCESSORIES, SPARE PARTS, OR TOOLS.—

(1) IN GENERAL.—Subject to paragraph (2), accessories, spare parts, or tools delivered with a good that form part of the good's standard accessories, spare parts, or tools shall—

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

(B) be disregarded in determining whether all the nonoriginating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 5–A of the Agreement.

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

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

(B) the quantities and value of the accessories, spare parts, or tools are customary for the good; and

(C) if the good is subject to a regional value-content requirement, the value of the accessories, spare parts, or tools is taken into account as originating or nonoriginating materials, as the case may be, in calculating the regional value-content of the good.

(h) FUNGIBLE GOODS AND MATERIALS.—

(1) IN GENERAL.—

(A) CLAIM FOR PREFERENTIAL TREATMENT.—A person claiming that a fungible good or fungible material is an originating good may base the claim either on the physical segregation of the fungible good or fungible material or by using an inventory management method with respect to the fungible good or fungible material.

(B) INVENTORY MANAGEMENT METHOD.—In this subsection, the term "inventory management method" means—

(i) averaging;

(ii) "last-in, first-out";

(iii) "first-in, first-out"; or

(iv) any other method—

(I) recognized in the generally accepted accounting principles of the country in which the production is performed (whether Australia or the United States); or

(II) otherwise accepted by that country.

(2) ELECTION OF INVENTORY METHOD.—A person selecting an inventory management method under paragraph (1) for a particular fungible good or fungible material shall continue to use that method for that fungible good or fungible material throughout the fiscal year of that person.

(i) PACKAGING MATERIALS AND CONTAINERS FOR RETAIL SALE.—Packaging materials and containers in which a good is packaged for retail sale, if classified with the good, shall be disregarded in determining whether all the nonoriginating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 4–A or Annex 5–A of the Agreement, and, if the good is subject to a regional value-content requirement, the value of such packaging materials and containers shall be taken into account as originating or non-

originating 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—

(1) the nonoriginating materials used in the production of a good undergo the applicable change in tariff classification set out in Annex 4–A or Annex 5–A of the Agreement; and

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

(k) INDIRECT MATERIALS.—An indirect material shall be treated as an originating material without regard to where it is produced, and its value shall be the cost registered in the accounting records of the producer of the good.

(l) THIRD COUNTRY OPERATIONS.—A good that has undergone production necessary to qualify as an originating good under subsection (b) shall not be considered to be an originating good if, subsequent to that production, the good undergoes further production or any other operation outside the territory of Australia or the United States, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or

to transport the good to the territory of Australia or the United States.

(m) TEXTILE AND APPAREL GOODS CLASSIFIABLE AS GOODS PUT UP IN SETS.—Notwithstanding the rules set forth in Annex 4–A of the Agreement, textile or apparel goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3 of the HTS shall not be considered to be originating goods unless each of the goods in the set is an originating good or the total value of the nonoriginating goods in the set does not exceed 10 percent of the value of the set determined for purposes of assessing customs duties.

(n) DEFINITIONS.—In this section:

(1) ADJUSTED VALUE.—The term "adjusted value" means the value determined under Articles 1 through 8, Article 15, and the corresponding 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 to exclude any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the good from the country of exportation to the place of importation.

(2) CLASS OF MOTOR VEHICLES.—The term "class of motor vehicles" means any one of the following categories of motor vehicles:

(A) Motor vehicles provided for in subheading 8701.20, 8704.10, 8704.22, 8704.23, 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.

(3) FUNGIBLE GOOD OR FUNGIBLE MATERIAL.—The term "fungible good" or "fungible material" means a good or material, as the case may be, that is interchangeable with another good or material for commercial purposes and the properties of which are essentially identical to such other good or material.

(4) GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.—The term "generally accepted accounting principles" means the recognized consensus or substantial authoritative support in the territory of Australia or the United States, as the case may be, with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements. These standards may encompass broad guidelines of general application as well as detailed standards, practices, and procedures.

(5) GOOD WHOLLY OBTAINED OR PRODUCED ENTIRELY IN THE TERRITORY OF AUSTRALIA, THE UNITED STATES, OR BOTH.—The term "good wholly obtained or produced entirely in the territory of Australia, the United States, or both" means—

(A) a mineral good extracted in the territory of Australia, the United States, or both;

(B) a vegetable good, as such goods are provided for in the HTS, harvested in the territory of Australia, the United States, or both;

(C) a live animal born and raised in the territory of Australia, the United States, or both;

(D) a good obtained from hunting, trapping, fishing, or aquaculture conducted in the territory of Australia, the United States, or both;

(E) a good (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with Australia or the United States and flying the flag of that country;

(F) a good produced exclusively from products referred to in subparagraph (E) on board factory ships registered or recorded with Australia or the United States and flying the flag of that country;

(G) a good taken by Australia or the United States or a person of Australia or the United States from the seabed or beneath the seabed outside territorial waters, if Australia or the United States has rights to exploit such seabed;

(H) a good taken from outer space, if such good is obtained by Australia or the United States or a person of Australia or the United States and not processed in the territory of a country other than Australia or the United States;

(I) waste and scrap derived from—

(i) production in the territory of Australia, the United States, or both; or

(ii) used goods collected in the territory of Australia, the United States, or both, if such goods are fit only for the recovery of raw materials;

(J) a recovered good derived in the territory of Australia or the United States from goods that have passed their life expectancy, or are no longer usable due to defects, and utilized in the territory of that country in the production of remanufactured goods; or

(K) a good produced in the territory of Australia, the United States, or both, exclusively—

(i) from goods referred to in any of subparagraphs (A) through (I), or

(ii) from the derivatives of goods referred to in clause (i),

at any stage of production.

(6) INDIRECT MATERIAL.—The term "indirect material" means a good used in the production, testing, or inspection of a good but not physically incorporated into the good, or a good used in the mainte-

nance of buildings or the operation of equipment associated with the production of a good, including—

(A) fuel and energy;

(B) tools, dies, and molds;

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

(D) lubricants, greases, compounding materials, and other materials used in production or used to operate equipment or buildings;

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

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

(G) catalysts and solvents; and

(H) any other goods that are not incorporated into the good but the use of which in the production of the good can reasonably be demonstrated to be a part of that production.

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

(8) MATERIAL THAT IS SELF-PRODUCED.—The term "material that is self-produced" means an originating material that is produced by a producer of a good and used in the production of that good.

(9) MODEL LINE.—The term "model line" means a group of motor vehicles having the same platform or model name.

(10) NONALLOWABLE INTEREST COSTS.—The term "nonallowable interest costs" means interest costs incurred by a producer that exceed 700 basis points above the applicable official interest rate for comparable maturities of the country (whether Australia or the United States).

(11) NONORIGINATING MATERIAL.—The term "nonoriginating material" means a material that does not qualify as originating under this section.

(12) PREFERENTIAL TREATMENT.—The term "preferential treatment" means the customs duty rate, and the treatment under article 2.12 of the Agreement, that are applicable to an originating good pursuant to the Agreement.

(13) PRODUCER.—The term "producer" means a person who engages in the production of a good in the territory of Australia or the United States.

(14) PRODUCTION.—The term "production" means growing, raising, mining, harvesting, fishing, trapping, hunting, manufacturing, processing, assembling, or disassembling a good.

(15) REASONABLY ALLOCATE.—The term "reasonably allocate" means to apportion in a manner that would be appropriate under generally accepted accounting principles.

(16) RECOVERED GOODS.—The term "recovered goods" means materials in the form of individual parts that result from—

(A) the complete disassembly of goods which have passed their life expectancy, or are no longer usable due to defects, into individual parts; and

(B) the cleaning, inspecting, or testing, or other processing that is necessary for improvement to sound working condition of such individual parts.

(17) REMANUFACTURED GOOD.—The term "remanufactured good" means an industrial good that is assembled in the territory of Australia or the United States, that is classified under chapter 84, 85, or 87 of the HTS or heading 9026, 9031, or 9032, other than a good classified under heading 8418 or 8516 or any of headings 8701 through 8706, and that—

(A) is entirely or partially comprised of recovered goods;

(B) has a similar life expectancy to, and meets the same performance standards as, a like good that is new; and

(C) enjoys a factory warranty similar to a like good that is new.

(18) TOTAL COST.—The term "total cost" means all product costs, period costs, and other costs for a good incurred in the territory of Australia, the United States, or both.

(19) USED.—The term "used" means used or consumed in the production of goods.

(o) PRESIDENTIAL PROCLAMATION AUTHORITY.—

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

(A) the provisions set out in Annex 4–A and Annex 5–A of the Agreement; and

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

(2) MODIFICATIONS.—

(A) IN GENERAL.—Subject to the consultation and layover provisions of section 104, the President may proclaim modifications to the provisions proclaimed under the authority of paragraph (1)(A), other than provisions of

chapters 50 through 63 of the HTS, as included in Annex 4–A of the Agreement.

(B) ADDITIONAL PROCLAMATIONS.—Notwithstanding subparagraph (A), and subject to the consultation and layover provisions of section 104, the President may proclaim—

(i) modifications to the provisions proclaimed under the authority of paragraph (1)(A) as are necessary to implement an agreement with Australia pursuant to article 4.2.5 of the Agreement; and

(ii) before the end of the 1-year period beginning on the date of the enactment of this Act, modifications to correct any typographical, clerical, or other nonsubstantive technical error regarding the provisions of chapters 50 through 63 of the HTS, as included in Annex 4–A of the Agreement.

SEC. 204. 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 (13) the following:

"(14) 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 United States-Aus-

tralia 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. DISCLOSURE OF INCORRECT INFORMATION.

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

(1) by redesignating paragraph (8) as paragraph (9); and

(2) by inserting after paragraph (7) the following new paragraph:

"(8) PRIOR DISCLOSURE REGARDING CLAIMS UNDER THE UNITED STATES-AUSTRALIA FREE TRADE AGREEMENT.—

"(A) IN GENERAL.—An importer shall not be subject to penalties under subsection (a) for making an incorrect claim that a good qualifies as an originating good under section 203 of the United States-Australia Free Trade Agreement Implementation Act if the importer, in accordance with regulations issued by the Secretary of the Treasury, voluntarily and promptly makes a corrected declaration and pays any duties owing.

"(B) TIME PERIODS FOR MAKING CORRECTIONS.—In the regulations referred to in subparagraph (A), the Secretary of the Treasury is authorized to prescribe time periods for making a corrected declaration and paying duties owing under subparagraph (A), if such periods are not shorter than 1 year following the date on which the importer makes the incorrect claim.".

SEC. 206. ENFORCEMENT RELATING TO TRADE IN TEXTILE AND APPAREL GOODS.

(a) ACTION DURING VERIFICATION.—

(1) IN GENERAL.—If the Secretary of the Treasury requests the Government of Australia to conduct a verification pursuant to article 4.3 of the Agreement for purposes of making a determination under paragraph (2), the President may direct the Secretary to take appropriate action described in subsection (b) while the verification is being conducted.

(2) DETERMINATION.—A determination under this paragraph is a determination—

(A) that an exporter or producer in Australia is complying with applicable customs laws, regulations, procedures, requirements, or

practices affecting trade in textile or apparel goods; or

(B) that a claim that a textile or apparel good exported or produced by such exporter or producer—

(i) qualifies as an originating good under section 203 of this Act; or

(ii) is a good of Australia,

is accurate.

(b) APPROPRIATE ACTION DESCRIBED.—Appropriate action under subsection (a)(1) includes—

(1) suspension of liquidation of the entry of any textile or apparel good exported or produced by the person that is the subject of a verification under subsection (a)(1) regarding compliance described in subsection (a)(2)(A), in a case in which the request for verification was based on a reasonable suspicion of unlawful activity related to such goods; and

(2) suspension of liquidation of the entry of a textile or apparel good for which a claim has been made that is the subject of a verification under subsection (a)(1) regarding a claim described in subsection (a)(2)(B).

(c) ACTION WHEN INFORMATION IS INSUFFICIENT.—If the Secretary of the Treasury determines that

the information obtained within 12 months after making a request for a verification under subsection (a)(1) is insufficient to make a determination under subsection (a)(2), the President may direct the Secretary to take appropriate action described in subsection (d) until such time as the Secretary receives information sufficient to make a determination under subsection (a)(2) or until such earlier date as the President may direct.

(d) APPROPRIATE ACTION DESCRIBED.—Appropriate action referred to in subsection (c) includes—

(1) publication of the name and address of the person that is the subject of the verification;

(2) denial of preferential tariff treatment under the Agreement to—

(A) any textile or apparel good exported or produced by the person that is the subject of a verification under subsection (a)(1) regarding compliance described in subsection (a)(2)(A); or

(B) a textile or apparel good for which a claim has been made that is the subject of a verification under subsection (a)(1) regarding a claim described in subsection (a)(2)(B); and

(3) denial of entry into the United States of—

(A) any textile or apparel good exported or produced by the person that is the subject of a

verification under subsection (a)(1) regarding compliance described in subsection (a)(2)(A); or

(B) a textile or apparel good for which a claim has been made that is the subject of a verification under subsection (a)(1) regarding a claim described in subsection (a)(2)(B).

SEC. 207. REGULATIONS.

(a) The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out—

(1) subsections (a) through (n) of section 203 and section 204;

(2) amendments to existing law made by the sections referred to in paragraph (1); and

(3) proclamations issued under section 203(o).

TITLE III—RELIEF FROM IMPORTS

SEC. 301. DEFINITIONS.

As used in this title:

(1) AUSTRALIAN ARTICLE.—The term "Australian article" means an article that qualifies as an originating good under section 203(b) of this Act.

(2) AUSTRALIAN TEXTILE OR APPAREL ARTICLE.—The term "Australian textile or apparel article" means an article—

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

(B) that is an Australian article.

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

Subtitle A—Relief From Imports Benefiting From the Agreement

SEC. 311. COMMENCING OF ACTION FOR RELIEF.

(a) FILING OF PETITION.—

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

(2) PROVISIONAL RELIEF.—An entity filing a petition under this subsection may request that provisional relief be provided as if the petition had been

filed under section 202(a) of the Trade Act of 1974 (19 U.S.C. 2252(a)).

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

(b) INVESTIGATION AND DETERMINATION.—Upon the filing of a petition under subsection (a), the Commission, unless subsection (d) applies, shall promptly initiate an investigation to determine whether, as a result of the reduction or elimination of a duty provided for under the Agreement, an Australian 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 Australian article constitute a substantial cause of serious injury or threat thereof to the domestic industry producing an article that is like, or directly competitive with, the imported article.

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

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

(2) Subsection (c).

(3) Subsection (d).

(4) Subsection (i).

(d) ARTICLES EXEMPT FROM INVESTIGATION.—No investigation may be initiated under this section with respect to any Australian article if, after the date on which the Agreement enters into force, import relief has been provided with respect to that Australian article under this subtitle.

SEC. 312. COMMISSION ACTION ON PETITION.

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

(b) APPLICABLE PROVISIONS.—For purposes of this subtitle, the provisions of paragraphs (1), (2), and (3) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d) (1), (2), and (3)) shall be applied with respect to determinations and findings made under this section as if such determinations and findings were made under section 202 of the Trade Act of 1974 (19 U.S.C. 2252).

(c) ADDITIONAL FINDING AND RECOMMENDATION IF DETERMINATION AFFIRMATIVE.—If the determination made by the Commission under subsection (a) with respect to imports of an article is affirmative, or if the President may consider a determination of the Commission to be an

affirmative determination as provided for under paragraph (1) of section 330(d) of the Tariff Act of 1930) (19 U.S.C. 1330(d)), the Commission shall find, and recommend to the President in the report required under subsection (d), the amount of import relief that is necessary to remedy or prevent the injury found by the Commission in the determination and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. The import relief recommended by the Commission under this subsection shall be limited to that described in section 313(c). Only those members of the Commission who voted in the affirmative under subsection (a) are eligible to vote on the proposed action to remedy or prevent the injury found by the Commission. Members of the Commission who did not vote in the affirmative may submit, in the report required under subsection (d), separate views regarding what action, if any, should be taken to remedy or prevent the injury.

(d) REPORT TO PRESIDENT.—Not later than the date that is 30 days after the date on which a determination is made under subsection (a) with respect to an investigation, the Commission shall submit to the President a report that includes—

(1) the determination made under subsection (a) and an explanation of the basis for the determination;

(2) if the determination under subsection (a) is affirmative, any findings and recommendations for import relief made under subsection (c) and an explanation of the basis for each recommendation; and

(3) any dissenting or separate views by members of the Commission regarding the determination and recommendation referred to in paragraphs (1) and (2).

(e) PUBLIC NOTICE.—Upon submitting a report to the President under subsection (d), the Commission shall promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

SEC. 313. PROVISION OF RELIEF.

(a) IN GENERAL.—Not later than the date that is 30 days after the date on which the President receives the report of the Commission in which the Commission's determination under section 312(a) is affirmative, or which contains a determination under section 312(a) that the President considers to be affirmative under paragraph (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C.

1330(d)(1)), the President, subject to subsection (b), shall provide relief from imports of the article that is the subject of such determination to the extent that the President determines necessary to remedy or prevent the injury found by the Commission and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition.

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

(c) NATURE OF RELIEF.—

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

(A) The suspension of any further reduction provided for under Annex 2–B of the Agreement in the duty imposed on such article.

(B) An increase in the rate of duty imposed on such article to a level that does not exceed the lesser of—

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

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

(C) In the case of a duty applied on a seasonal basis to such article, an increase in the rate of duty imposed on the article to a level that does not exceed the lesser of—

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

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

(2) PROGRESSIVE LIBERALIZATION.—If the period for which import relief is provided under this section is greater than 1 year, the President shall provide for the progressive liberalization (described in article 9.2.7 of the Agreement) of such relief at regular intervals during the period in which the relief is in effect.

(d) PERIOD OF RELIEF.—

(1) IN GENERAL.—Subject to paragraph (2), any import relief that the President provides under this section may not be in effect for more than 2 years.

(2) EXTENSION.—

(A) IN GENERAL.—Subject to subparagraph (C), the President, after receiving an affirmative determination from the Commission under subparagraph (B), may extend the effective period of any import relief provided under this section if the President determines that—

(i) the import relief continues to be necessary to remedy or prevent serious injury and to facilitate adjustment by the domestic industry to import competition; and

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

(B) ACTION BY COMMISSION.—(i) Upon a petition on behalf of the industry concerned that is filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date any action taken under subsection (a) is to terminate, the Commission shall conduct an in-

vestigation to determine whether action under this section continues to be necessary to remedy or prevent serious injury and whether there is evidence that the industry is making a positive adjustment to import competition.

(ii) The Commission shall publish notice of the commencement of any proceeding under this subparagraph in the Federal Register and shall, within a reasonable time thereafter, hold a public hearing at which the Commission shall afford interested parties and consumers an opportunity to be present, to present evidence, and to respond to the presentations of other parties and consumers, and otherwise to be heard.

(iii) The Commission shall transmit to the President a report on its investigation and determination under this subparagraph not later than 60 days before the action under subsection (a) is to terminate, unless the President specifies a different date.

(C) PERIOD OF IMPORT RELIEF.—Any import relief provided under this section, including any extensions thereof, may not, in the aggregate, be in effect for more than 4 years.

(e) RATE AFTER TERMINATION OF IMPORT RELIEF.—When import relief under this section is terminated with respect to an article—

(1) the rate of duty on that article after such termination and on or before December 31 of the year in which such termination occurs shall be the rate that, according to the Schedule of the United States to Annex 2–B of the Agreement for the staged elimination of the tariff, would have been in effect 1 year after the provision of relief under subsection (a); and

(2) the rate of duty for that article after December 31 of the year in which termination occurs shall be, at the discretion of the President, either—

(A) the applicable NTR (MFN) rate of duty for that article set out in the Schedule of the United States to Annex 2–B of the Agreement; or

(B) the rate of duty resulting from the elimination of the tariff in equal annual stages ending on the date set out in the Schedule of the United States to Annex 2–B of the Agreement for the elimination of the tariff.

(f) ARTICLES EXEMPT FROM RELIEF.—No import relief may be provided under this section on any article that—

(1) is subject to—

(A) import relief under subtitle B; or

(B) an assessment of additional duty under subsection (b), (c), or (d) of section 202; or

(2) has been subject to import relief under this subtitle after the date on which the Agreement enters into force.

SEC. 314. TERMINATION OF RELIEF AUTHORITY.

(a) GENERAL RULE.—Subject to subsection (b), no import relief may be provided under this subtitle after the date that is 10 years after the date on which the Agreement enters into force.

(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 2-B of the Agreement, is greater than 10 years, no relief under this subtitle may be provided for that article after the date on which such period ends.

(c) PRESIDENTIAL DETERMINATION.—Import relief may be provided under this subtitle in the case of an Australian article after the date on which such relief would,

but for this subsection, terminate under subsection (a) or (b), if the President determines that Australia has consented to such relief.

SEC. 315. COMPENSATION AUTHORITY.

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

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 United States-Australia 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) ALLEGATION OF CRITICAL CIRCUMSTANCES.—An interested party filing a request under this section may—

(1) allege that critical circumstances exist such that delay in the provision of relief would cause damage that would be difficult to repair; and

(2) based on such allegation, request that relief be provided on a provisional basis.

(c) 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(c), the President shall determine whether, as a result of the reduction or elimination of a duty under the Agreement, an Australian textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market

for that article, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article.

(2) SERIOUS DAMAGE.—In making a determination under paragraph (1), the President—

(A) shall examine the effect of increased imports on the domestic industry, as reflected in changes in such relevant economic factors as output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits, and investment, none of which is necessarily decisive; and

(B) shall not consider changes in technology or consumer preference as factors supporting a determination of serious damage or actual threat thereof.

(b) PROVISION OF RELIEF.—

(1) IN GENERAL.—If a determination under subsection (a) is affirmative, the President may provide relief from imports of the article that is the subject of such determination, as described in paragraph (2), to the extent that the President determines necessary to remedy or prevent the serious

damage and to facilitate adjustment by the domestic industry to import competition.

(2) NATURE OF RELIEF.—The relief that the President is authorized to provide under this subsection with respect to imports of an article is an increase in the rate of duty imposed on the article to a level that does not exceed the lesser of—

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

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

(c) CRITICAL CIRCUMSTANCES.—

(1) PRESIDENTIAL DETERMINATION.—When a request filed under section 321(a) contains an allegation of critical circumstances and a request for provisional relief under section 321(b), the President shall, not later than 60 days after the request is filed, determine, on the basis of available information, whether—

(A) there is clear evidence that—

(i) imports from Australia have increased as the result of the reduction or

elimination of a customs duty under the Agreement; and

(ii) such imports are causing serious damage, or actual threat thereof, to the domestic industry producing an article like or directly competitive with the imported article; and

(B) delay in taking action under this subtitle would cause damage to that industry that would be difficult to repair.

(2) EXTENT OF PROVISIONAL RELIEF.—If the determinations under subparagraphs (A) and (B) of paragraph (1) are affirmative, the President shall determine the extent of provisional relief that is necessary to remedy or prevent the serious damage. The nature of the provisional relief available shall be the relief described in subsection (b)(2). Within 30 days after making affirmative determinations under subparagraphs (A) and (B) of paragraph (1), the President, if the President considers provisional relief to be warranted, shall provide, for a period not to exceed 200 days, such provisional relief that the President considers necessary to remedy or prevent the serious damage.

(3) SUSPENSION OF LIQUIDATION.—If provisional relief is provided under paragraph (2), the President shall order the suspension of liquidation of all imported articles subject to the affirmative determinations under subparagraphs (A) and (B) of paragraph (1) that are entered, or withdrawn from warehouse for consumption, on or after the date of the determinations.

(4) TERMINATION OF PROVISIONAL RELIEF.—

(A) IN GENERAL.—Any provisional relief implemented under this subsection with respect to an imported article shall terminate on the day on which—

(i) the President makes a negative determination under subsection (a) regarding serious damage or actual threat thereof by imports of such article;

(ii) action described in subsection (b) takes effect with respect to such article;

(iii) a decision by the President not to take any action under subsection (b) with respect to such article becomes final; or

(iv) the President determines that, because of changed circumstances, such relief is no longer warranted.

(B) SUSPENSION OF LIQUIDATION.—Any suspension of liquidation ordered under paragraph (3) with respect to an imported article shall terminate on the day on which provisional relief is terminated under subparagraph (A) with respect to the article.

(C) RATES OF DUTY.—If an increase in, or the imposition of, a duty that is provided under subsection (b) on an imported article is different from a duty increase or imposition that was provided for such an article under this subsection, then the entry of any such article for which liquidation was suspended under paragraph (3) shall be liquidated at whichever of such rates of duty is lower.

(D) RATE OF DUTY IF PROVISIONAL RELIEF.—If provisional relief is provided under this subsection with respect to an imported article and neither a duty increase nor a duty imposition is provided under subsection (b) for such article, the entry of any such article for which liquidation was suspended under paragraph (3) shall be liquidated at the rate of duty that applied before the provisional relief was provided.

SEC. 323. PERIOD OF RELIEF.

(a) IN GENERAL.—Subject to subsection (b), the import relief that the President provides under subsections (b) and (c) of section 322 may not, in the aggregate, be in effect for more than 2 years.

(b) EXTENSION.—

(1) IN GENERAL.—Subject to paragraph (2), the President may extend the effective period of any import relief provided under this subtitle for a period of not more than 2 years, if the President determines that—

(A) the import relief continues to be necessary to remedy or prevent serious damage and to facilitate adjustment by the domestic industry to import competition; and

(B) there is evidence that the industry is making a positive adjustment to import competition.

(2) LIMITATION.—Any relief provided under this subtitle, including any extensions thereof, may not, in the aggregate, be in effect for more than 4 years.

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 (19 U.S.C. 2251 et seq.).

SEC. 325. RATE AFTER TERMINATION OF IMPORT RELIEF.

When import relief under this subtitle is terminated with respect to an article, the rate of duty on that article shall be the rate that would have been in effect, but for the provision of such relief, on the date the relief terminates.

SEC. 326. TERMINATION OF RELIEF AUTHORITY.

No import relief may be provided under this subtitle with respect to any article after the date that is 10 years after the date on which duties on the article are eliminated pursuant to the Agreement.

SEC. 327. COMPENSATION AUTHORITY.

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

SEC. 328. BUSINESS CONFIDENTIAL INFORMATION.

The President may not release information which is submitted in a proceeding under this subtitle and which the President considers to be confidential business information unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released, or such party subsequently consents to the release of the information. To the extent a party submits confidential business information to the President in a proceeding under this subtitle, the party also shall submit a nonconfidential version of the information, in which the confidential business information is summarized or, if necessary, deleted.

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

SEC. 331. FINDINGS AND ACTION ON GOODS FROM AUSTRALIA.

(a) EFFECT OF IMPORTS.—If, in any investigation initiated under chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.), the Commission makes an affirmative determination (or a determination which the President may treat as an affirmative determination under such chapter by reason of section 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

from Australia are a substantial cause of serious injury or threat thereof.

(b) PRESIDENTIAL DETERMINATION REGARDING AUSTRALIAN IMPORTS.—In determining the nature and extent of action to be taken under chapter 1 of title II of the Trade Act of 1974, the President shall determine whether imports from Australia are a substantial cause of the serious injury or threat thereof found by the Commission and, if such determination is in the negative, may exclude from such action imports from Australia.

TITLE IV—PROCUREMENT

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 (i);

(2) by striking the period at the end of clause (ii) and inserting "; or"; and

(3) by adding at the end the following new clause:

"(iii) a party to a free trade agreement that entered into force with respect to the United States after December 31, 2003, and before January 2, 2005, a product or service of that country or instrumentality which is covered under the free

trade agreement for procurement by the United States.".