EXECUTIVE COMMITTEE MEETING

THURSDAY, OCTOBER 14, 1993

U.S. Senate

Committee on Finance

Washington, DC

The meeting was convened, pursuant to notice, at 10:00 a.m., Hon. Daniel P. Moynihan (Chairman of the committee) presiding:

Also present: Senators Baucus, Bradley, Pryor, Riegle, Rockefeller, Daschle, Breaux, Packwood, Roth, Danforth, Grassley, and Hatch.

Also present: Lawrence O'Donnell, Jr., Staff Director; Edmund Mihalski, Chief of Staff, Minority.

Also present: Rufus Yerxa, Deputy U.S. Trade Representative; Ira Shapiro, Esq., General Counsel, U.S. Trade Representative; Stuart Seidel, Director, International Trade Compliance Division, Office of Regulations and Rulings, U.S. Customs Service.

Also present: Marcia Miller, Majority Chief International Trade Counsel; Eric Biel, Majority Trade Counsel, Debbie Lamb, Majority Trade Counsel; and Brad Figel, Minority International Trade Counsel.

The Chairman. Good morning. This is a regular meeting of the committee to consider a rather heavy agenda. Some items more routine, or more -- nothing here is routine, but some are more readily disposed of than others.

We are dealing with trade, of course, today. And I know that the very able and energetic chairman of our subcommittee on trade has been following the GATT negotiations. Is that what we say? Or proclamations. And I understand you'd like to make a statement about Mr. Balladur's most recent evocation of the glory that was France.

Senator Baucus. Thank you, Mr. Chairman. While we in the Congress here are focusing on NAFTA, this time, to some degree health care, Somalia, Bosnia, Haiti, I think it's important for us to keep attention on the Uruguay Round, the GATT negotiations.

It's regrettable that you read reports where Prime Minister Balladur is indicating that France wants to separate out agriculture provisions of Uruguay Round. As he calls it "Gatt Light."

And I say regrettable because France did agree to the Blair House Agreement on agriculture. There's an agreement reached in the United States, France and other major countries, with respect to agriculture. And Mr. Sutherland, Inspector General of the GATT, has made it very clear that

the deadline is December 15th.

Mr. Chairman, we've been working on this Uruguay Round for many years, as you well know, and many of us went up to Montreal for the mid-term. That was many years ago. I think it was it was 19 --

Senator Packwood. Quad.

Senator Baucus. Quad. Yeah. 1988 or something. It was some time ago. And it's just that we have to come to an agreement here. I think that the proposal is on the table. The Dunkel text, while not perfect by any stretch of the imagination, many of us in the United States have question or problems with the Dunkel Text, just as other countries have problems with the Dunkel Text.

Nevertheless, Arthur Dunkel, then Director General of the GATT, put on the table what he thought was a fair, middle position among all the countries involved, and the Blair House Agreement was reached as consequence of Mr. Dunkel's efforts. Plus, France already has agreed to the Blair House Agreement. The United States has agreed to the Blair House Agreement.

I think that -- I urge, frankly, Mr. Balladur, the people of the country of France and other members of the European community to try to find ways to agree to the Blair House Agreement because I frankly think if the French do not agree to the Blair House Agreement, that the prospects for a

successful conclusion to the GATT are very grim, very dim, and the consequences of various countries involved to meet the December 15th guideline would be a dramatic setback of the world trade efforts to produce various trading, and therefore, a consequent reduction of living standards around the world.

And I very much hope -- urge the French to take a second look and see if they can find ways to agree to the Blair House Agreement.

Mr. Chairman. Well, I thank you, Senator Baucus. I notice also that the French are asking that movies, moving pictures, be excluded, and that we just not, in effect, reach an agreement in December 15, but let's let it go by to be continued indefinitely.

It would be the first time in the post-war world that a multilateral agreement of this kind has failed, and it would -- I think it would mark -- I mean, the President asked us to give him -- to set the December 15 position, and a nearly unanimous committee did so. I'm sure Senator Packwood --

Senator Packwood. Well, I recall some of the things that Senator Baucus said. We were in Montreal at that quad meeting, and then we were on that trade trip with Chairman Bentsen at the time.

Then I can't remember if you were at Kanesee or not for that -- with the European industrialists. And Mr. Agnelli

of Fiat was there wanting an 80% domestic content provision and didn't even want to let the English -- I think the car was the bluebird in the continental Europe because it only had 65% British content.

And I came away from those meetings, frankly, very pessimistic about GATT, in addition to the problems about agriculture. And I sensed that Europe was going protectionist, and this was before the assumption of the obligations in East Germany and the break up of -- the total break up of the Soviet empire.

And I've made speeches for the last year that GATT would rise or fall on agriculture, and if there's not a satisfactory agriculture agreement, there will be no GATT, and that we will turn our attention to the western hemisphere, and that's why I think NAFTA is so important.

I expect within 10 to 15 years we will basically have a wester hemisphere free trade agreement. I think Chile will be soon coming in, and there is an economy that's a total market economy now. And that if it doesn't work out, we will become frustrated, and we will turn our attention to the western hemisphere.

And we'll say, "All right. If Europe wants to go their direction with their market and their agricultural policies, we'll turn our attentions to our natural neighbors to the south," and we will end up with a western hemisphere

agreement.

Mr. Chairman. Well, sir, if I could say, the language of the -- of the French Prime Minister is language we haven't heard in a very long while.

He -- I'm just reading from the Washington Post this morning. "Balladur urged French conservatives to close ranks with their leftist opponents, 'to defend together the interest of France and Europe, as we know it, a free and democratic community treated on an equal footing with other political and economic blocks.'"

Are we now another political and economic block after -- after half a century of NATO and all of the above? Well, we've said our piece, and I hope someone from the Mata, over at the press table, on the Onjas France. And there we are.

Good morning Senators. Would -- let me see. Mr. Pryor, welcome back, sir.

Senator Pryor. Thank you, Mr. Chairman.

Mr. Chairman. Would you like to come --

Senator Pryor. No, I have no comments.

Mr. Chairman. Senator Riegle.

Senator Riegle. Thank you, Mr. Chairman. I'll try to ask unanimous consent that a full text of the statement that I had be made part of the record.

Mr. Chairman. Without objection.

(The prepared statement of Senator Riegle appears in the appendix.)

Senator Riegle. I'll just touch on a few of the points. I had very much hoped that -- with respect to the NAFTA issue, that we would not come to the point where we are now, that we would have managed to decide that this was not a sound track to take with respect to a free trade agreement with Mexico.

I think the fundamental issue here is this enormous disparity in economic condition where you're trying to integrate a third world economy with a -- obviously a very advanced U.S. economy.

I think the most telling way to imagine the impact of this is to imagine enlarging the U.S. labor force by approximately 60 million Mexican workers because this is what this will do. Their minimum wage is about 58 cents an hour, but of course, many Mexican workers earn maybe 1/7 to 1/9 what workers here in the United States earn for comparable work.

You've seen typewriter factories close in your state and go to Mexico. I've seen a countless manufacturing plants in the automobile industry and related manufacturing activity close in Michigan and go to Mexico.

We also face the prospect, I think, that were this to be gratified, or to be approved, that we would have a

situation where we would in all likelihood face a evaluation of the peso afterward, which would completely knock even the pro forma numbers haywire.

If that happens, you'll find that what now shows up as a bounty surplus and trade would vanish, although much of the trade we send to Mexico is round trip trade. We send it down there, it's processed in part, and it's sent back to the United States.

I think an important way to think about that would be if you're sending a product say from Michigan to Mexico for processing, and then brought back to the United States, suppose we could send it from a location in Michigan either to another location in Michigan to get that processing done, or even for that matter, to Ohio or some other one of the 50 states. And then, keep it in the United States. That would keep the work here, the value added contribution here, and I think greatly help our economy.

The side agreements unfortunately do not solve these problems. I see very substantial potential here for strip mining the job base of America because of these. It's the fundamental economy hydraulics.

The implementing legislation, for example, does not deal with El Pacto, which is really a suppression of any kind of a free labor movement down there. It prevents Mexican wages from rising with productivity. You've not

seen that pattern in recent years, and of course, the differentials are so vast in any case that I see this as a terribly damaging proposition.

I would say the votes in the House of Representatives today are not there to pass it, which I think is an important measure of sort of public feeling and public opinion. I think there are fewer votes in the Senate for it today then there were six months ago, and it's hard to predict what a final vote outcome would look like in the Senate, assuming that we would come to vote on it.

But I just want to state as forcefully and as clearly as I can today my opposition to the package. I think it's important that it be turned aside. I think we can then embark on the kind of common market arrangement that Senator Hollings and others have suggested, which I think is a more orderly way to knit together some new and enhanced economic and trading relationships with Mexico.

But I think clearly this is one of the singular threats to our economy and our job base at this time when we're very much out of phase as it is.

Finally, just this. I know some have talked about economic security platform. Senator Bradley has talked about that, I've been in meetings together with Senator Baucus recently on that, and the President has mentioned it.

I think it's a wonderful concept, but I think we're a

million miles away from any practical way of putting in place a meaningful economic security platform for American workers. I think every time you knock an American worker out of a job, man or woman, in many cases supporting families, when there's no replacement work--we talk about training programs. We don't know what to re-train people for--I think you're creating a problem in this country that is ever more difficult to solve, and it's contributing to all of the other problems of the growth of the under class. I think of crime difficulties and break up of families because people can't find work.

So that maintaining our job base here in America, I think is -- in the private sector, is our single most important priority. This cuts directly against that, despite all the propaganda to the contrary.

I think it's very important, Mr. Chairman, that it be turned aside, and we start fresh. Thank you.

Mr. Chairman. Thank you, Senator.

May I just point out that we are not considering the NAFTA Agreement in terms of approving or disapproving.

Senator Riegle. I understand.

Mr. Chairman. We are simply going through the process of preparing a draft, which if when agreed to with the House, will be sent to us by the President. At that point, of course, we would have to record our approval or

disapproval.

Senator Grassley, good morning, sir.

Senator Grassley. I didn't have an opening statement, but we're going to have some discussion of the processes as we go into --

The Chairman. Oh, yes.

Senator Grassley. -- what will be called a mark up of NAFTA?

The Chairman. A walk through.

Senator Grassley. That's today?

The Chairman. That's today.

Senator Grassley. All right. I want to be involved in that process. Will that be the first thing that's going to --

The Chairman. No. We have three brief things that we have to deal with.

Senator Grassley. If -- if the -- okay. If it's not going to take very long, I want to be involved down the hall in some questions of the Assistant Attorney General for criminal matters. I want to be able to --

The Chairman. Here in that familiar situation. We'll come back to any subject you want to return to.

Senator Grassley. All right.

The Chairman. Senator Chafee?

Senator Chafee. Mr. Chairman, I listened carefully to

what Senator Riegle had to say. I know he's been deeply concerned about this for a long time.

I would point out, as he acknowledges in his comments, that when he says he has countless manufacturers in his state move to Mexico, that that takes place absent any free trade agreement. That's occurred. And if we do nothing, can continue to occur. So I don't think it's fair to blame people moving to Mexico on the proposed NAFTA or the NAFTA itself.

I also would like to say that I don't want to get the impression around that those of us who support NAFTA support the decrease of jobs in the United States. I believe very strongly that this means more jobs for the United States of America, and certainly in my state we look forward to the implementation of NAFTA with enthusiasm. We believe it's going to create more jobs in our various industries and likewise across the nation.

I know this isn't the time to get into an overall debate on NAFTA, but I just didn't want the idea -- the impression to go out that those of us who support NAFTA, i.e., are supporting decline of jobs in the United States. Thank you, Mr. Chairman.

The Chairman. Thank you, Senator Chafee.

Now to our agenda. The first item is to consider S.J. Res. 110, a resolution approving the extension of most

favored nation treatment, which I gather we're beginning to describe as non-discriminatory treatment. Mr. Figel, is that your idea?

Mr. Figel. No way, sir.

The Chairman. It's non-discriminatory? I think maybe the public has a right to know what we're doing, and it's -- most favored nations.

Senator Baucus. There's a leeway.

The Chairman. Non-discriminatory treatment to the products of Romania. This is a measure which we have -- would put into effect a trade agreement, which was negotiated in 1992. It has been held off owing some disagreements, some concerns about the internal affairs in Romania. They seemed to have progressed to the point that it's the judgment of the administration that we should proceed the House, I believe, unanimously, Ms. Miller?

Ms. Miller. By voice vote, I believe.

The Chairman. By voice vote. Yes. They adopted it. And I would propose that we do the same, --

Senator Packwood. Second.

The Chairman. -- and then -- it is seconded. When a quorum has been established, I'll ask to report it out. Senator?

Senator Chafee. Mr. Chairman, I'd just like to say that I think somebody should abolish the term "most favored

nation."

The Chairman. I think we made a little motion in that direction today. Non-discriminatory.

Senator Chafee. Oh, I missed that.

The Chairman. A very important exchange took place on this side of the aisle.

Senator Chafee. Well, I was trying to repair my chair, which has --

(Laughter)

Senator Chafee. -- thrown me backwards in a dangerous fashion. In any event, I'm for abolishing the -- let me join in whatever the motion is to get rid of "most favored nation."

The Chairman. Our agenda reads exactly to consider S.J. Res. 110, a resolution approving the extension of non-discriminatory treatment, then in parenthesis, "most favored nation treatment to products of Romania."

Shall we decide here and now that we will henceforth refer to is as non-discriminatory?

Senator Chafee. Excellent.

Senator Baucus. Absolutely, Mr. Chairman.

The Chairman. All in favor, say aye.

(Chorus of ayes.)

The Chairman. Well, we just changed the language of international economic policy.

Senator Grassley. I propose that the democrat majority get Senator Chafee a new chair, particularly since he's up for election. They ought to at least do it until after the election so that if he's injured, --

The Chairman. Motion be made. Is there a second?

Senator Baucus. I second.

The Chairman. All in favor, say aye.

Senator Chafee. Well, that's been taken care of, Mr. Chairman. I shifted the chair over to Mr. Danforth's slot.

(Laughter)

Senator Pryor. And he's retiring.

The Chairman. The committee will now vote to consider the authorization for the following agencies: The Customs Service, the Office of Special Trade Representative, and the International Trade Commission.

Ms. Miller, do you want to go through the --

Ms. Miller. Yes.

The Chairman. -- items. And let's see, Mr. Figel, do you want to join doing so, the two of you?

Mr. Figel. Yes.

The Chairman. As you -- you agree? You know what you're proposing to us.

Ms. Miller. Mr. Chairman, what I would propose is that I would like to ask Ms. Lamb to discuss the Customs Service budget, --

The Chairman. Fine.

Ms. Miller. -- and Mr. Biel to do the USTR and ITC budgets. I would point out that the members have before them three pages that describe the Chairman's proposals in these three areas, which were distributed to their legislative assistants yesterday. And I'd ask that Ms. Lamb describe the Customs Service -- the proposal for the Customs Service first.

The Chairman. Ms. Lamb, good morning and thank you.

Ms. Lamb. Good morning. Thank you, Mr. Chairman.

The Chairman. How did you manage all those papers?

Ms. Lamb. In several trips actually, Mr. Chairman. Thank you.

The Chairman's proposal for the fiscal year 1994 and 1995 authorizations for the Customs Service are found in the far right hand columns on the documents that you have before you. By law, the committee and the Congress are required to provide separate authorizations for non-commercial and commercial operations for salaries and expenses of the Customs Service.

The Chairman's mark would propose authorizations for FY 1994 for non-commercial operations of $540,783,000.00, and for commercial operations $771,036,000.00. These are the amounts that were requested by the administration.

For the Air and Marine Interdiction Program for fiscal

year 1994, the Chairman's mark would propose an authorization of $95,156,000.00. That is also the amount that was requested by the administration. The actual operating level for the Air and Marine Interdiction Program, however, is $132,156,000.00. That is because for fiscal year 1994 only, the administration has proposed to liquidate $37,000,000.00 in unobligated balances in that interdiction account and apply that amount toward operating expenses for the Interdiction Program in FY 1994.

For fiscal year 1995, the Chairman's mark extends the FY 1994 authorization level, making adjustments to maintain current operating levels, and to reflect the second round cuts in administrative costs and personnel reductions that President Clinton has ordered. The FY 1995 salaries and expenses proposal also assumes no pay increase in FY 1995.

The Chairman. Can I just go through this for the committee to -- not to burden anyone, but this -- we're talking about $1.3 billion of budget here. Not a small activity.

The administration has proposed that we reduce the level of the funds available for the -- both the non-commercial and the commercial activities of the Customs Service. Is that not right?

Ms. Lamb. That is the requested authorization.

The Chairman. And they do so how?

Ms. Lamb. It reflects the -- President Clinton's directive to cut administrative costs and also to reduce personnel in the Customs Service.

The Chairman. Right. But on the other hand, there is to be no significant reduction in the Air and Marine Interdiction?

Ms. Lamb. There is also -- the requested authorization level reflects the cuts in administrative costs for operation of that program as well.

The Chairman. Well, now wait. We're at 132 million this year, and we dropped to 128? That's not --

Ms. Lamb. That would be -- the fiscal year 1995 proposal would be a decrease from the fiscal year 1994 proposal.

The Chairman. Of no consequence?

Ms. Lamb. Of 3.14%.

The Chairman. Oh. I guess I'd like to ask the committee, do they -- are we satisfied spending $130 million a year flying airplanes back and forth across the Mojave Dessert to no consequence of any kind? I mean, this is theatrics. It's not government. It has no cuts.

I mean, the whole of our Drug Interdiction Program has zero effect on supply. I mean, the supply in this -- the amount brought into the country is reflective of the demand here, and -- I don't know. How did the Customs Service get

into this practice? Do they have any evidence it has any consequences?

Ms. Lamb. We have representatives of the Customs Service here this morning. If you would like, we could ask them to respond to the question?

The Chairman. Would the committee mind if we just took a moment? Yes, sir, would you come forward? Would you introduce yourself, sir?

Mr. Hamilton. Yes, Mr. Chairman. My name is Wayne Hamilton. I'm the budget officer for the Customs Service.

The Chairman. Good morning, Mr. Hamilton. You are in the Customs Service itself?

Mr. Hamilton: Yes, sir.

The Chairman. How do you explain 130 -- how -- you've spent about a billion dollars on this proposition so far. When did the Customs Service get itself an Air Force?

Mr. Hamilton: Well, the Customs Air Force has its origins in the early '70s I think, Mr. Chairman.

The Chairman. How big is it now?

Mr. Hamilton: We have seven P3 aircraft, four equipped with the AEW radar, three that are not so equipped. Then we have a number of other aircraft ranging in types from Blackhawk helicopters, which are on loan from DOD, other helicopters on loan from DOD and some twin engine aircraft. I don't have the numbers in front of me.

The Chairman. And drug interdiction is their mission?

Mr. Hamilton. Is their primary mission.

The Chairman. And what have they got to show for it?

Mr. Hamilton. I would have to furnish that for the record, Mr. Chairman. I don't -- I do not --

Mr. Chairman. I'll tell you what you have to show for it. You have nothing to show for it. I'm sorry. It's not your fault. It's just that it's inherently a flawed assignment, and you may divert some gothic in one point to another, but I mean, it was a political thing to do, and it goes on and on. And when you look up, a billion dollars has disappeared and the Blackhawk helicopters and AWACs and P3s, and there's no effort even to justify it.

Does the committee want to put this off until we've had a little more information?

Senator Chafee. Well, Mr. Chairman?

The Chairman. Yes.

Senator Chafee. It just seems to me we're getting into a very complicated subject here that as we try to mark up a budget, which I thought was kind of a preliminary to getting into some NAFTA activity, this is -- this is an entirely separate subject, how effective interdiction is to drug trafficking.

And I remember when the proposal -- you remember when the proposal was on the floor that DOD do it.

The Chairman. Yes. Well, they are now.

Senator Chafee. And Chairman Nunn conducted what I thought was one of the more amusing descriptions of attempting to do this with DOD facilities, and we rejected that overwhelmingly. That wasn't a business what the people enlisted in the Air Force or the Army for, and so we left it as it was at the time.

So this is a -- this isn't something that we can brush through. If the decision is to stop interdiction by aircraft, then we ought to have some long hearings and discuss it. I'm sorry. I jumped in front of our ranking member here who -- but I just wanted to express my strong views that we shouldn't just go charging ahead in cutting out this without some hearings on it.

The Chairman. I think that my proposal was that we ask Mr. Hamilton to get us some information about the results of this program, and we'd take it -- and we'd pick it up at our next meeting.

Senator Packwood. Refresh my memory, Mr. Chairman. You raised this issue a year ago, didn't you?

The Chairman. Yes, sir.

Senator Packwood. And I think the year before that, if I'm not mistaken?

The Chairman. Yes.

Senator Packwood. And I had hoped that you had

received satisfactory answers. You obviously haven't.

The Chairman. No. Well, the -- I worry about the military, as a matter of fact. They're getting more interesting all the time.

I have a letter here -- we all have a letter, I believe, from the Director of the Central Intelligence talking about how important his new budget is and how it mustn't be touched. And he talked about the new missions. One of the things it says here, "It is true that the cold war is over, but to take one example, the demise of the Soviet Union has had no effect on international narcotics cartels, which continue to pour poison into this country."

Senator Grassley. Who did you just quote?

The Chairman. I quoted Mr. James Woolsey. R. James Woolsey.

And, you know, we're entitled to a little more respect for our intelligence. If it is a cartel, its purposes is to restrict supply and raise price, which is what we would hope would happen.

Senator Rockefeller. It's a laudable procedure, Mr. Chairman.

The Chairman. I mean, there's a man who can speak with some friends in these matters.

(Laughter)

Senator Grassley. Mr. Chairman?

The Chairman. Sir.

Senator Grassley. Mr. Chairman, we're talking about the $128 million figure, --

The Chairman. Yes.

Senator Grassley. -- which for fiscal year '93 just ended with 132 million. From the standpoint, it's just simple budgeter and management. How do you curtail a department's activity from 132 down to 95?

The Chairman. They are shifting money forward they haven't spent, and it will be used up in this year, and they go right back to the same level next year.

Senator Grassley. Well, okay. That's an answer to my immediate question. Then a natural follow up question, if you haven't really shifted much, what is the changes in the operation between '93 and presumably in '95 with these figures you have here, even if you've shifted money? Is it pretty much constant from '93 to '95? Or is there a big down turn in '94, and then an up turn proposed for '95 in operation, with a difference of 33 million dollars?

The Chairman. Mr. Hamilton?

Mr. Hamilton. Senator, there's basically no change in the level of operation. The operating hours would be virtually the same.

Senator Grassley. All right. Well, then -- okay. Then -- so then we've had a bunch of budgetary gimmickry

between '93 to '94 to '95 of 33 million dollars? Is that basically what we're doing?

Mr. Hamilton. There's, in '94, 37 million dollars in unobligated balances which have accumulated over a period of five years are being used to support the operations.

Senator Grassley. All right. But momentarily, it leaves that balance, sort of a budget surplus, to benefit budget deficit figures positively that evidently aren't needed for '95.

One other question on the point you made, and maybe I ought to ask the Chairman. You know, the case you make against interdiction may be perfectly legitimate. I wouldn't question that. I don't have enough in front of me to make that determination. But recently, it was reported in the news, to the surprise of all of us I'm sure, that Castro did not give some sort of asylum or protection from people that were in international transportation of drugs.

Now, it seems to me that we would not have been able to run them down to Cuba, they wouldn't have been forced in Cuba and not get that protection if it hadn't been for some efforts of our interdiction.

The Chairman. Well, that's true. But we have -- I do not believe the Customs Service was involving the Coast Guard.

Senator Grassley. All right.

The Chairman. Can I ask the committee that we just put this off until we get from them a statement of what they're doing and why they think they ought to continue to do it?

Senator Grassley. Then based on the last comment the Chairman just made to me then, you're only concerned about the Customs expenditure on money and the interdiction?

The Chairman. Yes.

Senator Grassley. Not the Defense Department and not the Coast Guard?

The Chairman. I'm concerned about this little Air Force that grew up there.

Senator Grassley. All right. In other words, you want our government to pursue interdiction --

The Chairman. I'm in favor of interdiction.

Senator Grassley. -- in the other area?

The Chairman. Yes.

Senator Grassley. All right.

The Chairman. And we'll see what they have to say. Is that all right? Fine.

Could we go ahead then to the next and quite routine? Not routine at all, but I think we all agree. On the USTR, who will do that? Mr. Biel?

Mr. Biel. Mr. Chairman, the Chairman's mark proposes to increase USTR's funding in both fiscal year 1994 and fiscal year 1995 by $550,000.00 over the budget request. As

a result, the Chairman's proposals are $20,693,000.00 for fiscal year 1994 and $20,969,000.00 for fiscal year 1995.

The Chairman. May I say, those are very modest increases, and if you notice, it's a very modest budget. Any discussion?

Senator Grassley. Mr. Chairman?

The Chairman. Mr. Grassley?

Senator Grassley. I have a discussion, and it would also involve the same question to the Customs person budget person who was just there.

In the case of Customs, there's a reduction of 265 positions; in the case of USTR, a reduction of five positions; and in the case of ITC, 12 positions. My question is general to all of these, or common to all of these. Are these reductions part of the 252,000 positions that Vice President Gore anticipates a reduction of personnel in his Reinvent Government Program?

Ms. Lamb. Senator Grassley, I understand from our representative from the Customs Service, Mr. Hamilton, that those budget cuts, those personnel reductions, reflect only the first round of personnel cuts of 100,000. They do not reflect any additional cuts that are contemplated.

Senator Grassley. Well, if the 100,000, and I believe it is, is part of the 252,000 that's part of Vice President's Gore figure, then in a sense, it is part of the

252,000?

Ms. Lamb. It is described to me as the first round of the 252,000 cut. Yes.

Senator Grassley. All right.

The Chairman. I think you'd have to agree it's a modest beginning?

Senator Grassley. But you know it's how you eat 10,000 marshmallows. You eat one at a time.

The Chairman. Mr. Figel, if you have any --

Mr. Figel. No comments.

The Chairman. And then the Trade Commission. Who will --

Mr. Biel. Mr. Chairman, the Chairman's proposal -- the Chairman's proposal for fiscal year 1994 for the International Trade Commission if $45,416,000.00. That represents a reduction from the budget request of $472,000.00. For fiscal year 1995, the Chairman's proposal is $45,974,000.00. That represents a reduction of $1,067,000.00 from the budget request.

I should note at the same time that the figures in the Chairman's proposal both are consistent with figures submitted to you in a letter dated April 8th from ITC Chairman Newquist, which essentially was an amended budget request, although not a formal submission, and therefore, those figures comport with what was reflected in that April

8th letter.

The Chairman. We have the administration's request?

Mr. Biel. That's correct.

The Chairman. If there is no objection, I would move that we adopt the proposals for the Trade Commission and the USTR. And those in favor would say aye.

(Chorus of ayes.)

The Chairman. And I think -- I believe we have a quorum? Can we move to adopt the report on Senate Joint Resolution 110 on the Rumanian non-discriminatory treatment? I move. Is there a --

Senator Baucus. I second.

Senator Roth. Second.

The Chairman. And all in favor will say aye.

(Chorus of ayes.)

The Chairman. Thank you, gentlemen.

And now, we have one last -- the Trade Commission has requested a Section 332 study on environmental technology industries. You want us to -- Ms. Miller, would you want to explain that? Mr. Biel?

Ms. Miller. I'll ask Mr. Biel to.

Mr. Biel. Mr. Chairman, as has been standard procedure of the committee, under Section 332 of the Tariff Act of 1930, this committee along with the Ways and Means Committee and the U.S. Trade Representatives have the authority to

request these kind of fact finding investigations from the International Trade Commission.

This particular request concerns a study on environmental technology industries in the United States and their competitiveness. Senator Baucus was the catalyst behind this request, and so he may want to make a few comments concerning the specifics of the request.

The Chairman. Senator Baucus?

Senator Baucus. Thank you, Mr. Chairman. Last June, I guess it was, I was in Mexico, Mexico City, and in talking to a Mayor of Mexico City and many others in Mexico City, it was clear to me that there's a tremendous need for the development of environmental technologies to address, not only American, but Mexican air pollution, water pollution and second, it was clear to me that many countries provide assistance in many ways to their companies, environmental technology firms, that we do not provide for our companies.

I thought it made good sense in conjunction with NAFTA. Specifically, and also generally, for the studies to be conducted to determine the degree to which we in this country are helping assist the development of environmental technologies, compared with the efforts that other countries are making to better enable us in the future, to decide what course of action we should take in that whole area.

I talked to a -- the Mayor also told me -- he said

there are six or seven German companies there providing technological assistance. So there is one person in the EAP that is scheduled to fly down to Mexico City, and the State Department canceled that EAP technical person's trip to Mexico City to help Mexico City develop a water pollution program. It just seems we have to find out some better way to address this.

The Chairman. Well, I think that makes perfect sense. Is there further comment?

(No Response)

The Chairman. If not, I would propose we approve item three on the agenda. Those in favor, will say they're second.

Senator Packwood. Second.

The Chairman. Those in favor, will say aye.

(Chorus of ayes.)

The Chairman. None apposed. And now, -- and thank you very much each of you. Thank you, Mr. Hamilton. Thank you, Senator Baucus.

And now we go to the main business of the morning, which is the implementing legislation for the North American Free Trade Agreement.

Ms. Miller, you're going to stay with us. Don't leave us whatever you do.

Ms. Miller. I am, Mr. Chairman.

The Chairman. Thank you, Mr. Biel. Mr. Figel, you're going to stay with us?

Mr. Figel. Yes, sir.

Ms. Miller. The representatives from the USTR will join us for this discussion.

The Chairman. Good morning, gentlemen. We're very pleased to have you here.

Ambassador Yerxa. Good morning, Mr. Chairman.

The Chairman. I make the point that we -- what we're dealing with here, we are not dealing with a treaty. We are dealing with an executive agreement. It does not have the force of law, in and of itself, and is not a self executing agreement, that it was signed last December. Am I right? It's the -- was that right? It was December. Signed by President Bush, of course, and simultaneously in Mexico City and in Autowa.

If it happens to become effective, Congress must past the bill to implement the agreement, and what we are doing now is fashioning that bill, and we will then -- we will then later vote on the bill that we have fashioned on the merits. I don't think anyone's comments here today would need indicate any final judgment on how the legislation voted out.

There are two matters we don't -- I don't know that we would -- that we have yet. We need to know how we are going

to pay for this measure. I don't -- do we have the final proposals? And we also need to know about the trade adjustment provisions.

Ambassador Yerxa, do you have any report of that for us?

Ambassador Yerxa. Thank you, Mr. Chairman. We are prepared today to discuss with you what the administration would see as a reasonable proposal to offset the revenue loss costs. We are not going to make a formal proposal to you today because this, of course, is a preliminary walk through, and since this is part of a process of the committees working together with the administration to fashion appropriate implementing bill language, we do want to do this in a consultative process with you.

The Chairman. Fine. But when we get to these matters, you'll bring them up?

Ambassador Yerxa. Yes.

The Chairman. Shall we proceed then? And Ms. Miller, will you lead us through the document?

Ms. Miller. Yes, Mr. Chairman.

The Chairman. We all have it?

Ms. Miller. Yes.

The Chairman. A bet sheet, in effect?

Ms. Miller. Right. The members have before them a large description entitled, "North American Free Trade

Agreement Implementing Legislation," dated October 12th, "Staff Document D."

Essentially, the document is organized by chapters of the NAFTA, which are described down the left hand side, chapter by chapter. Each are numbered with the number of the chapter followed by the pages of the description.

We worked as much as possible with the Ways and Means Committee staff to prepare this document so that both committees will be working from the same descriptions, once you reach conference, and working from the same point essentially over the next --

The Chairman. Right. Could I ask if you'd bring your microphone a little closer?

Ms. Miller. Sorry, Mr. Chairman.

The Chairman. So we'll get our own schedule clear here just before we begin, the President has asked us to get this document to him by November 1, which is a fair, reasonable request. And that will mean we're going to go through and agree to it, or not. And next week -- is Tuesday the date we are --

Ms. Miller. Wednesday was the tentative day you planned?

The Chairman. Wednesday, next week?

Ms. Miller. Yes. The Ways and Means Committee is marking up on Tuesday, and --

The Chairman. Oh, fine. And then we will then go to a conference with the House and there, I think, go directly to the White House. Is that our plan?

Ms. Miller. Yes, Mr. Chairman. That is the plan. The hope.

The Chairman. For those in the audience, this is basically -- we're going through what is essentially an informal process. Is that not right, Senator Packwood? You have been Chairman and have handled this in the past?

Senator Packwood. That is the same thing we have done before when we've faced these agreements.

The Chairman. Yes. And so --

Senator Roth. Could I ask a question?

The Chairman. You can certainly do.

Senator Roth. You raised the question in your opening remarks about trade adjustment, and I wasn't clear from Mr. Yerxa whether or not the administration is going to have a specific proposal today, which I think is critically important.

Both in this administration and the last administration, there was talk about the need of trade adjustment being extended to help those workers who are impacted, and I'm seriously concerned that nothing specifically yet has come out of that.

I do know, Mr. Chairman, the finance staff, my staff,

and some others have been meeting, I think, with the administration, but I want to emphasize I think that that's critically important if anything is going to be done on this agreement. And how are we going to pay for that?

I've had a proposal of long standing that of which the distinguished Chairman has joined me. The administration hasn't taken it up, but I do want to emphasize the importance to which some of us attack this aspect of the agreement.

The Chairman. Very properly. Ambassador, would you like to --

Ambassador Yerxa. Certainly, Mr. Chairman. Senator Roth, --

The Chairman. Perhaps you too will bring that microphone --

Ambassador Yerxa. Yes.

The President and the administration have indicated very clearly that we want to include, as part of the NAFTA package, effective provisions to insure that any work or dislocation problems are addressed.

Now, Secretary Reisch and the Labor Department have been talking about the development of comprehensive worker adjustment program, which obviously would not be ready to be finalized or considered by the Congress in time for the NAFTA.

We are prepared to discuss with you today, and to work next week, towards the development of a program that we would -- we would ask be an interim program. That is, one which would cover the interim period between the entry and the force of the NAFTA, and the adoption of a full comprehensive program.

The fact of the matter is, we have worker dislocations occurring for a large number of reasons. Defense conversion, technology, other causes of job changes in our economy, restructuring, etcetera. And the administration does believe we ought to have a program that is much, much more streamlined and tailored to get both training and income assistance, regardless of the reasons people's jobs are changing in our economy.

The fact is that we believe that NAFTA will produce, in the totally of things, very, very small changes in this regard, but recognize that there has to be a program there as a part of the NAFTA package. We have a couple of different options that we can discuss with you as we go through this.

The two basic approaches that Secretary Reisch has talked about in his testimony before the Labor Committee this week was -- were either to do an interim earmarking of the existing EDWA money for NAFTA, or to do a NAFTA specific trade adjustment assistance component, and we're prepared to

work with you on that, Mr. Chairman.

The Chairman. I don't want to delay this another minute, but Senator Roth raised an important question, and if you are going to do it, you'd better do it soon. Obviously I mean that if you -- you have requested that this measure be to the President by November 1.

Ambassador Yerxa. I'm sorry. I wasn't quite clear enough in conveying the message that we would make this a part of the package that the President would submit, a part of the legislation that the President would submit. And what we want to do during the next two weeks is work with the committee in devising the most appropriate package.

The Chairman. Good.

Senator Riegle. Mr. Chairman, could I comment just on this one point before we move past it?

The Chairman. Yes.

Senator Riegle. I want to make two points about it. First of all, I want to agree with Bill Roth, and it's very fuzzy at this point as to both the scope, what the administration sees as the scope of the problem and how serious the program is to deal with it, what the form structure is, and importantly, how it is to be paid for.

Now, just for the point of reference here for the record, the Bush administration made a commitment on this issue on May 1st of 1991 regarding worker re-training, and

this is what they said at that time, "Any changes to U.S. law to implement such as program," this is in terms of worker re-training, "should be in place by the time the agreement enters into force and could appropriately be addressed in legislation implementing a NAFTA." That was a quote.

Then on September 18th of last year, the Bush administration proposed a $2 billion per year worker re-training program as a part of NAFTA. Just yesterday this administration proposed what I understand to be a $100 million a year supplemental appropriation to an existing program, with promises of a comprehensive program in the future, the definition of which I haven't been able to get, and I don't know whether in fact it exists or not.

But what it seems to me, we're on a phase here in terms of the original concept coming out of the administration that put this together, namely the Bush administration, where they acknowledged the need for a major worker re-training submission, they talked about a figure of two billion dollars a year, and now we're talking about something that is a scant fraction of that.

The other point is this, Mr. Chairman. I won't belabor this now, except it's a key issue, and we've got to get these cards out on the table so we're not fooling ourselves as to what's most likely to happen here.

Recently in Michigan I visited a plant that was closing in Wall Lake, Michigan, a town. Principally a work location of women workers earning $6.25 an hour making radiator hoses. They had two weeks to go before the plant was to close. It has since closed and moved to Mexico. Most of those women are single heads of household struggling to sort of get by, obviously not with a great income at $6.25 an hour. But most of them are now unemployed.

My question to you, and I think we've got to have a specific answer to this, are people like that who have been directly displaced by the movement of their job to Mexico going to get direct and specific job help? And not just in a euphemism phrase like "job re-training", but I mean for something that in fact that they will move into, because those women are out there right now.

This is pre-NAFTA. I think we'll have more of that to deal with post-NAFTA, should it pass. I hope it doesn't. But the question is, what's the specific program that sort of comes in underneath workers like that that have taken it right between the eyes?

Ambassador Yerxa. Could I --

The Chairman. Yes, please.

Ambassador Yerxa. -- Mr. Chairman? First to address the point you raised, Senator Riegle, about what was indicated by the Bush administration in that September 28th

document. I think it's very important so that everyone is clear on exactly what was being described in that proposal.

That was not a proposal of a specific incremental increase for NAFTA. That $2 billion figure was a comprehensive figure for all worker adjustment programs, which the Bush administration at that time indicated would be adequate to cover NAFTA.

Now, I will have to get you some figures on what is precisely the amount of money in the pipeline for -- or in the budget now for EDWA or TAA, for other programs that are ongoing programs. But in essence, that figure was really a kind of obfuscation of what incremental amount would be necessary for NAFTA. What this administration --

The Chairman. It was an obfuscation, sir?

Ambassador Yerxa. Well, it -- let's put it this way, Mr. Chairman, it didn't --

The Chairman. Let's not put it that way.

Ambassador Yerxa. I'm sorry, Mr. Chairman. Let me use a better term.

The Chairman. Yes. Think of a better one than obfuscation.

Ambassador Yerxa. It did not --

The Chairman. Hold it right there. Just in the interest of equal time, our former Chairman ranking member is very much concerned with this question, too.

Senator Roth. Well, and on the opposite side. Ambassador Yerxa, of course, has been on the Ways and Means -- or worked with the Ways and Means for years, and he knows both sides of these issues.

The Chairman. He knows something about obfuscation, too obviously.

(Laughter)

Senator Roth. Well, if he's been on the Ways and Means, Mr. Chairman.

I've never been an enthusiastic supporter of trade adjustment assistance, and I've seen the reports that have come out over the last few months, that by and large, working re-training has not worked very well. This is not to say that maybe it can't be made to work very well, but we have spent lots of money on it in the past to relatively unsatisfactory ends, and I don't blame anybody for that.

But the worker re-training that seems to work the best is that that is done by community colleges in local areas in conjunction with the business who wants the workers, so that the business will often provide the teacher, and they will train people for jobs that are available.

But I hope the administration, just for the sake of politics, does not throw an immense worker re-training program into this with no greater hope of success then the lack of success we have had with the programs over the past

years.

Senator Rockefeller. Mr. Chairman?

The Chairman. Yes, sir. Senator Rockefeller.

Senator Rockefeller. One, I find that an extraordinary statement that the Senator from Oregon has just made, and I associate myself very much with what Senator Riegle said.

Of course we've not done a good job on training of displaced workers, imports or for exports, or for any other reason. That's been a major failing in our society for the last half century. We have an administration now, which for the first time hopefully, with no guarantee, is going to try and do it better.

But I think that the concept of a government program in which I think most people would agree that -- they may say they're will be a net plus or a net minus of jobs. Most people say a net plus, but some would disagree. As to NAFTA in general, where you have a specific government program which is guaranteed to put some people out of work, and that it will, and that it will do, you know, that's one reason that Senator Roth made not to vote for this thing.

Is the concept of not taking on worker training, worker re-training, in the sense that the Canadians have done in it in a quick hit approach, yes, a lot of what we have done has been a failure. But I think, you know, a lot of what we've done in health care has been a failure, and John Chafee, and

Dave Durenberger, and Tom Daschle and a lot of folks and myself are trying to get that reformed. Because it hasn't worked, it doesn't mean that it can't work.

We have a national crisis of people who are graduating from school ill trained, unready for work, changing their jobs, we're told, five to eight times during their life time, something which our generation is not accustomed to even thinking about. And the thought of not taking that on seriously, in something like NAFTA, is to me very bizarre.

I strongly support what Senator Riegle has said.

The Chairman. I wonder if I could just close out this discussion by saying that there's no more difficult thing for a person who cares about a subject, as I know Senator Packwood does, to acknowledge that what we've -- what you've been trying to do hasn't necessarily been working. If you don't care about the outcome, you won't bother to make a statement, and we all face those problems.

Senator Bradley. Mr. Chairman, if I could?

The Chairman. Senator Bradley.

Senator Bradley. And I take the points that have been made. And I think that to a certain extent all of them have some value, in that some of the training programs of the past haven't been as effective as they otherwise could have been.

The Chairman. They haven't.

Senator Bradley. But the training programs in the past were kind of a sliver of a delivering on the deal with labor. For open trade, you get trade adjustment assistance. It was never adequate.

The Chairman. A fair point.

Senator Bradley. But really, the issue isn't just trade now. The issue is defense down sizing, the knowledge revolution, a variety of other things that are causing people to need more skills if they're going to get a job.

So the idea of displaced workers, I think should be replaced with the concept of lifetime education, and that you have to facilitate the ability for people to get lifetime education opportunities. I've long shadowed comments about this, but I just want to make that observation at this point.

The Chairman. A fair point. Well, once again, Ms. Miller.

Ms. Miller. Mr. Chairman, if the committee will turn to the first full page describing the descriptive page of the spreadsheet, which is page 1-1. Let me explain what exactly this document contains.

The first column is a description of the provisions of the NAFTA itself, the second column is a description of current U.S. law or practice, and the italicized language in the second column refers to whatever provision was included

in the implementing legislation for the U.S./Canada Free Trade Agreement, referred to here as the CFTA Act. It is the italicized language.

The third column essentially represents the necessary changes in law to implement the NAFTA. Over the last six or seven months, or longer, we have worked -- the committee staff has worked with the administration and the Ways and Means committee staff to identify the required changes in law to make NAFTA law. As you said in the beginning, it is not a self executing agreement. Its terms have effect as spelled out in the legislation that you are about to develop.

Senator Packwood. Could I ask a question here, Mr. Chairman?

The Chairman. Sure.

Senator Packwood. Ms. Miller, are we assuming that the side agreements are part of the NAFTA Agreement and subject to the same time procedure as the new amendments on the floor?

Ms. Miller. The implementing proposal here does not speak to the supplemental agreements. Essentially, they are not required to be approved in approving the NAFTA.

Senator Packwood. No, I know that. How is the administration going to regard them as we approach this?

Ms. Miller. I think the question is whether the

administration believes any implementing legislation is necessary, or whether the Congress affirmatively wants to approve them, at least on the first point of --

The Chairman. I think Senator Packwood has asked a very important question, and I don't want to delay you again, Ms. Miller. But Embassador Yerxa, what is your general -- how do you respond to Senator Packwood?

Ambassador Yerxa. Yes. Certainly.

The Chairman. The point being, we do not have before us the environmental and labor accord. Is that you're understanding?

Senator Packwood. Well, if they're done, I am curious if we are going to consider them as part of the NAFTA Agreement.

The Chairman. They are not in this document.

Senator Packwood. That's correct. But I'm curious -- but they're not in this document yet.

The Chairman. Yes.

Senator Packwood. When the administration finally submits it to us, are they going to be part of the document and will be considered on the same -- in the same procedure as in time frames and especially no amendments, as is the agreement itself?

Ambassador Yerxa. Senator, the first point I want to make is that the side agreements themselves are not trade

agreements negotiated under the fast track procedures. They are executive agreements to environment and labor matters, however, they are considered by the administration to be essential components of an overall package, which the administration is proposing the Congress adopt.

The implementing legislation for the NAFTA itself, that is the fast track trade agreement, the rules under which fast track bills are considered, specifically states that legislation necessary and appropriate to implement a trade agreement can be considered under the fast track rules.

The administration is not proposing specific changes in U.S. labor and environmental laws in order to implement these executive agreements on labor and environment. If the Congress feels that there are some necessary provisions to implement the side agreements, that can be done as part of the fast track package because it would be appropriate to implementing the trade agreement.

There is also one other point that I should make, and that is there are other ways the Congress and the administration could work out a vital connection between these three agreements. Or I should say these four agreements. And that is to look at the terms and conditions for entry into force of the NAFTA.

And there is a provision in the implementing bill governing entry into force, to require that certain

conditions be met before the agreement enter into force among the parties, including if appropriate, entry into force of the side agreements as a pre-condition.

So there are ways to create that linkage, and we would certainly support that.

The Chairman. Ambassador, we're going to have to explore this. Senator Packwood has raised roughly a central issue. Senator Riegle, do you want to --

Senator Riegle. Thank you, Mr. Chairman.

On this very point, I think it will come as a surprise to many that the implementing legislation will not include the side agreements, and it sounds to me as if it gets very dicey here as to whether or not then the fast track procedures can be extended over to the side agreements when they're not actually part of the package.

I would suggest, for example, that one of the questions this poses is that we may in fact want to consider amending the side agreements because the side agreements are in fact not part of the package. And I would submit, at least on the face of it, they may obviously want to take the other side, that it comes under the fast track umbrella, that they're specifically not putting it in the package, and I would think that that makes it then, in fact, fair game for amendment, and that's something I'd want to think about.

But I also want to know in this section where it talks

about any letters integral to the agreement exchanged between the United States, Canada and Mexico, that's the quote, I'm wondering what letters, if any, exist that are integral to NAFTA, and do we -- are those public? Do we have all those?

Ms. Miller. Senator Riegle, a set of the side letters was given to each of the trade legislative assistants yesterday. I don't --

Senator Riegle. That's complete? There are no other letters?

Ms. Miller. That I will let the administration speak to. To the best of our knowledge, it is a complete set.

Senator Riegle. Let's get the administration --

The Chairman. Ambassador? Take your time. Don't -- for what's it's worth, I had highlighted that, "any letters integral to the agreement."

Ambassador Yerxa. The one thing that occurs to me is what is the --

Senator Bradley. They're -- they're --

The Chairman. Excuse me, Senator Bradley.

Senator Riegle. Can we get the answer first before we move ahead?

Ambassador Yerxa. We have provided to the committee the side letters that have been concluded. They relate to some technical issues that had to be cleared up between the

parties. I can't remember the formal terms.

Subsequent to the signing of the agreement, there were some technical problems with the language that had to be remedied through sides letters, and that's been submitted to the committees.

Senator Riegle. If I could just finish then. So we got those yesterday? Am I correct on that, Ms. Miller?

Ms. Miller. Yes, they were distributed to --

Senator Riegle. And the administration's testimony is that each and every letter has now been conveyed? There are no remaining outstanding letters on large or small matters that have not, to this point, been given to each of us?

Ambassador Yerxa. At the present time, there are no further exchanges of letters that have been consummated.

Senator Riegle. Are some in process?

Ambassador Yerxa. There are no -- there have been no letters sent by us to the other -- to countries at this point. There have been some informal discussions about further clarification.

Senator Bradley. Do any letters reveal communist tendencies?

The Chairman. Ambassador, we have a vote on, and it's on the Bumper's Amendment to the defense appropriations. I wonder while we -- I wonder if we could ask you to get this letter matter a little -- get it straight about which have

been consummated, which have not been. Why don't you get us a set of these letters and have it on the desk when we return?

Ambassador Yerxa. We certainly will.

The Chairman. We can work these out. You say they're technical matters. That's not unusual.

Ambassador Yerxa. They relate to issues like the definition of the Marionos Islands, and that sort of thing.

The Chairman. Good. All right. We'll have them when we get back. But then we also -- perhaps you could consult with your colleagues about this question that Senator Packwood has raised, that we have made a lot of effort on the environmental and labor accord, and now we find that they aren't part of the legislation. Think about it.

Ambassador Yerxa. We certainly well.

The Chairman. We stand in recess. Will members come back as promptly as they can.

(Whereupon, the hearing was recessed at 11:10 a.m.)

(Continued on page 76)

(Continued from page 75)

[Whereupon, at 11:40 a.m, the meeting was reconvened after recess.]

The Chairman. We will ask our guests to tend to the proceedings of the committee.

Now, Senator Packwood is necessarily delayed. So we will proceed. And we had reached a point of some complexity. And we need some clarity with regard to the status of what we call the supplemental agreements.

First of all, we have the letters. Each Senator has at his place the letters.

And as Ambassador Yerxa said, there are quite technical references in the NAFTA to a State of the United States shall be deemed to refer also to the District of Columbia and the Commonwealth of Puerto Rico.

Now, the issue before us, and Senator Danforth, Senator Roth, Senator Riegle raised this is, what is the status of what we will call the supplemental agreements?

By the supplemental agreements, I refer to the agreement on labor matters and on environmental matters, specifically requested and negotiated by the present Administration. The agreement before us

was, as I noted earlier, negotiated by previous Administrations, and signed in December.

Subsequently, the two agreements, one on labor and one on environmental matters, were negotiated. And we have the text.

Now, I want to ask our learned counsel -- perhaps, first our distinguished Ambassador Deputy Trade Representative, would you like to address that matter, sir?

Mr. Yerxa. Yes, I would, Mr. Chairman.

The supplemental agreements on environment and labor are executive agreements between the three governments. As such, they constitute international obligations of all three countries, that is, obligations to one another.

They are binding in the sense that the governments have committed to one another to carry out the terms of those agreements.

They do not in and of themselves change U.S. law or have force of law in the United States. That is for a very important reason.

When we negotiated these supplemental agreements, we indicated that we would not compromise U.S. sovereignty by changing U.S. law. And any changes --

The Chairman. Changing U.S. law by virtue of the executive agreement?

Mr. Yerxa. That is correct. That is correct.

And that the obligations that are being undertaken in this agreement, the U.S. is capable of carrying out without changing its laws.

We were not going to enter into commitments under these agreements to change our environment or labor laws, to change the way we enforce and administer those laws. And we in fact did not ever turn with such obligations.

It is therefore our view that in order to give effect in U.S. law to any of the obligations we have undertaken under these agreements, we do not need to change U.S. labor and environment statutes.

There may, however, be certain steps which are necessary to give full effect to these agreements. For example, the agreements set up commissions on labor and the environment.

It would be necessary to authorize appropriate money for the establishment of those commissions.

It is our opinion, and I think this would be supported by the -- well, it is supported by the conversations we have had with the parliamentarians in the House and the Senate, that the fast-track

implementing bill for implementation of NAFTA can include any of those necessary legislative provisions to give effect to these agreements.

The Chairman. By which you mean authorizing the establishment of an international commission?

Mr. Yerxa. Yes, exactly.

The Chairman. Now, are there going to be any substantive provisions?

Mr. Yerxa. That is correct.

The Chairman. Is it your view that all the matters dealt with are already in statutory law?

Mr. Yerxa. That is our view. Yes.

The Chairman. If you don't mind, Ambassador Yerxa, I'd like to ask our counsel --

Mr. Yerxa. Mr. Chairman, can I just make one further point?

The Chairman. Please.

Mr. Yerxa. I am sorry to belabor this, but I mentioned earlier that the Congress may want to consideration and certainly the Administration would give serious consideration to this if it is a mutually agreeable position to in determining whether the conditions for entry into force of NAFTA have been met, there are some linkage to the side agreements being in effect and implemented by all

three parties.

In other words, do you want a situation where one of these countries is not applying the side agreements, but nevertheless, NAFTA enters into force?

If we do not, we can deal with that through the statutory provision on entry into force the agreement, which is there is currently language in the draft bill. It would mean amending that language to require that linkage.

The Chairman. Now, Ambassador, I have to ask you, does the Administration want this? Or does it not want this?

Mr. Yerxa. Mr. Chairman, we believe that it would be a mistake to have the NAFTA enter into force among the three countries without them also adhering to the side agreements.

There are a variety of ways that can be done. It can be done by the President under his authority to determine that the conditions have been met.

But if that is not made explicit in the statute, that might be ambiguous. Therefore, we would welcome that kind of an arrangement, but not if the Congress feels it is inappropriate.

Senator Bradley. Mr. Chairman.

The Chairman. Senator Bradley.

Senator Bradley. Let me ask Ambassador Yerxa or counsel to correct me if I am not right here because I think this is a fine point here, that this is in part related to what is acceptable under fast track.

If all of the side agreements were placed in the treaty--and I think this is maybe Senator Riegle's interest--a point of order would lie against the treaty. That is what Senator Riegle would contend.

By not putting the side agreements in the text or in the treaty that is going to be ratified by the Senate, no point of order would lie.

And you get a commitment on abiding by the obligations of the treaty, by conditions or entry into force of the treaty itself.

That is where I think the --

The Chairman. I think we have established that we are not dealing with a treaty.

Senator Bradley. I am sorry. Agreement.

The Chairman. Well, can we ask our learned counsel?

Ms. Miller. Yes, Mr. Chairman and Senator Bradley.

Essentially what the provisions of the fast track say to quote, Is that provisions necessary or appropriate or appropriate to implement the NAFTA, such trade agreement may be part of this bill.

It is a determination of the Congress and the Senate in the case of the Senate floor action as to what is necessary or appropriate to implement the NAFTA.

If you and then the Senate make the determination that it is appropriate to include certain provisions that relate to the supplemental agreements on labor and environment, it would seem that is essentially a determination that the Senate would make.

The Chairman. Fine. Could I ask Mr. Figel?

Mr. Figel. I agree entirely.

The Chairman. Counsel are in accord. Very well then, the matter is up to the committee. And we can discuss it now as an issue. Or we can say that is something that we --

Senator Bradley. Could I ask a further question of the counsel?

The Chairman. You surely can.

Senator Bradley. Is it your opinion that if the side agreements were considered necessary and

appropriate and therefore added to the agreement, the point of order would lie against the agreement?

Ms. Miller. It is my personal opinion that it would not because if you choose, if the Congress chooses to implement those, that is essentially a decision that they are to the Congress important to the implementation of the NAFTA itself.

They were negotiated by the President because he felt that, from his statements, they were important to going forward with the NAFTA. And I think the history of why they were negotiated supports that.

The Chairman. Could I just ask? That is your professional opinion, not personal opinion?

Ms. Miller. Correct, Mr. Chairman.

The Chairman. Mr. Figel.

Mr. Figel. No other comments.

Senator Riegle. Mr. Chairman, might I ask on this point? If -- let us say the Congress now is we are going through in a sense writing this implementing legislation. I mean, this is an exercise in legislative craftsmanship in doing this.

If the theory is we are going to bring the side agreements actually into the package, not have them out to the side, but bring them in so the load is

taken, it will cover expressly the environmental and labor side agreements.

Are we not then also just as we have a certain latitude to adjust certain of these items in here, that in fact we are going to produce a draft which goes back to the Administration in which they send to us?

I would assume then that would also mean that if we felt it was necessary to adjust the side agreements that we could undertake to do that as well.

Ms. Miller. Senator Riegle, the only thing that the committee is addressing is the implementing legislation.

So amendments --

Senator Riegle. Let me stop you there. Yes. Let me just stop you there. I understand that, but you just gave an explanation that I heard saying that the side agreements are a necessary part of the implementation. In other words, the implementation of this whole thing.

Senator Packwood. I think what you said is if we thought they were, that she would regard them as appropriate.

Senator Riegle. Well, so let me -- fine.

Ms. Miller. Correct, Senator Packwood.

Senator Riegle. But let me purse that then. So my point is this, if we should make that decision and decide to bring the side agreements into the agreement itself so that when we vote on the floor, we are voting on the agreement plus the side agreements, we would not have the same latitude to make adjustments that we think we are necessary in the side agreements, as we now presently have to make in other parts of this?

In other words, we are here now as part of a legislative exercise to go through a certain amount of refinement, to then send a package back to the President, which he then resubmits.

And I am saying I do not think you can have it both ways. Or they cannot have it both ways. They cannot say that the side agreements are off to the side, are not under the umbrella of NAFTA because if they are, then, I would think we have the right to sort of deal with those perhaps even by amendments to them.

It they want to bring it in and put it under the umbrella of NAFTA, then, it seems to me we also then have a different right, the right of this committee and the Ways and Means Committee to see

what adjustments may be needed in the side agreements, not that they would be to the liking of the Administration or anybody else, but to our liking, that that is part of our role.

Now, is that -- what is wrong with that?

Ms. Miller. Well, Senator Riegle, I guess the distinction I am making is between the provisions of the implementing bill and the provisions of the agreements.

Through this implementing bill, except to the extent the implementing bill itself would include such provisions, you cannot change the provisions of the NAFTA.

The same point would rest, I think, with respect to the provisions of the supplemental agreements.

You are writing how these agreements are to be implemented under U.S. law. You are not making changes to the agreements themselves.

The Chairman. If I may say, I think that is fairly elemental or primal I should say in the relations of the legislative branch and the executive branch.

And the President has negotiated. We cannot change what he has negotiated. We do not have to

accept it.

Sir.

Mr. Figel. Correct.

The Chairman. Well, we are going to have to think about whether we want to proceed along these lines.

I do not think we should decide now. We are going to have -- we are not going to do this until everybody is ready. We have a timetable, but not to ram anything through.

I talked with Senator Danforth. And in his plain way said: we want to do this the water torture way or can we think of any other walk-through that might be more pleasant?

[Laughter]

The Chairman. And I suggested that Senator Packwood and I would -- I suggested for you, sir, as you were necessarily detained for the moment. We will be here to 1:00 o'clock, one or the other of us to here any Senator can ask any question after Ms. Miller has given us a good 15-minute, brisk walk-through.

[Laughter]

The Chairman. And then, perhaps we can address matters to the counsel to see if there are issues

that need to be clarified and can be clarified. And then, we will bring up issues that -- we ought to make a list of issues that will be up before us next Wednesday.

Sir.

Senator Riegle. Mr. Chairman, if you would permit me just to follow up, not on the point we just discussed, but the one we discussed just before the vote.

We have been given now these letters.

The Chairman. Yes.

Senator Riegle. And I take it these make it part of the public record. They were given to us yesterday.

The Chairman. They are hereby made part of the public record.

Senator Riegle. I think that is constructive.

May I, the question I posed before we were interrupted?

What other letters are there in process now? I would like to know how many there are and what subjects they address that are in draft form going back and forth. I would like to get that answer now, if I may.

The Chairman. Ambassador Yerxa.

Mr. Yerxa. Senator Riegle and Mr. Chairman, the first thing I would say is you can be assured that any letters, interpretive letters or other letters, an exchange between the parties relevant to this agreement would be submitted to the committees prior to any decisions being taken and prior to the submission of legislation by the President.

Secondly, I am not at liberty to discuss in public session what conversations might be taking place between the governments. I would be glad to do that in --

The Chairman. Between the governments?

Mr. Yerxa. Yes.

The Chairman. Yes.

Mr. Yerxa. I would be glad to do that in executive session with you, but not in public.

The Chairman. Fine. If any Senator wishes such a session, we will have one.

Senator Riegle. Well, Mr. Chairman, here is the problem I see with that. In other words, we are on this very tight timeframe. I mean, this fuse has been lit. And we are being asked now to be able to act on this in a matter of days.

And I think it is necessary and appropriate. If there are topics up in the air for discussion,

whether it is sugar, citrus, whatever it might be, I think we need an honest statement of the fact that there are one, two, three, four issues in play, under discussion with letters and drafts going back and forth.

And stop the mystery game here. I mean, I do not think it is fair for us to try to deal with something of this consequence when you have issues in play where you will not even tell us forthrightly what the issues are.

I think we have a right to --

The Chairman. Perfectly fair.

Senator Baucus. Mr. Chairman, if I might say, he is willing to forthrightly tell of all us what they all are in executive session.

Senator Riegle. No. What I am saying --

Senator Baucus. Well, I could certainly -- let me finish. I do not think the United States wants to publicize its bargaining position in advance of the agreement.

Senator Riegle. I did not ask for that. I asked what issues are now the subject of an exchange of letters.

The Chairman. Senator Packwood and I have just had a conversation. The committee will meet in

executive session at 1:00 o'clock to hear Ambassador Yerxa for any person who has any questions.

Now, Ms. Miller, will you go through that?

Ms. Miller. Yes, Mr. Chairman.

If I could begin back where I was a little bit ago to explain what is in the implementing proposal currently. As I said, we have developed this jointly with the Ways and Means Committee staff.

And the Administration required changes in law to implement the NAFTA.

In brackets, you will occasionally see issues to be addressed. We have often used the model of the CFTA Act, the implementing bill for the Canada agreement, because of its history for the implementing provisions of the NAFTA.

Occasionally, where we knew there was some degree of controversy about them, we have left them in brackets to be addressed.

The third column also notes where another committee has jurisdiction over the relevant implementing legislation.

The good news is that essentially from chapter 9 through chapter 18, there is either no legislation required to implement the chapter or it is in the jurisdiction of another committee.

And therefore, at least for the purpose of this walk-through, I would not intend to discuss them. If members have questions, they can address them to the Administration about the NAFTA itself.

Where does a comment about existing U.S. law applies?

Senator Packwood. There is the bad news.

Ms. Miller. Well, there are still about 10 chapters left.

Senator Packwood. All right.

Ms. Miller. Whether comments about existing law applies, there is no implementing legislation required in those instances either.

And what I would do just very briefly is to highlight perhaps some of the most important areas.

The Chairman. Please.

Ms. Miller. I think the first provision that I would bring to the attention of the committee is at the bottom of page 1-2. It is the extent of the obligations.

The NAFTA, of course, requires that the parties take such measures as necessary to give effect to the provisions of the NAFTA.

It is not self executing, as we have discussed this morning. Essentially, the point here is using

the Canada Free Trade Agreement model again.

The implementing bill would state that the agreement itself has no effect. It only has the effect given by this bill.

The following page identifies, on page 1-3, the relationship to State law. Again, following the model of the Canada Free Trade Agreement, the proposal would be that the provisions of the NAFTA itself would prevail over conflicting State law.

However, only the United States Government may bring a challenge to State law in order to bring it into conformity.

There is no private right of action proposed either to implement the agreement with respect to State law or Federal law.

One issue that we have noted that remains to be discussed is the consultation requirements. In the implementing bill for the Canada agreement, there was specific consultation requirements for the Administration with the States to help States bring their laws into conformity.

This is an issue that the States have a particular interest in. And there have been ongoing discussions with the Administration about how the NAFTA should be brought into effect at the State

level.

The next point, I would just mention that, on page 3-1, we have the tariff elimination provisions. The proposal here is that the President would be given the authority to proclaim any tariff reductions.

One issue that remains to be addressed is how future changes in tariffs, perhaps, for example, under the acceleration provisions of the NAFTA, would be implemented.

There is also an issue that the committee would want to address as far as what Mexico's status is under the generalized system of preferences.

Senator Breaux. Can I ask a question, Mr. Chairman on that point?

The Chairman. Yes. Of course.

Senator Breaux. On acceleration of the tariffs, you said the President may increase it or speed it up I guess, does that require any consent or consultation with the industries that would be effected by it?

Ms. Miller. Under the Canada Free Trade Agreement, the practice and the law specifically provided that the Administration had to go through an elaborate consultation process with the private

sector and then submit those proposals to the Congress.

They would lay over in the Congress, the Ways and Means Committee and the Finance Committee for 60 days before they could be acted upon. That was the way in 1988 that the Congress chose to give the President some authority, but at the same time provide a check on that authority to make sure that it was not abused in any way.

The Chairman. But that has not actually happened, has it not?

Ms. Miller. It has. That process which the Administration could speak to has been quite a popular mechanism for reducing the tariffs more quickly than originally scheduled.

Senator Breaux. What we have now is none of that type of protection?

Ms. Miller. Well, that is what exists under the Canada Free Trade Agreement.

Now, under the NAFTA, we have not decided that issue. The question is whether the committee wants to continue with that kind of consultation process or change it any way.

Senator Breaux. We have the flexibility within the jurisdiction of the committee in the Congress to

do that in implementing legislation though, don't we?

Ms. Miller. Yes, Senator Breaux.

The Chairman. Senator Breaux, are you satisfied on the point?

Senator Breaux. Yes.

The Chairman. The point is that we, if it is within the committee, be free to include the provision of the Canada Free Trade Agreement for accelerating the moving up dates which would lower tariffs and through a process whereby the agreement is submitted to the committees. And they could say no.

Ms. Miller. Correct.

The Chairman. Yes. And we have some regularity. The Canadian agreements on tariffs have been expiated.

Ms. Miller. In practice, what has happened is that because of all the consultation requirements frankly, the proposals, once they reached the submission to Congress, have been barely -- I mean, quite non-controversial. That has been the experience.

Ambassador Yerxa, do you want to speak, sir?

Mr. Yerxa. Could I just say that I think the

procedure has worked very well in the case of the Canada agreement.

It has been used extensively by many industries. And I think on balance, there have been very few complaints about it.

The Administration would certainly be prepared to see the same procedure followed in the case of NAFTA.

I think the fact that it is not reflected here should not be an indication that we would oppose conclusion of that in this legislation if the committee deems it appropriate.

The Chairman. Thank you.

Ms. Miller. The next provision I may draw your attention to would be on page 3-2 which relates to the drawback and the treatment of drawback under the NAFTA.

Basically, the U.S. duty drawback program allows for the duties paid on imported goods to be refunded on the export of a final product.

That under the NAFTA would be quite limited essentially. And what the provisions of the implementing bill would do would be to change U.S. drawback laws to bring them into conformity with the NAFTA provisions.

On page 3-6, I would note that the Customs user fees that are currently in law will continue to be phased out with Canada and will end with Mexico in the end of June, 1999.

Again, there is a provision here that specifically puts into the implementing bill that phase out and elimination with Mexico.

The Chairman. But you also are proposing to pay for this with an increase in fees for airport --

Ms. Miller. That is the Administration's proposal. This just speaks to the Customs user fee that applies for merchandise trade, trade in goods to the point --

The Chairman. When are we going to see the specifics of the airline ticket increases?

Mr. Yerxa. Mr. Chairman, we are prepared to give you a kind of general discussion about it today, and specifics, obviously before the committee starts marking up on Wednesday.

The Chairman. Ambassador, I will wait.

Mr. Yerxa. Yes. I appreciate that message.

The Chairman. Senator Riegle may not.

Mr. Yerxa. I hope the Treasury Department is listening. We will try to get it to you before the end of this week. That is tomorrow.

[Laughter]

Mr. Yerxa. I just realized.

The Chairman. Is anyone from the Treasury present?

Mr. Yerxa. They are working on the health care plan.

The Chairman. They are working on the health care plan?

Is anyone from the Treasury Department present?

Mr. Yerxa. The problem as I understand it, Mr. Chairman, is working out the final numbers.

And there has been some discussions between Treasury OMB and CBO. We want to make sure that when we present it to you, the numbers are very clear and precise.

The Chairman. Thank you, Ambassador.

Ms. Miller.

Ms. Miller. Mr. Chairman, on page 3-7, the obligations under the NAFTA regarding country-of-origin markings are listed.

Essentially, countries are -- the NAFTA countries may require country-of-origin markings. They are required to be sort of reasonable and such. And there are some amendments to U.S. law proposed to bring it into conformity with the NAFTA

provisions.

Senator Danforth. Mr. Chairman.

The Chairman. Yes, Senator Danforth.

Senator Danforth. I think there is an issue with respect to this.

The Chairman. Do you want to speak to it?

Senator Danforth. Well, I think the issue is what constitutes adequate country-of-origin marking, whether AG or whether it is pencil, ink, but there is an issue which will have to be addressed.

Ms. Miller. Yes.

Senator Breaux. May I ask a question, too, if I may, Mr. Chairman, on that issue?

The Chairman. Yes, sir.

Senator Breaux. Does the treaty prohibit the marking of imported products into this country, whether the country of origin is on it? I mean, it does not prohibit that?

Ms. Miller. No. In fact, it specifically provides that the countries can do that.

Senator Breaux. But is there implementing legislation to change, as I understand it, current law which provides for markings in certain types of ways?

Ms. Miller. Yes. I think there are some

additional exceptions proposed to make sure that U.S. law is in conformity.

I do not know if somebody either -- from Customs that the Administration wants to speak to, how there is any difference between the NAFTA and current law.

The Chairman. I think Senator Danforth and Senator Breaux would like to hear that. I see Ambassador --

Senator Breaux. I mean, it is a real small issue in many cases. I mean, the issue of manhole covers which are made in my State, they say you can mark them underneath them. Nobody will ever see them, right?

The Chairman. Manhole covers?

Senator Breaux. It is a big item. But you make them.

The Chairman. Yes.

Mr. Yerxa. The particular individual who is most familiar with this in the Administration and who can give you a better explanation than I could is not here right now.

What I would propose is that we get an answer for you as to exactly what --

The Chairman. What is our question? Let's

speak clearly.

Senator Danforth. Mr. Chairman, I think this is one of the issues that when we meet again -- is it next Wednesday?

Ms. Miller. Right.

Senator Danforth. Hopefully, we will have this clarified and be able to decide.

Mr. Yerxa. In fact, the question is, as I understand it, to what extent are we changing the current country-of-origin marking requirements under U.S. law.

Senator Breaux. And my question would be the general question: does anything in the NAFTA agreement prohibit the marking or labeling of imported products with their country of origin?

I guess the answer to that is no.

Ms. Miller. The answer to that is no.

Senator Breaux. All right.

Ms. Miller. We have also already scheduled a meeting with the individual -- for the legislative assistance with the individual that Ambassador Yerxa was referring to for Monday afternoon to address the questions that have arisen in this area.

Mr. Yerxa. I think there are some provisions under the agreement, if you look on the left-hand

side, that do require that there be exemptions in certain circumstances.

But I believe those are circumstances -- on the whole, those are circumstances where we do not require it and where we would not want another country to require it, for example, where the good is incapable of being marked. We do not really want somebody requiring country-of-origin markings on a strawberry or something like that.

But obviously, there are ways of addressing those marking requirements to enable that there can be appropriate markings.

Senator Packwood. I can give you a humorous incident on that, Rufus. A little company in Oregon makes fishing flies. And part of those are imported.

So each fly has a little country-of-origin tag on it. And when you try to take it off the fish, it tore the feathers off the fly. We managed to work that problem out so each one did not have to be labeled.

The Chairman. Senator Riegle.

Senator Riegle. Article 311 sets out 14 different circumstances under which goods do not have to be marked in order to show this country of

origin.

I wonder if any of these exceptions do cover, say, fruits or vegetables. Say, something like, would it affect oranges, say, that might come from Chile as opposed to Mexico?

Ms. Lamb. Senator Riegle, to the extent that Annex 311 addresses it and we have representatives here, 311, paragraph 5-B talks about the exemptions as you noted.

And I believe the exemption that would apply in that case would be to the goods incapable of being marked which is the first exemption.

Senator Riegle. But I am asking now for an application of that standard. Let's take an orange, for example. Is an orange -- would it be marked or not marked?

Mr. Seidel. Under existing law, articles must be conspicuously marked in a manner to reach the consumer. Exceptions may be granted if the article is impossible or difficult to mark, but then the container must usually be marked. Under existing law, I believe oranges are required to be marked.

Senator Riegle. They obviously can be, but is it the intention that they will?

In other words, one of the concerns here and

everybody is familiar with has thought about it, and that is the degree to which you are going to get back-door items that come into Mexico that are then sent into the United States as if they were Mexican origin and in fact are not Mexican origin. And this gets to their whole -- the way their system works and how tight their policing system is and what have you.

And there is a great concern by many people. I mean, obviously, this takes a different character if you are talking about sugar that might come from Cuba because obviously you cannot mark a grain of sugar. Maybe you can mark a bag, but somebody can put it in a different bag. And it may not mean anything.

I think we need -- I would like to know what specifically -- and I have cited the examples, say, of oranges or any other kind of produce that is large enough to mark like that. We mark lemons, for example, Sunkist or whatever.

Is it the intention that these things will be marked so that we are not facing a situation where the back door of Mexico is being used improperly as a supply route for other items that are sent up here as if they are from Mexico and in fact are not.

I mean, part of the concern of that obviously is pesticides and other things that are allowed to be used, whether in Mexico or other places that are not allowed to be used here. That is sort of a side issue, apart from the economic impact.

But I want to know what is likely to be marked and what is likely not to be marked. And do we have those answers at this point?

Mr. Yerxa. We are going to have to get you further clarification, Senator Riegle.

I do want to make it clear that nothing in these exemptions in any way exempts the country from adhering to the country-of-origin requirements or the rule-of-origin requirements, that is the requirements regarding that the product be a product of the country in order to receive NAFTA benefits.

Nothing changes the current system for ensuring that products come in are not -- do not contain pesticide residues or that sort of thing.

All of those mechanisms for enforcing those provisions would remain in effect.

Senator Riegle. Here is part of my concern. And then, I will -- if you could give me some listings that will help me. But I will just make this point, Mr. Chairman.

We are told now that over half the cocaine coming in the United States comes through the Mexico. Over half the cocaine coming to the United States comes through Mexico.

You obviously have a very poor system in Mexico that is allowing first of all cocaine to come in, but I think it speaks to the whole structure of law, practice.

And it really sort of defies my imagination on the one hand. There is in a sense a complete break down of the ability to handle drug traffic, but then somehow we are going to have a rather exquisite and professional and well-run screening process for things in other commercial categories. I mean --

Senator Bradley. If I could, I think there is a point that should be made that there is simply a demand issue here, the demand for cocaine. People are going to pay higher prices for cocaine than they are going to pay for oranges, right?

So the analogy of an orange to cocaine is it ignores the dramatic difference and the market demand and price that people are willing to pay.

Senator Riegle. Well, you could certainly make that point, but I think you are choosing to miss the other point, and that is if you are going to have

any kind of an effective administrative system of policing and implementing these requirements, abiding by the rules, what is the true country of origin?

It is not just agricultural items. It could be automotive parts. It can be transistors. It can be made anywhere in the world. And they can be back-doored into Mexico and labeled as Mexican or claimed to be Mexican and sent on into this country.

I am just saying that you have another area of commerce, albeit quite different where you have had in a sense a total break down of any kind of effective administrative procedure.

We just had a Catholic cardinal shot to death in an airport parking lot down there by the drug lords who are moving up from Columbia.

Anybody that does not understand that the porousness of this system and the failure to sort of be able to run it effectively, that it is not going to spill over on the commercial side, I mean, it is just sheer fantasy. I want to make that assertion.

The Chairman. Senator Riegle, let me say.

Senator Baucus.

Senator Baucus. Someone might say, Ambassador, isn't it true that the rules of origin provisions in

NAFTA, as well as the basic content provisions, all provisions that address transshipment problems are stronger in NAFTA than current law, that is, they are stronger? For agriculture --

Senator Riegle. Enforcement.

Senator Baucus. Well, the point is first, they are stronger. I mean, I would rather have it in the first place, then, get to enforcement second.

But the point is that the rules-of-origin provisions for agricultural products, for example, are stronger than NAFTA. And second, you address domestic content. And similar provisions, they are stronger under NAFTA than without it.

And I agree that transshipment is a potential problem. It is a potential problem among all countries.

Mr. Yerxa. But, Senator --

Senator Baucus. NAFTA provisions address transshipment. The transshipment protections are stronger under NAFTA than without.

Mr. Yerxa. Yes. In fact, we have a number of other preferential trading arrangements obviously. We have the GSP program. We have the Caribbean Base Initiative.

And this concern about transshipments and about

pass through is not a new concern. Back when the Congress considered the CBI legislation, implementation of CBI, this precise concern was raised. And there were numerous groups.

And I am quoting from some testimony that was made at the time of CBI, which said that, "If there was adopted massive trade diversions, a flood of imports worldwide could be funneled through any one or combination of these 28 countries."

The actual experience under that legislation is something different. And in fact, we have not seen the kind of pass through in part because there were these implemented by the Congress as part of that agreement.

But I want to make clear what Senator Baucus says is absolutely true. The country-of-origin requirements, the rule-of-origin, the enforcement provisions, the tracing requirements of this agreement are far tighter than anything we have ever done under any preferential arrangement.

The Chairman. Fine. So we are going to get from you some clarification.

Mr. Yerxa. Yes.

The Chairman. And before Senator Breaux leaves, I want to say, I missed it completely,

manhole rings or frames still require identification.

Senator Breaux. On top as opposed to the bottom.

The Chairman. Is that your preference?

Senator Breaux. If you put the clarification on the bottom, nobody will ever see it.

The Chairman. People who will look down there, you know.

[Laughter]

Mr. Yerxa. It has to be visible when it is imported, not when it is in the ground.

The Chairman. All right. I will leave that to the Senator from Louisiana.

Senator Riegle.

Senator Riegle. Can I just insert a rejoinder to that in the record, Mr. Chairman? Because the procedure as to how we go down and track down a suspected complaint is incredible and effective.

And I will just ask to put it in the record here and not take the time to discuss it.

The Chairman. Without objection, so included.

[The information appears in the appendix.]

The Chairman. Senator Danforth.

Senator Danforth. I simply want to note the

issue of the marking of steel pipe and fittings which is somewhat a different issue than the importation of drugs or even the native country-of-origin issue. I mean, just the marking question for those products.

The Chairman. And we will get that from the Administration. You heard? Senator Danforth --

Mr. Yerxa. Yes. We certainly will.

The Chairman. Fine.

Ms. Miller.

Ms. Miller. Mr. Chairman, particularly given the discussion we have just had on rules of origin, I think I would propose to go to page 4-1, but in doing so, I am passing over the chapters on autos and textiles. There is not too much there in terms of implementing legislation. But I just wanted to --

Senator Roth. Could I, Mr. Chairman, phrase a comment on that?

The Chairman. Would you please, Senator Roth.

Senator Roth. Well, in Section 300-A, it says, "The parties will review by December 31, 2003 the status of the North American Automotive Sector."

Now, statements have been issued that in the first year of the NAFTA agreement, that our exports

of autos, auto parts, as well as trucks and other vehicles were increased by $2 billion.

I would like to suggest, Mr. Chairman, that we need a much earlier monitoring of what the agreement does to the auto industry.

The Chairman. Give us your page number, sir.

Senator Roth. Yes. I am on page 3-9.

The Chairman. 3-9.

Senator Roth. And Annex 300-A.

The Chairman. Oh, this is annex.

Senator Roth. It says, "The parties will review by December 31, 2003 the status of the North American Automotive Sector."

I was pointing out that I think the Department of Commerce has claimed that in the first year, exports of autos, auto parts, trucks, and other vehicles will increase by $2 billion.

I would like to suggest two steps need to be taken. One is that there needs to be much earlier monitoring to ensure about the impact of this agreement on the auto industry. And so I would urge that be provided.

And secondly, in the part that talks about accelerating tariffs, I think 302 is it.

The Chairman. Tariff reductions.

Senator Roth. Tariff reductions. Yes. 3021 I guess it is. In the case of auto tariffs, ours are eliminated totally the first year. Ours is 2.5 percent.

The Mexicans are cut in half, I believe, the first year to 10 percent. Then, they take 10 years to bring to it zero.

What I am suggesting is that we ought to be monitoring this agreement insofar as it impacts on the auto industry the first year. And at that time, it could well be that we would want to accelerate the reduction of tariffs as provided in 3021.

The Chairman. Would I be correct, Senator -- let me ask counsel that if we were to provide that the United States Government will do this, we could put this in the implementing legislation as against the parties.

Ms. Miller. Yes. I think I would have one question for Senator Roth. I think you are speaking to how fast Mexico reduces its duty.

Senator Roth. That is correct.

Ms. Miller. As opposed to how fast the United States does.

Senator Roth. But we could enter negotiations to accelerate.

Ms. Miller. That would be one way to approach the question.

The implementing bills provisions on tariff acceleration relate to how the U.S. Government would accelerate the reduction of its tariffs, not to how Mexico would accelerate its duty reductions.

But you certainly could reach the issue through some language about negotiating an objective or authority or recommending that the Administration seek that kind of duty acceleration in Mexico.

Senator Roth. Well, it concerns me that our tariff eliminated the first year. And there is a 10-year period before the Mexican.

So I would urge that we address first the monitoring of the auto industry and its impact. And secondly, we negotiate the acceleration of Mexican tariffs.

The Chairman. Very well. That is next week.

Senator Riegle.

Senator Riegle. Thank you, Mr. Chairman.

On the auto sector which obviously is of keen interest to me, as it is to Senator Roth, I would like to just make two points and ask that the Administration see what can be done in either of these areas. Maybe this falls in the category of

letters and process or issues and process.

As a follow-on to what Senator Roth has said, Mexico has to phase out over a 10-year period its embargo on imports of used cars or vehicles, but there is a catch in that.

And the phase out of this embargo actually begins in the year 2009. Until the year 2009 which is 15 years from the date of the presumed enactment of NAFTA, Mexico maintains its ban on used motor vehicles.

And then, if the restriction is eliminated over a 10-year period, the provision would not in fact finally conclude itself until the 2019. And I am not aware of anything else in this agreement in terms of a U.S. industry having an adjustment period accommodation that is anywhere near in that ballpark.

But let me raise in addition to that a second item, and that is that under Article 401 -- and I think this is a matter of real concern, Mr. Chairman.

The Chairman. Can we get a page here?

Senator Riegle. It is Chapter 4, pages 1 through 4, Article 401.

Ms. Miller. It would be page 4-1.

The Chairman. Right. Got it.

Senator Riegle. Under Article 401, Mexico can become an export platform for third countries. Now, this leaves out the United States, Canada, and Mexico, but other countries, such as Japan.

It allows them to become an export platform for countries like Japan to sell their products in the United States. And this is how it would work.

Assuming that there was perfect compliance with the provisions of NAFTA as written, and there is doubt about that, a Japanese manufacturer could ship to Mexico parts that were equal to 40 percent of the value of goods or 50 percent of their net cost that would ultimately be included in the product.

Now, for the sake of illustration, I am talking about cars. That means that a Japanese manufacturer can set up an assembly plant in Mexico, paying the Mexican workers about $1.50 an hour, and then turn around and export the finished manufactured good to the U.S. and count them as Mexican goods, not subject to any tariff.

And I think over time, we can expect Japan and other countries to move more of their auto parts operations to Mexico again for the purpose of shipping duty free into the United States.

As a result, we just in effect eliminated U.S. tariffs on any country that wants to establish assembly operations in Mexico.

And as far as that third country is concerned, in my case Japan, I do not see where we get any benefit for that kind of concession.

But that is, I think, the way the economic hydraulics of this would work. And I do not know if you can see a way to deal with that problem, but I am looking for a way. And I would like to find a way.

Senator Bradley. Mr. Chairman, if I could?

The Chairman. Yes, Senator Bradley.

Senator Bradley. I thought 62.5 percent would the North American content.

Senator Riegle. It phases up to 62.5.

Senator Bradley. During the time period, is that correct?

Mr. Yerxa. Eight years.

Senator Bradley. Eight years. That is 2001.

Mr. Shapiro. Right.

Senator Bradley. That is when 62.5 percent. So you could not export into Mexico Japanese cars and right into the United States. Even in your calculation, the number would not be 40 percent, but

would be about 37.5 percent is the maximum.

But I think it would be helpful if maybe Mr. Yerxa could give us a picture of the whole automotive sector and why he thinks this is a good agreement from the automotive sector's standpoint. He could also comment on Senator Riegle's point.

The Chairman. Ambassador.

Mr. Yerxa. I would like to, Mr. Chairman. And I may ask Mr. Shapiro to join me because he has some points to make as well.

But going to the point Senator Riegle just made about this export platform issue, and he was citing the provisions of the agreement which do deal with the changes in the treatment by Mexico the duty-free treatment goods for importation that are later exported.

And this is actually an improvement over the current status quo, over the status quo situation under this agreement, that is, we are phasing out the drawback provisions which currently allow Mexico to bring duty-free parts from Japan subject to a very low overall content requirement, export them to the United States with only a 2.5 percent duty.

This actually improves that situation. That is my first point.

The second is, because it goes directly to what Senator Roth was saying about the slower phase out of Mexico tariff on automobiles, one of the reasons we have to look at the totality of this package for automobiles is it is not just tariffs that are in play here.

Mexico has a 20 percent tariff. They also have very strict domestic content and trade balancing requirements which essentially require you to manufacture in Mexico if you want to sell in Mexico, and not only that, but require you to export a predominant percentage of your manufacturing.

That results in a distortion today that causes exports to come to the U.S. market. What is being phased out under this agreement is not only the tariff, but those non-tariff restrictions which make it possible for us to manufacture in the United States, sell to Mexico without being forced by Mexico's investment laws to locate production in Mexico.

But even if you were to just look at it as a tariff deal, if you have no NAFTA, if the NAFTA does not exist, the discrepancy in our tariffs on automobiles would be 17.5 percent in perpetuity.

Under NAFTA in the first year, the discrepancy

is reduced to 10 percent. And it is then phased out over the ensuing 10-year period.

So you have to look at the totality of all of these provisions. First of all, it actually makes things better with respect to the potential of an export platform from Japan.

Secondly, it actually reduces the tariff disparity between the U.S. and Mexico. And thirdly, it makes it possible for us to sell directly to Mexico without meeting these investment restrictions.

That is why the estimates are at least a $2 billion increase in autos and autos parts in the first year of the agreement.

The Chairman. Mr. Shapiro, you are the general counsel.

Mr. Shapiro. If I could just add, and obviously Ambassador Yerxa has covered the key points, clearly there are very strong advocates of the auto industry that are on both sides of this agreement.

Obviously, Senator Riegle and others have spent a great many years studying these questions. But I do have to emphasize to Senator Roth that the tariff part of this is, I think, the least of it, what many

commentators have referred to as the hated trade balancing requirement which Mr. Yerxa referred to, by which you have to export from Mexico two cars for every one that you import which has been a terrible barrier to us.

On day one, that changes so that it is no longer a 2 to 1 ratio. It is .8 to 1 ratio.

If I may respond to one point Senator Riegle raised with respect to the used cars, and that is an unusual provision because it is a 25-year provision, in fact, my understanding of the negotiations are that that was done in close consultation with the auto industry because basically they did not want to create a used-car market in Mexico.

They far preferred to look at Mexico as an opportunity to sell new cars. And consequently, they did not want us to be selling our junkers when they could be manufacturing new ones.

Now, obviously, there are analysts on both sides of this.

The Chairman. Right.

Mr. Shapiro. But a number of the recent studies -- and there is a book that came out quite recently by William Orm, Latin American correspondent who has covered Mexico and Latin

American for a long time, who makes the point that this will result immediately in imports, that there will be imports of U.S. automobiles into Mexico.

The Chairman. Would you indulge me just one personal question? Years ago, I remember reading that the rise of the rental car activity in the United States had to do with the subsequent export of these cars to Mexico. Is that -- do you know anything about that?

Mr. Shapiro. I do not know about that.

The Chairman. I know this is part of the economic history. How free it is, I do not know.

Mr. Yerxa. Nor I, Mr. Chairman. And I do not know when this embargo on used cars came into being in Mexico. It might have been in response to that situation, but we can find out.

The Chairman. If you have a chance. It is not necessary.

Senator Roth.

Senator Roth. Yes, Mr. Chairman.

What I was suggesting was that we ought to begin immediately monitoring the impact on the auto industry rather than wait to 2003.

I agree that tariffs is only part of the picture, that the other obstacles are

extraordinarily important.

But as I said, the Department of Commerce has come out and said in the first year, this agreement will result in an increase of $2 billion in exports, $1 billion on autos and parts, $1 billion on trucks and other vehicles, that it will result in an increase of 15,000 new employees. I am hoping all of this is true.

But I am suggesting that we ought to be monitoring it and be in a position to accelerate negotiations to ensure that our auto industry is favorably impacted.

The Chairman. I think that is fair. We have enough time there.

Can we not move forward, Ms. Miller?

Ms. Miller. To go on to the rules of origin in general, there has been mention of the rules of origin under the NAFTA.

Essentially, those goods that are wholly grown or produced in a NAFTA country would be eligible for the preferential tariff treatment or the elimination of tariffs.

And those goods that are made partially of components that come from outside non-NAFTA countries would have to meet the rules of origin

which essentially rely on a tariff change, a change in tariff classification. Those rules are spelled out in great detail in the annexes to the agreement.

The proposal for implementing legislation would be actually in match with the provisions of the NAFTA that define the rules of origin as statutory provisions.

We have left open the issue of -- because those are very important rules. I think that is the reason that you might want to enact them as statutory provisions.

We have left open the question of technical changes in the specific rules themselves. The Administration has argued that these rules may need some adjustments, products change.

And you could make those subject to the same kind of proclamation, lay over consultation requirements that we discussed on tariff acceleration. That will be one possibility. That is the case with the rules of origin under the Canada Free Trade Agreement. That is the way it is with that.

The Chairman. Yes.

Ms. Miller. To go to Chapter 5, page 5-1, essentially all of that Chapter 4 enacts those rules

of origin. It makes required changes of law.

Chapter 5 speaks to Customs procedures and in particular the enforcement of the rules of origin. The NAFTA requires that parties establish certificates of origin to demonstrate where a product is produced.

This chapter, essentially the proposals would be to require exporters to keep and render the certificates of origin as necessary.

It establishes penalties for those who violate either the record keeping requirements. It also establishes penalties regarding false certification of origin.

The Chairman. Do I take it, Ambassador, that in practice, we do not find this a very large problem? Or do we? Or is it segmented?

Mr. Yerxa. Well, Mr. Chairman, as you know --

The Chairman. Whether it is the Free Trade Agreement.

Mr. Yerxa. Whether it is domestic taxation or trade tariff enforcement, the problem of circumvention, the problem of duty of avoidance, the problem of that sort thing is always there.

And it has to be constantly dealt with. And there has to be mechanisms in place to deal with it.

Our experience under previous agreements, and I think this NAFTA reflects our experience because we have perfected these rules to the point where the Customs Service feels that we can enforce it.

And on the whole, it has not been a serious problem in other preferential arrangements.

The Chairman. Thank you.

Ms. Miller.

Ms. Miller. Yes. I would move next -- we passed the chapter on energy which --

Senator Riegle. Could I raise just one point here, Mr. Chairman?

The Chairman. Yes, Senator Riegle.

Senator Riegle. I will be very brief on this. And I am mindful of the fact that I am raising a number of issues, but this is relevant.

The Chairman. Well, that is what we are here for.

Senator Riegle. And I think it is very important we do it.

In Chapter 5 and Part 5 here, pages 12-2, in the trucking area, the agreement provides that the parties agree.

And I am going to just quote here, To liberalize access to their land transportation

sectors. End quote. That, of course, includes trucking.

And then, it says, and I am interrupting the quote, The degree of a work program to make their land transportation standards. End quote. And a few words are missing. Quote, compatible. End quote. That is the thrust of it.

And there is concern that I have heard expressed by a lot of people that could work in a way that the United States would end up at some later time lowering its own truck safety standards if NAFTA were passed.

So I have introduced, Mr. Chairman, Senate Resolution Number 36 which expresses the sense of Congress that the U.S. truck safety standards should not be lowered during any post-NAFTA harmonization discussions.

And I will likely offer that as a resolution, offer this resolution as an amendment to the implementing legislation next week.

But I think we ought to go on record as opposing any lowering of the safety standards on U.S. roads as a result, not just as it applies to us, but to the Mexican trucks coming in here.

Would that be something the Administration

would be prepared to accept in that form?

Mr. Yerxa. Senator, I do not see any problem with that. I want to be very clear that under the NAFTA, the U.S. retains full control over its safety laws, both with respect to trucking and with respect to other health and safety standards, but trucking in particular.

Nothing in the NAFTA would subject us to future changes because of any discussion on harmonization. And only through legislation, only through action by the Congress could those standards be changed.

And both Canadian and Mexican trucks would have to fully comply with U.S. standards with respect to weight, with respect to length, wit h respect to inspection, and the drivers as well.

Senator Riegle. In terms of the drivers and licensing?

Mr. Yerxa. Yes.

Senator Riegle. And age requirements?

In other words, we are not going to find a situation where a Mexican truck driver, post-NAFTA, would be able to come across the border driving a Mexican truck if they are under the age that we require here or in fact they have to --

Mr. Yerxa. Meet the standards of the local

jurisdiction in which they operate.

Senator Riegle. And hours, too, hours of drive time before rest is taken?

Mr. Yerxa. That is correct.

Senator Riegle. So they are required to operate to our standards?

Mr. Yerxa. That is correct.

Senator Riegle. And, of course, then, I guess it is our job to enforce that that happens?

Mr. Yerxa. That is right. And nothing under NAFTA would in any way create a self executing mechanism that would force those changes.

The only way any changes could occur -- and I am not suggesting or proposing that they do occur -- is if Congress would legislate changes.

Senator Riegle. Well, I think it would be helpful to have this kind of language in here. And I would like to have you consider it and be willing to accept it.

The Chairman. Could I make what I believe to be a point? This would be a Commerce Committee restriction. I do not think we could adopt it here. We will find that out.

Does counsel have any view on that?

Ms. Miller. Mr. Chairman, I am not sure about

that. We will look into it.

The Chairman. Check it out. All right.

Fifteen minutes.

Ms. Miller. I hesitate since Senator Riegle got all the way to Chapter 12 to step back for a second, the emergency action. But I think I must bring it to the committee's attention.

The Chairman. Yes.

Ms. Miller. So I will do that. I have gone pass the agriculture chapter.

The Chairman. Chapter 8.

Ms. Miller. And I do not know if there are any questions on agriculture. But in Chapter 8, essentially, the NAFTA provides for safeguards of both in bilateral trade and it also speaks to the question of how imports from Mexico and Canada would be handled in a global action under Section 201 of the 1974 Trade Act which is the U.S. statutory mechanism for the safeguard emergency action kind of provisions.

With the proposed implementing legislation here, we again have followed the model of the Canada Free Trade Agreement implementing goal.

There is a specific mechanism set out for industries to petition to the International Trade

Commission for relief under the bilateral safeguard mechanism if its import of goods from Mexico or Canada that are harming them.

And there are specific provisions on page 8-2 and 8-3 that speak to how imports from Mexico and Canada would be treated in the global action.

Essentially, both instances would require the ITC and the President to make the determinations that are set forth under the NAFTA.

Mr. Shapiro. Mr. Chairman, it might just be worth noting --

The Chairman. Mr. Shapiro.

Mr. Shapiro. -- both with respect to the bilateral and the global safeguards, this provision goes beyond the CFTA in terms of how you would apply the safeguards and the length to which it could apply in sensitive product areas.

Moreover, it goes beyond the CFTA by requiring Mexico and Canada to adopt very detailed procedures by which they engage in safeguards, which at the present time, they do not come up to our levels in terms of procedural protections.

And we have tried to upgrade them in that regard in this provision.

The Chairman. Thank you, counsel.

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e Chairman. Now, let us hear what you just
The provisions in the CFTA for the binational
are there, but there are no provisions in
reement before us?

. Miller. The implementing proposal, the
roposal here does not decide the issue of how
ection of panelists would proceed and whether
we follow the same consultational
ements that we had under the --

ie Chairman. CFTA?

s. Miller. The CFTA. It does go ahead and
ll the necessary changes to U.S. law or the
tution of domestic judicial review with panel
. That I do not think is so much the issue.
here have been concerns about how the
sts are selected.

ne thing the NAFTA does, which I do not
e was a provision of the CFTA, is say
ically that judges or former judges should be
for these panels to the fullest extent
icable.

And we have incorporated that particular
ria in the draft implementing proposal. You
hat on page 19-1, the first paragraph.

Whether or not to go through the same committee process, the lay over requirements and such, we left open, not so much because that mechanism is controversial, but just because we know the general issue of panel selection is something that there are members in the committee have had an interest in that.

The Chairman. Well, you are a little beyond me because it states here that Annex 1901.2, "Provides for the establishment of binational panels and the selection of individuals to serve as panelists."

Now, what are you trying to --

Ms. Miller. Correct. Well, what I was speaking to is what we put in the implementing bill as far as how that happens, how the U.S. goes about selecting those panelists.

We included a procedure in the Canada bill, the Canada implementing bill, that requires lists of candidates to be submitted to the Finance Ways and Means Committee.

Only those on the list could be used for the panels. And they had to lay over here between January 1 and essentially March 31 of each year.

At the time and when this was discussed in the Canada agreement, there was much sensitivity to this

because these panelists basically substitute for the judgment of judges who are --

The Chairman. I am a little lost because it says here that it, "Provides panels shall be comprised to the fullest extent practicable of judges and former judges."

Ms. Miller. Correct. And that is one proposal that we left. And the question is, does the committee want the same process of submitting the list to the committees before anybody can be selected.

The Chairman. I see.

Ms. Miller. Or is there anything else that the committee wants to raise with regard to the selection of panelists.

The Chairman. Senator Riegle.

Senator Riegle. Just a brief comment in answer to your question, and that is, I think judges, former judges are fine. I would be a little concerned if a former judge, who then goes back into the practice of law and sort of has trade clients, would then be draw upon for it.

I think if we are using judges, they ought to be out of the practice of law in the trade area, singled out. That may be a fine point, but I just -

- I do not think we want to --

The Chairman. What does the Ambassador -- what does the Administration have to say here? We would like to hear what you want.

Mr. Yerxa. Let me ask Mr. Shapiro to take it.

The Chairman. Sure.

Mr. Shapiro, as counsel.

Mr. Shapiro. Mr. Chairman, in response to Senator Riegle, part of the preferences for judges and former judges stem from the fact that ordinarily, we would be able to avoid some of the conflicts of interest that frankly have made it hard to find qualified panelists because they are all out practicing law.

[Laughter]

Mr. Shapiro. However, in the case of a former judge, as you have described it, there would still be conflict of interest rules that would pertain so that there would be that protection.

But in general, I think judges would have fewer conflicts.

The other reason that we have preferred and moved in a direction of judges is quite frankly that we have not always been satisfied with the standard of review that the panels have used.

It is important here to recognize that we are asking these panels to review the application of U.S. antidumping and countervailing duty law. And there have been times when they have not adhered to that standard in the way that we would like.

And part of what we are doing in this exercise is trying to adhere -- strengthen the adherence to the proper standard of review.

The Chairman. Ambassador Yerxa.

Mr. Yerxa. The Administration certainly, Mr. Chairman, is prepared to work with you in crafting provisions in the NAFTA implementing bill, such as the provisions in the Canada bill and to discuss improvements in that selection procedure that would be of interest to this committee.

The Chairman. And this can be done by tomorrow night? Let it pass.

Senator Danforth.

Senator Danforth. Mr. Chairman, there are three areas under Chapter 19 that we would like addressed, I would like addressed between now and Wednesday. One is the use of judges as panelists questions which we have already discussed.

The second is the extraordinary challenge procedures and the ability of U.S. authorities to

avail themselves of those procedures.

And the final one would be the provision in Section 409 of the Canadian Free Trade Agreement that Senator Baucus and I offered with respect to subsidies in the general application of that provision.

The Chairman. Do you have any -- do you expect to offer language? Do you wish to offer language?

Senator Danforth. Yes. We would like to conduct discussions between now and Wednesday as to the specifics.

Mr. Yerxa. We would be glad to do that.

The Chairman. Thank you, Ambassador.

The hour of 1:00 o'clock is approaching.

You are doing very well. You are on Chapter 19.

Ms. Miller. Right.

The Chairman. That is about it, isn't it?

Ms. Miller. There is not much more. There are provisions relating to the settlement of disputes. There is not much in the way of implementing legislation here. So I would not propose to discuss them.

At page 22-1, we have the issue of amendments in the NAFTA and how those would be considered by

Congress if this bill should include anything.

One thing I would point out to you is that the Canada Free Trade Agreement did grant to the Administration 30 months of fast track authority for amendments to the NAFTA that required statutory changes. There is no proposal to do anything similar in this bill.

We also discussed earlier the consultation and lay over requirements which relate to things like rules of origin and proclamation authority which I think there has been some discussion on.

On page 22-2, the entry into force provision --

Senator Riegle. Could I just stop it here for just one moment as long as we are pass that?

The Chairman. Sure.

Senator Riegle. I would like to just express the view that I think we ought not to provide any continuing fast track authority. As you point out, it is not in there now.

And I would like just for a moment to back up to Chapter 20 which we did not touch on, on the remedies that would still be available under Section 301.

That really originated in this committee in years past. And there is a question as to what kind

of 301 actions would be still be permitted after the adoption of NAFTA.

The Administration has said that NAFTA would not undermine 301.

What I would like for the record, what remedies, specific remedies other than reverting to current tariff levels, would be available to us under Section 301 after NAFTA would go into effect?

And I would like to have the list of remedies available actually included in the statement of administrative action. I would like to make that suggestion.

In any event, I would like your response to that. I do not want to hold us up here now, but I want to cover that.

The Chairman. Ambassador.

Mr. Yerxa. Well, I would want to reiterate the point that Section 301 will remain available. In fact, notwithstanding the Canada Free Trade Agreement, we have continued to apply Section 301.

There have been Section 301 cases against Canada. And the remedies which would be available under that statute would remain the remedies that are set forth in the statute itself, that is including --

The Chairman. 301 remains in force.

Mr. Yerxa. In force.

The Chairman. It applies to the other two parties?

Mr. Yerxa. Correct.

The Chairman. We are now at one final provision, the entry into force is January 1, 1994.

Ms. Miller. Right.

The Chairman. A party may withdraw from the NAFTA six months after he provides written notice.

Ms. Miller. The only --

The Chairman. What is the CFTA on withdrawal?

Ms. Miller. The CFTA provision, I believe, was the same, six-month withdrawal provision.

The only other provision I might note here is the accession provision since that has been of some interest to members on page 22-3.

The Chairman. Yes. 204.

Ms. Miller. Exactly.

The proposal is that the bill specifically say that Congressional approval of the NAFTA may not be construed as conferring Congressional approval of entry into force of the NAFTA with respect to any other countries, any other country that would be interested in exceeding or agree to exceed to the

NAFTA would be subject to Congressional approval separately.

The Chairman. And the hour of --

Senator Danforth.

Senator Danforth. The hour of 1:00 o'clock having arrived, I would just like to say that with respect to Chapter 20, I will have suggestions on the method of selecting experts for dispute, settlement panels.

And with respect to the question of exception, I will also have suggestions on that with respect to the standards to be applied. And I think also Senator Baucus has an interest.

The Chairman. Which you will bring up?

Senator Baucus. Yes, I will in Wednesday's session.

The Chairman. All right. I am going to ask that Mr. Figel's suggestion that staff of the committee members meet quickly now to clear up matters that can be cleared up and agreed to. And if not, those which cannot or those which are too important to be done informally, we will take up on Wednesday. We have to expect Wednesday to be a long day.

I thank our capable staff. You have a long

week ahead of you.

Ambassador Yerxa, tomorrow is Friday.

Mr. Yerxa. I have a long night ahead of me.

The Chairman. Yes, sir.

Thank you, Mr. Shapiro. Thank you, Ambassador.

Mr. Shapiro. Thank you, Mr. Chairman.

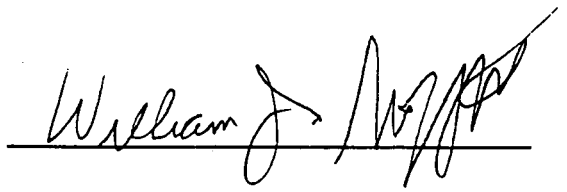
The Chairman. I thank our Recorder.

The committee will now go into executive session in the committee room.

[Whereupon, at 1:01 p.m., the meeting was concluded.]

C E R T I F I C A T E

This is to certify that the foregoing proceedings of an Executive Committee Meeting before the Committee on Finance, held on October 14, 1993, were held as herein appears and that this is the original transcript thereof.



WILLIAM J. MOFFITT

Official Court Reporter

My Commission expires April 14, 1994.

United States Senate
COMMITTEE ON FINANCE
WASHINGTON, DC 20510-6200

EXECUTIVE SESSION

Thursday, October 14, 1993 -- 10:00 a.m.
Room SD-215 Dirksen Senate Office Building

A G E N D A

I. To consider S.J. Res. 110, a resolution approving the extension of nondiscriminatory treatment (most-favored-nation treatment) to the products of Romania (Staff Document A)

II. To consider budget authorizations for the following agencies (Staff Document B):

A. United States Customs Service

B. Office of the United States Trade Representative

C. United States International Trade Commission

III. To consider a request for the United States International Trade Commission to conduct a section 332 study on environmental technology industries (Staff Document C)

IV. To consider recommendations for legislation to implement the North American Free Trade Agreement (Staff Document D)

STAFF DOCUMENT A

S.J. RES. 110, A RESOLUTION APPROVING THE EXTENSION OF MOST-FAVORED-NATION (MFN) TREATMENT TO ROMANIA

(Prepared by the Staff of the Senate Committee on Finance)

Thursday, October 14, 1993

S.J. Res. 110 would approve the extension of non-discriminatory treatment with respect to the products of Romania, as well as the 1992 U.S.-Romanian trade agreement.

The U.S.-Romanian trade agreement was signed on April 3, 1992, and originally forwarded to the Congress for its approval on June 23, 1992. The resolution that would have approved MFN and the trade agreement failed, however, in the House of Representatives. President Clinton, by letter of July 2, 1993, forwarded the agreement to the 103rd Congress. The trade agreement and the accompanying resolution would restore MFN to Romania, which ceased receiving MFN treatment on July 3, 1988. On July 20, 1993, Chairman Moynihan issued a press release requesting public comments on the agreement by August 3, 1993. In response, the Committee received 87 comments, all but three in favor of approving MFN for Romania. The House Ways and Means Committee, on October 6, 1993, ordered the companion resolution, H.J. Res. 228, favorably reported. The full House of Representatives is expected to consider the resolution on October 12, 1993.

Background.--In 1951, Congress enacted the Trade Agreements Extension Act which required the President to suspend MFN status for countries under the control of international communism, including Romania. Under Title IV of the Trade Act of 1974 (1974 Trade Act), the President may restore MFN treatment to imports from Romania if: (1) the President certifies that the freedom-of-emigration provisions of the 1974 Trade Act, commonly known as the Jackson-Vanik amendment, have been met, or waives those requirements; and (2) Romania has entered into a bilateral commercial agreement with the United States that contains the specific provisions identified in section 405 of the 1974 Trade Act.

The Jackson-Vanik requirements for Romania were first waived on April 24, 1975 and extended annually from 1976 through 1987. In 1988, after Romania renounced MFN status from the United States, then-President Reagan announced that he would not seek renewal of MFN for Romania and did not, therefore, renew the Jackson-Vanik waiver. On August 17, 1991, President Bush once again waived the Jackson-Vanik requirements and renewed the waiver on June 3, 1992. President Clinton renewed the waiver on June 3, 1993. In his report to the Congress, the President stated that the right to emigrate is constitutionally protected in Romania, and, except in rare cases involving national security or criminal charges, is not limited in practice. The President noted that no exit visa is required to leave Romania and that thousands of Romanians have left in recent years in search of economic opportunities in the West.

A trade agreement meeting the Title IV requirements entered into force August 3, 1975. The agreement's MFN provisions have been suspended since 1988, but the remainder of the agreement remains in force. In June 1992, a new U.S.-Romanian trade agreement was sent to the Congress by former President Bush, and resubmitted by President Clinton July 2, 1993. If approved by Congress, the new agreement would supersede the 1975 agreement. The agreement provides for the reciprocal extension of MFN treatment and contains a number of additional provisions designed to facilitate trade between the two countries. Included in the agreement are measures to encourage the mounting of trade promotion events; ease the establishment of business offices and the direct hire of employees; and improve the transparency of laws and regulations affecting trade and commercial matters. Additional provisions require that trade be conducted in convertible currencies and require the parties to provide non-discriminatory treatment with respect to a range of financial transactions. In addition, hard currency earnings from trade may be immediately repatriated. Further, Romania agreed to provide strong protection for intellectual property.

Procedures for Congressional consideration of the trade agreement.--The 1974 Trade Act, as amended by the Customs and Trade Act of 1990, provides expedited ("fast-track") legislative procedures for Congress to consider bilateral commercial agreements and Presidential declarations proclaiming MFN status for those countries which have entered into commercial agreements which meet the Title IV requirements. Thus, no amendments to S.J. Res. 110 are in order, floor debate will be limited, and final Congressional action on it must occur within 90 session days after its introduction.

STAFF DOCUMENT B

TRADE AGENCY BUDGET AUTHORIZATIONS

(Prepared by the Staff of the Senate Committee on Finance)

Thursday, October 14, 1993

This document provides background information on the fiscal year (FY) 1994 budget requests and, where applicable, the FY 1995 budget requests of the U.S. Customs Service, the U.S. Trade Representative (USTR), and the U.S. International Trade Commission (ITC). Each of these agencies sent detailed supporting documents to each Member's office before the June 28, 1993 International Trade Subcommittee hearing. The supporting documents are also available in the Finance Committee.

A. U.S. Customs Service

U.S. Customs Service Proposed Budget Authority
(Dollars in Thousands)

	FY 1993	FY 1994 (Request)
Salaries and Expenses	$1,315,917	$1,311,819
Air and Marine Interdiction		
Operations & Maintenance	$ 83,242	$ 46,063
P-3 Program	$ 28,000	$ 28,000
Procurement	$ 21,174	$ 21,093
SUBTOTAL	$ 132,416	$ 95,156
Facilities, Construction, and Improvements	$ 4,600	$ 0
Forfeiture Fund[1/]	$ 15,000	$ 0
Small Airports[1/]	$ 1,500	$ 1,406
TOTAL	$1,469,433	$1,408,381

[1/] Does not require annual authorization.

(1) Salaries and Expenses.--The President's budget requests $1.312 billion for the salaries and expenses of the Customs Service for FY 1994, covering 17,199 full time equivalent (FTE) positions. These amounts represent a decrease of $4.1 million and 365 FTE positions below the levels appropriated for FY 1993.

The President's budget request for FY 1994 reflects reductions of 265 positions to implement the President's directive on personnel reduction and of 200 positions which, according to Customs' budget submission, represents a "technical adjustment" that will "more accurately reflect the actual FTE supported by Customs funding." One hundred new positions are proposed to implement the FY 1993 Mexican Border Initiative. Thus, the proposed net reduction in FTE positions in FY 1994 is 365.

The President's proposal also reflects an $8.49 million reduction in administrative costs in response to the President's Executive Order mandating a Government-wide 14 percent reduction in administrative costs between FY 1994 and FY 1997. The proposed budget includes one new initiative: $2.5 million to fund the first part of the redesign of the Customs Service Automated Commercial System. The goal is to improve Customs' revenue collection and accounting systems.

The Omnibus Budget Reconciliation Act of 1986 requires that the salaries and expenses portion of the Customs Service authorization specify separate amounts for non-commercial and commercial operations. The President's requested authorization for salaries and expenses for FY 1994 is $771,036,000 for commercial operations and $540,783,000 for non-commercial operations.

(2) Air and Marine Interdiction Programs.--The FY 1993 total appropriation for operation and maintenance of the air and marine interdiction programs was $132.4 million.

In the past, operation and maintenance of the interdiction programs had been covered by one appropriation. The FY 1993 Treasury Appropriation Act split the account into three separate accounts: operation and maintenance of the air and marine interdiction programs; P-3 surveillance aircraft drug interdiction operations and maintenance; and procurement.

The total FY 1994 budget request for the air and marine interdiction programs is $95.2 million. For the operations and maintenance account, the budget proposes appropriations of $46.1 million, compared with FY 1993 appropriations of $83.2 million. The reduction reflects the Administration's decision to liquidate unobligated balances in the account (money appropriated in prior years but not spent), amounting to $37 million, and apply that amount toward FY 1994 operations and maintenance. While this reduces the requested appropriation to $46 million, the operating level for the operations and maintenance program will be $83.2 million, and $132.2 million for the entire air and marine interdiction program.

The Administration's request for FY 1994 does not propose any new interdiction initiatives.

(3) Facilities, Construction, and Improvements.--The FY 1993 appropriation included funds to complete construction at the Customs Canine Training Facility. Customs has not requested additional funds for FY 1994.

(4) Forfeiture Fund.--Pursuant to Public Law 102-393, the Customs Forfeiture Fund (consisting of currency and the proceeds from sales of assets seized in the course of Customs' law enforcement activities) was transferred to the Department of the Treasury and merged into a Treasury-wide asset forfeiture fund. The law provides a $50 million permanent authorization for discretionary uses of the Treasury Forfeiture Fund. Thus, no authorization is requested for a separate Customs Forfeiture Fund.

(5) Small Airports.--The Customs Service is authorized to charge user fees for services at certain small airports and other facilities where the volume of business is insufficient to justify the establishment of a port of entry. The user fees collected at these sites fund the salaries and expenses of the Customs employees who provide the services. The President's budget proposal requests a funding level of $1.4 million for 30 positions, a decrease of two positions from the FY 1993 level. There is a permanent authorization for this account.

B. USTR

The President's budget requests $20,143,000 and 157 FTE for USTR for FY 1994. The request represents an increase of $151,000 (0.8 percent) over the original FY 1993 appropriation level of $19,992,000. USTR also sought a $750,000 supplemental appropriation for FY 1993, primarily to cover costs associated with the NAFTA and Uruguay Round negotiations. The supplemental appropriations bill passed by the Congress in early July provided $500,000 for USTR, making USTR's total FY 1993 appropriation $20,492,000. USTR's FY 1995 budget request is $20,419,000, a 1.4 percent increase over the FY 1994 request level.

U.S. Trade Representative Proposed Budget Authority

FY 1993 APPROPRIATION		FY 1994 REQUEST	FY 1995 REQUEST
Original	$19,992,000		
Supplemental	$ 500,000		
TOTAL	**$20,492,000**	$20,143,000	$20,419,000

According to USTR, the requested $151,000 increase for FY 1994 is attributable to inflation increases and higher personnel costs (compensation and benefits), less cuts in administrative expenses to meet the targets of President Clinton's Executive Order directing a three percent cut in such expenses. Several other expenses, including the travel and communications accounts, also are reduced from the FY 1993 levels. The budget request also assumes a reduction in USTR's full-time equivalent (FTE) positions from 162 to 157.

C. ITC

The ITC's budget request for FY 1994 is $45,888,000, an increase of $1,036,000 (2.3 percent) over the FY 1993 appropriation level of $44,852,000. The FY 1995 budget request is $47,041,000, a $1,153,000 (2.5 percent) increase over the FY 1994 request level.

U.S. International Trade Commission Proposed Budget

FY 1993 APPROPRIATION	FY 1994 REQUEST	FY 1995 REQUEST
$44,852,000	$45,888,000	$47,041,000

On April 8, subsequent to the ITC's formal budget submission, Chairman Newquist sent Chairman Moynihan a letter setting out the ITC's budget without the general, cost-of-living pay increases. Without these increases (2.2 percent in FY 1994 and 2.0 percent in FY 1995), the budget level proposed for FY 1994 would be $45,416,000 (1.3 percent higher than the current appropriation level), and the FY 1995 level would be $45,974,000.

According to the ITC, the increases in the budget requests are necessary to cover non-discretionary increases in costs for personnel (compensation and benefits), rental of space, and replacement of equipment. These will be offset in part by reductions in travel and communications expenses. The FY 1994 budget request funds 474 FTE positions, 12 fewer than the current appropriation level.

The ITC's budget is not subject to review or control by the Executive Branch. To preserve the ITC's independence, by law the Office of Management and Budget must submit its budget directly to Congress without change. The ITC has indicated, however, that it voluntarily has reduced its budget requests (from higher levels approved earlier by the commissioners) in order to comply with the President's budget reduction directives for the Executive Branch.

STAFF DOCUMENT C

United States Senate
COMMITTEE ON FINANCE
WASHINGTON, DC 20510-6200

October 14, 1993

Dear Mr. Chairman:

As part of its policymaking process, the Senate Committee on Finance anticipates a need for impartial and detailed information on the competitiveness of environmental technology manufacturing and service industries in the United States. Recent reports prepared by the Office of Technology Assessment (OTA) at the request of the Committee have highlighted the emerging market opportunities for U.S. exporters of these goods and services. The OTA reports have also underscored the need for better data about the extent to which U.S. competitors are involved in export promotion of their environmental technology goods and services.

Accordingly, the Committee hereby requests, pursuant to section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), the Commission to collect and analyze information on the competitiveness of U.S. industries producing environmental goods and services. Specifically, the Committee requests that the Commission provide two reports. These should be comparative in nature, reviewing the export promotion/technical assistance policies of the United States' top competitors in the environmental technology field, including but not limited to Japan and Germany.

The first report should focus on the industry providing goods and services for municipal and industrial water supply and for municipal and industrial wastewater treatment and disposal. The second report should focus on the industry providing goods and services for air pollution prevention and abatement. The first report should be delivered within 12 months of the release of OTA's final report in its series on American Industry and the Environment, which is anticipated before the end of this year; the second report should be delivered not later than 12 months after delivery of the first report.

In defining the scope of its investigations, the Commission should focus on:

(1) those industries that provide such conventional environmental goods and services as pollution abatement, pollution prevention, or environmental remediation; or goods and services that have as a central component the reduction of energy or materials consumption or the reduction of environmental impact during use or upon disposal; and

(2) those industries that would benefit in foreign markets from greater coordination among export promotion and market development, environmental regulation, technology transfer, technical development assistance, economic development or other financial assistance, and intellectual property protection policies.

Thank you for your attention to this request.

Sincerely,

Daniel Patrick Moynihan
Chairman

The Honorable Don E. Newquist
Chairman
U.S. International Trade Commission
500 "E" Street, S.W.
Washington, D.C. 20436

COMMITTEE ON FINANCE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA) DRAFT IMPLEMENTING PROPOSAL

Staff Recommendations

Wednesday, October 20, 1993

1. **Consultations with State Governments (Article 105, p. 1-3)**

Replace the bracketed language in the third paragraph on p. 1-3 with the following:

"In order to conform, to the greatest extent practicable, state laws and practices with the NAFTA, and to improve the federal-state consultative process:

"(1) the President shall consult through the Intergovernmental Policy Advisory Committee for Trade (IGPAC); and

"(2) the USTR shall establish an expanded consultative process to address particular issues that arise under the NAFTA, which shall include:

"(a) assisting the states in identifying state measures that are inconsistent with the NAFTA;

"(b) informing the states concerning any matter arising under the NAFTA that directly relates to, or may have a direct impact on, them;

"(c) providing the opportunity for the states to submit information and advice with regard to such matters, and taking into account such information and advice in formulating U.S. positions; and

"(d) involving the states, to the greatest extent practicable, at each stage of the development of U.S. positions with respect to such matters (whether they are before a committee, subcommittee, or working group established by the NAFTA or are to be decided by a dispute settlement panel).

"This federal-state consultative process does not create an 'advisory committee' subject to the requirements of the Federal Advisory Committee Act.

"Statement of Administrative Action to elaborate on this consultative process, including the designation by USTR and the states of a coordinator ('single point of contact') for state-related matters under the NAFTA."

2. **Initial Implementing Regulations (Article 105, p. 1-3)**

Replace the bracketed language in the sixth paragraph on p. 1-3 with the following:

> "except that, at a minimum, interim regulations on rules of origin reflecting the Uniform Regulations required by Article 511 shall be issued as soon as possible and no later than the date of entry into force of the Agreement."

3. **GSP Status of Mexico (Article 302, p. 3-1)**

At the end of the first paragraph on p. 3-1, insert the following:

> "The President shall withdraw beneficiary status under the Generalized System of Preferences program from Mexico on the effective date of the proclamation to carry out the schedule of duty reductions with Mexico."

4. **Amendments to the NAFTA (Article 302, p. 3-1; Annexes 401, 403.1, 403.2, p. 4-1; Article 2202, p. 22-1)**

Replace the bracketed language at the bottom of p. 3-1 with the following:

> "The President is authorized, subject to consultation and layover requirements, to proclaim tariff modifications, including any acceleration of tariff staging, as may be agreed by the Parties."

Replace the bracketed language at the bottom of p. 4-1 with the following:

> "The President is authorized, subject to consultation and layover requirements, to proclaim modifications to specific rules of origin in Annex 401 and to the automotive tracing requirements in Annexes 403.1 and 403.2."

Replace the bracketed language on p. 22-1 with the following:

> "Changes in statutes to implement a requirement, amendment, or recommendation.
>
> "Normal legislative procedures will apply to any changes in statutes needed for future amendments to the NAFTA.
>
> "Proclamation authority subject to consultation and layover requirements.

"The President is authorized to proclaim --

"tariff modifications, including any acceleration of tariff staging agreed to by the Parties;

"modifications to specific rules of origin in Annex 401, and the automotive 'tracing' requirements in Annexes 403.1, and 403.2;

"modifications in provisions of the bill that enact Article 415 (rule of origin definitions) agreed by the Parties during the first year after enactment of the NAFTA Act;

"only if --

"(1) the President has obtained advice regarding the proposed action from appropriate private sector advisory committees and from the ITC;

"(2) the President has submitted a report to the House Ways and Means and Senate Finance Committees setting forth the proposed action and reasons therefor and the advice obtained; and

"(3) at least 60 calendar days have expired since submission of the report and the President has consulted the committees during this period.

"Initial proclamations authorized in the NAFTA Act (tariff modifications to implement schedules of duty reductions, basic and specific rules of origin, various customs provisions) may take effect no earlier than 15 days after the proclamation is published in the Federal Register."

5. **Restrictions on Accelerated Tariff Elimination (Article 302, p. 3-2)**

At the top of p. 3-2, insert the following:

"For those tariff items for which the U.S. tariff phaseout period under the NAFTA is more than 10 years, the Administration may consider a request for acceleration of the phaseout schedule only if such acceleration is not opposed by U.S. producers. If a request for acceleration has been previously denied, a new request cannot be considered (1) unless it includes new information indicating changed circumstances, and (2) if the previous request was denied in any of the preceding three calendar years or three acceleration reviews, whichever is longer.

"Statement of Administrative Action to provide additional details on the Administration's plans for implementing tariff acceleration procedures.

"Committee report to urge the Administration to press Mexico for accelerated removal of its tariffs on certain U.S. products, particularly those for which reciprocal concessions were not obtained from Mexico in the NAFTA."

6. **Drawback Authority (Article 303, p. 3-4)**

After the third paragraph on p. 3-4, add the following:

"Provides that any person claiming drawback must disclose to Customs whether that person has prepared or intends to prepare a NAFTA Certificate of Origin. If a Certificate is prepared after a drawback claim is filed, the drawback claimant must disclose to Customs the existence of the Certificate within 30 days, and any amount of drawback paid must be adjusted accordingly."

7. **Marking Requirements for Certain Pipes and Fittings, Compressed Gas Cylinders, and Manhole Rings and Covers (Article 311, p. 3-7)**

Strike the last sentence in the paragraph on p. 3-7, and replace with the following:

"Also amends section 304 to provide that certain pipes and fittings may be marked by means of continuous paint stenciling in addition to the methods provided in section 304(c)(1) and that certain manhole rings or frames may be marked with 'an equally permanent method of marking' in addition to the methods provided in section 304(e). Makes conforming changes to section 304(c)(2)."

8. **Report on Automotive Trade (Annex 300-A, p. 3-9)**

At the bottom of p. 3-9, insert the following:

"Findings.--The Congress finds that automotive trade is one of the most restricted areas of trade between the United States and Mexico; and that the NAFTA's elimination of Mexican barriers to such trade should increase substantially U.S. automotive exports (as reflected in estimates by the U.S. Department of Commerce and the U.S. auto industry).

"Reports.--For each of the first five years of the NAFTA, USTR shall report to the Senate Finance and House Ways and Means Committees on the effectiveness of the NAFTA's automotive trade provisions. These reports shall include information on current bilateral automotive trade levels; remaining barriers; the amount U.S. exports have increased over the previous year; whether such increases meet the anticipated levels of new exports; and if not, what actions USTR is prepared to take (including, but not limited to, possible additional negotiations with Mexico) to realize the expected benefits."

9. **Proclamation Authority for Definitions Relating to Rules of Origin (Article 415, p. 4-6)**

After the paragraph on p. 406, add the following:

"The President is authorized to proclaim, subject to consultation and layover requirements, modifications to the definitions that may be agreed to by the Parties during the first year after enactment of the NAFTA."

10. **Changes to Procedures for "Snapback" of Tariffs on Canadian Agricultural Products (Article 703/Annex 703.3, p. 7-3)**

At the middle of p. 7-3, insert the following:

"Special Tariff Provisions for Fresh Fruits and Vegetables:

"Section 301(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (CFTA Act) is amended to provide that the Secretary of Agriculture may impose a temporary duty on any Canadian fresh fruit or vegetable (as defined in the statute) entered into the United States if:

"(1) The Secretary, or his designee, determines that both of the conditions set forth at section 301(a)(1)(A) and (B) of the CFTA Act (relating to the import price of the fresh fruit or vegetable and the planted U.S. acreage for the like product) exist at the time that imposition of the duty is recommended, and notice of such determination is published in the Federal Register; and

"(2) Not later than seven days after publication of such notice, and having considered whether the conditions in subparagraphs (A) and (B) have led to a distortion in U.S.-Canada trade in the relevant product, the Secretary determines to impose the temporary duty.

"The Commissioner of Customs and Director of the Census Bureau shall provide the Secretary with timely information concerning the importation of Canadian fresh fruits or vegetables, and importers shall be required to report such information as soon as practicable to the Commissioner of Customs."

11. **Monitoring Imports of Broomcorn Brooms (Article 801; Annex 801.1, p. 8-1)**

At the bottom of p. 8-1, insert the following:

"Statement of Administrative Action to provide that the Executive Branch will take the following actions: (1) it will carefully monitor U.S. imports of broomcorn brooms from Mexico once the NAFTA enters into force; (2) if the NAFTA's elimination of tariffs on these products results in increased imports from Mexico and causes or threatens to cause serious injury to U.S. producers, it will take action consistent with the NAFTA and U.S. law to rectify the situation; and (3) it will consult with the Congress concerning any developments with respect to imports of broomcorn brooms from Mexico."

12. **Establishment of Rosters of Panelists (Annex 1901.2, p. 19-1)**

Replace the bracketed language on p. 19-1 with the following:

"Identical provisions regarding the establishment and functions of the interagency group. With regard to the selection of panelists, identical provisions, with conforming amendments, and with the added requirement that, at the time the USTR submits candidate lists, it shall submit to the Senate Finance and House Ways and Means Committees a written report that contains: (1) such information regarding the individuals on the lists as the Committees may require; and (2) if the preliminary candidate lists include individuals who are not judges or former judges, a description of the efforts USTR has taken to include judges and former judges, the reasons the list is not comprised solely of judges or former judges, and the efforts the USTR has made to ensure that the non-judges included on the list have the appropriate qualifications.

"Committee report to expand on information to be required of individuals on preliminary candidate lists, taking into account that federal judges are subject to confirmation. Report to clarify that the request for information is not intended to discourage judges and former judges from serving on binational panels, but to encourage the selection of qualified panelists."

13. **Standard of Review in Binational Panel Cases (Article 1904, p. 19-8)**

After "Existing U.S. law applies," on p. 19-8, add the following:

"Statement of Administrative Action and committee report to emphasize that NAFTA requires binational panels to apply the same standard of review as domestic courts."

14. **Grounds for Invoking Extraordinary Challenge Procedure (Annex 1904.13, p. 19-9)**

Opposite Annex 1904.13 on p. 19-9, insert the following:

"Express the sense of the Congress that the failure of a panel to apply the appropriate standard of review, if such failure materially affected the outcome of the panel process, would, in the great majority of cases, in and of itself threaten the integrity of the binational panel review process. Provide further that the term 'manifestly' means only that the error is clearly evident and does not mean that the error itself must be of great magnitude."

15. **Procedures for Invoking Extraordinary Challenge Procedure (Annex 1904.13, p. 19-9)**

After the paragraph added pursuant to item 14 above on p. 19-9, add the following new paragraph:

"Statement of Administrative Action to elaborate on procedures by which interested parties can request that an extraordinary challenge committee be convened. Committee report to emphasize need for such procedures."

16. **Import Monitoring (Annex 1904.15, p. 19-11)**

Strike "No change to existing U.S. law" in the paragraph on p. 19-11, and replace with the following:

"Identical provision, with conforming amendments.

"Statement of Administrative Action and committee report to set forth the intention to monitor vigilantly foreign government actions in cases where there is the potential for subsidization (with particular attention to the provision of capital, loans, or loan guarantees on terms inconsistent with commercial considerations); as, for example, was stated in USTR's recent announcement of its intention to do so in response to the section 409(b) petition filed by Vista Chemical Company concerning linear alkylbenzene (LAB) production in Canada."

17. **Subsidy Negotiations (Article 1907, p. 19-14)**

Strike the third full paragraph on p. 19-14, and replace with the following:

"(a) Negotiating objectives.--The negotiating objectives of the United States with respect to subsidies, for any trade agreement entered into by the President (including any agreement to amend or permit accession to the NAFTA), include, but are not limited to:

"(1) achievement of increased discipline on domestic subsidies provided by a foreign government, including (A) the provision of capital, loans, or loan guarantees on terms inconsistent with commercial considerations; (B) the provision of goods or services at preferential rates; (C) the grant of funds or forgiveness of debt to cover operating losses sustained by a specific industry; and (D) the assumption of any costs or expenses of manufacture, production, or distribution;

"(2) achievement of increased discipline on export subsidies provided by a foreign government, particularly with respect to agricultural products; and

"(3) maintenance of an effective countervailing duty (CVD) remedy against all subsidized imports that materially injure or threaten to materially injure U.S. industries, and achievement of effective discipline on circumvention of CVD orders."

18. **GAO Report on Chapter 19 Panel Decisions (Chapter 19, p. 19-16)**

At the end of the description of Chapter 19 provisions on p. 19-16, add the following new paragraph:

"Require GAO to report on CFTA Chapter 19 panel decisions to date, analyzing each decision, the panel's application of the appropriate standard of review, and the volume of trade affected by the decision, and comparing the panel decision with CIT rulings on similar issues. Require similar annual reports on NAFTA Chapter 19 panel decisions."

19. **Clarification of the "Effects Test" (Chapter 19, p. 19-16)**

After the paragraph added in item 18 above on page 19-16, add the following new paragraph:

"Statement of Administrative Action and committee report to clarify that, once the Department of Commerce has found that a subsidy has been provided, it does not have to show that the subsidy affected the price or output of the subject merchandise. Statement of Administrative Action to provide that Administration will be willing to seek a legislative change if panels continue to misapply the test."

20. **Clarification of "Specificity Test" (Chapter 19, p. 19-16)**

After the paragraph added in item 19 above on page 19-16, add the following new paragraph:

"Statement of Administrative Action and committee report to clarify that the Department of Commerce may find that a subsidy is provided to a specific industry based on such factor or factors as it determines relevant, including one or more of those set out in its proposed regulations. Statement of Administrative Action to provide that Administration will be willing to support legislation to correct the problem if panels continue to misapply the test."

21. **Allocation of Subsidies Over Time (Chapter 19, p. 19-16)**

After the paragraph added in item 20 above, add the following new paragraph:

"Statement of Administrative Action and committee report to clarify that the Commerce Department has the discretion to allocate subsidies over a reasonable period of time such as the average useful life of an industry's renewable physical assets as established by the IRS. Statement of Administrative Action to provide that Administration will be willing to support legislation to correct the problem if panels continue to misapply the provision."

22. **Authorization of Appropriations for Secretariat, Chapters 19 and 20 Panels and Committees (Article 2002, pp. 20-1 and 20-2)**

Strike the second paragraph on p. 20-1 and the bracketed language at the top of p. 20-2, and replace with the following:

"Authorizes appropriations to the department or agency within which the U.S. Secretariat is established (Department of Commerce) of the lesser of such sums as may be necessary or $2,000,000 for each fiscal year after fiscal year 1993 for the establishment and operations of the U.S. Secretariat and for payment of the U.S. share of expenses of binational panels and extraordinary challenge committees convened pursuant to Chapter 19 and dispute settlement proceedings under Chapter 20. The U.S. Secretariat may retain and use funds provided by the Canadian and Mexican Secretariats for payment of their share of such expenses."

23. **Selection of Candidates for Chapter 20 Panel Roster (Articles 2008-2017, p. 20-5)**

At the top of p. 20-5 add the following:

"The USTR is required to consult with the Ways and Means and Finance Committees regarding the selection of candidates for the Chapter 20 roster."

24. **Cultural Industries (Article 2106/Annex 2106, p. 21-3)**

Opposite Article 2106 on p. 21-3, insert the following:

"The Trade Act of 1974 is amended to add a new section 183 ('Identification of a Country that Denies National Treatment, Market Access, or Adequate and Effective Intellectual Property Rights Protection for Cultural Industries') providing that:

"(1) By no later than 30 days after submission to Congress of the annual National Trade Estimates report, USTR shall identify any act, policy, or practice of Canada adopted or expanded after December 17, 1992 affecting cultural industries, and which would violate or be inconsistent with the NAFTA but for Article 2106. Any act, policy, or practice so identified should be treated, for purposes of section 301, as the basis for Canada's identification under the special 301 law as a 'priority foreign country', unless the United States has already taken action under Article 2106 in response to it.

"(2) In determining whether to make such an identification, USTR shall consult with and take into account the views of the relevant U.S. industries, appropriate advisory committees, and appropriate federal government officials."

NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA) IMPLEMENTING LEGISLATION
(Prepared for the Use of the Senate Committee on Finance)

October 12, 1993

NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA) IMPLEMENTING LEGISLATION
(Prepared for the Use of the Senate Committee on Finance)

Agreement Provision	Current U.S. Law/Practice	Draft Implementing Proposal
PART ONE: GENERAL PART		
CHAPTER 1: OBJECTIVES		
Article 101: Establishment of the Free Trade Area		
The Governments of the United States, Mexico, and Canada, consistent with Article XXIV of the General Agreement on Tariffs and Trade (GATT), establish a free trade area.	Under section 1103(a) of the 1988 Trade Act, the NAFTA may enter into force for the United States under "fast track" Congressional approval procedures only if: (1) the President transmits a document to Congress containing the final legal text of the NAFTA, a draft implementing bill, and a statement of any administrative action proposed to implement the NAFTA, as well as an explanation of how the implementing bill and administrative action change or affect current U.S. law, and a statement concerning how the agreement serves the interest of U.S. commerce; and (2) the implementing bill is enacted into law. Sections 151-154 of the Trade Act of 1974 prescribe the specific procedures for Congressional consideration of the NAFTA. *Section 101 of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (CFTA Act) approved the United States-Canada Free-Trade Agreement (CFTA), and the accompanying exchange of letters and statement of administrative action.*	The Congress approves the NAFTA Agreement entered into on December 17, 1992, any letters integral to the Agreement exchanged between the United States and Canada and Mexico, and the statement of administrative action proposed by the Executive branch to implement the NAFTA.
Article 102: Objectives Lists the NAFTA's objectives to: (1) eliminate barriers to trade in goods and services; (2) promote conditions of fair competition; (3) increase significantly opportunities for investment; (4) provide adequate and effective protection and enforcement of intellectual property rights; (5) create effective procedures for joint administration of the Agreement and for dispute resolution; and (6) establish a framework for further cooperation to expand and enhance Agreement benefits.		

Agreement Provision	Current U.S. Law/Practice	Draft Implementing Proposal
Article 103: Relation to Other Agreements Provides that the Parties affirm their existing rights and obligations with respect to each other under bilateral and multilateral agreements (including the GATT). If there is an inconsistency between the NAFTA and these, the NAFTA shall prevail except as it provides otherwise.		
Article 104: Relation to Environmental and Conservation Agreements **Annex 104.1: Bilateral and Other Environmental and Conservation Agreements** Provides that, in the event of any inconsistency between the NAFTA and the specific trade obligations in listed environmental agreements, such obligations in those agreements shall prevail. Covers three multilateral agreements: (1) the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora, as amended; (2) the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, as amended; and (3) the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal. Annex lists two bilateral agreements: (1) the 1986 Agreement between the United States and Canada Concerning the Transboundary Movement of Hazardous Waste; and (2) the 1983 Agreement between the United States and Mexico on Cooperation for the Protection and Improvement of the Environment in the Border Area. The Parties may add other environmental agreements to this list.		
Article 105: Extent of Obligations Provides that the Parties shall ensure that all necessary measures are taken to give effect to the provisions of the NAFTA, including their observance (except as otherwise provided in the NAFTA) by State, provincial, and local governments.	*Section 102(a) of the CFTA Act provides that no provision of that Agreement, nor its application, which is in conflict with any U.S. law shall have effect.*	Identical provision with conforming amendments.

Agreement Provision	Current U.S. Law/Practice	Draft Implementing Proposal
	Section 102(b) of the CFTA Act provides that provisions of the CFTA shall prevail over any conflicting State law (or application of such law), to the extent of the conflict.	Identical provision with conforming amendments.
	Section 102(b) provides further that the United States may bring an action challenging any provision or application of State law on the ground that it is inconsistent with the CFTA.	Identical provision with conforming amendments.
	Section 102(b) also requires the President to consult with State governments on the implementation of U.S. obligations under the CFTA through the intergovernmental policy advisory committees and with individual States as necessary.	[Consultation requirements with States to be addressed.]
	Section 102(c) of the CFTA Act specifies that it is the United States alone that shall be able to challenge such provision or application of State law as inconsistent with the CFTA.	Identical provision with conforming amendments.
	No person other than the United States shall have any cause of action or defense under the CFTA, or shall be able to challenge any action or inaction by the Federal Government or any State or its subdivision as inconsistent with the CFTA.	Identical provision with conforming amendments.
	Section 102(d) of the CFTA Act provides that initial regulations necessary or appropriate to carry out the statement of administrative action shall, to the maximum extent feasible, be issued within one year after the CFTA enters into force.	Initial regulations that are necessary or appropriate to carry out the statement of administrative action shall, to the maximum extent feasible, be issued within one year after the NAFTA enters into force. [Timing for initial regulations to implement the rules of origin in Chapter 4 to be addressed.]
	For any implementing action that takes effect after the entry into force, initial regulations shall, to the maximum extent feasible, be issued within one year after the relevant effective date.	Identical provision with conforming amendments.

Agreement Provision	Current U.S. Law/Practice	Draft Implementing Proposal
CHAPTER 2: GENERAL PROVISIONS		
Article 201: Definitions of General Application Annex 201.1: Country-Specific Definitions		
Defines the terms generally used in the NAFTA (e.g., Harmonized System, Secretariat).		Sets out definitions of key terms used throughout the implementing bill.

Agreement Provision	Current U.S. Law/Practice	Draft Implementing Proposal
PART TWO: TRADE IN GOODS		
CHAPTER 3: NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS		
Article 300: Scope and Coverage		
Chapter 3 applies to trade in goods among NAFTA Parties, including automotive goods, textiles and apparel, and other goods covered in Part Two.	*The CFTA, as implemented by the CFTA Act, currently applies to trade between the United States and Canada.*	
Article 301: National Treatment		
Requires Parties to accord national treatment to the goods of another Party. State and provincial governments must also accord national treatment to the goods of another Party. Annex 301.3 establishes certain exceptions to the national treatment obligation. These include, for the United States, the exceptions "grandfathered" under the GATT (certain taxes on imported perfume containing distilled spirits and maritime restrictions on cabotage) and export controls on logs. For Canada, the exceptions include export controls on unprocessed fish and the exceptions that Canada "grandfathered" under the GATT. For Mexico, the exceptions include, for a 10-year period, import restrictions on certain used goods.	The United States has, through the GATT, assumed national treatment obligations with respect to Canada and Mexico, subject to the exceptions "grandfathered" under the GATT. *With respect to Canada, the United States has also assumed national treatment obligations under the CFTA, subject to the same exceptions "grandfathered" under the GATT.*	
Article 302: Tariff Elimination		
Prohibits Parties from increasing any existing customs duty or adopting any customs duty on originating goods, except as provided in the NAFTA. Requires the progressive elimination of tariffs according to the staging categories set forth in Annex 302.2 of the NAFTA, and in each Party's schedule to Annex 302.2. The staging categories are: (1) immediate elimination (category A); (2) five-year phase-out in equal, annual cuts of 20 percent per year (category B); (3) 10-year phase-out in equal, annual cuts of 10 percent per year (category C); and (4) in the case of the most import-sensitive products, 15-year phase-out in equal, annual cuts of 6.67 percent per year (category C+). Goods that currently receive duty-free treatment will continue to receive duty-free treatment.	*Under the CFTA, tariffs on originating goods (goods meeting the CFTA rules of origin) traded between Canada and the United States will be eliminated by January 1, 1998. Section 201 of the CFTA Act authorizes the President to proclaim such modification or continuance of any existing duty, continuance of duty-free or excise treatment, or such additional duties as he determines necessary or appropriate to carry out the CFTA duty reductions. Section 201 also authorizes the President to proclaim, subject to consultation and lay-over requirements, such tariff modifications, including the modified staging of duty reductions, as may be agreed by Canada and the United States, as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Canada.*	The President may proclaim such modifications or continuation of any duty, continuation of duty-free or excise treatment, or such additional duties as he determines necessary to carry out the NAFTA provisions. [Amendment authority to be addressed.]

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If requested by a Party, requires the Parties to consider accelerating the elimination of customs duties; any agreement on accelerated implementation would supersede the implementation schedule now in the Agreement.		
Allows Parties to adopt or maintain import measures to allocate in-quota imports pursuant to a tariff rate quota provided under the NAFTA if they do not have trade restrictive effects beyond those caused by the imposition of the tariff rate quota.		
Annex 302.2: Tariff Schedules		
Annex 302.2 sets forth the U.S., Canadian, and Mexican tariff schedules, indicating for each Harmonized Tariff Schedule (HTS) tariff provision the existing rate of duty and the staging schedule.		
The base rates for customs duties (generally the rates of duty in effect on July 1, 1991) and the appropriate staging categories are set forth in each Party's Schedule to Annex 302.2. Interim staged rates will be rounded down, with limited exceptions.		
Article 303: Restriction on Drawback and Duty Deferral Programs		
Limits duty drawback on trade between the United States and Canada as of January 1, 1996, and on trade between the United States and Mexico as of January 1, 2001, with certain exceptions. For dutiable goods traded between the Parties, drawback will be limited to an amount that is the lesser of (1) the total amount of customs duties paid or owed on the non-NAFTA components initially imported; and (2) the total amount of customs duties paid to another Party on the good subsequently exported.	U.S. duty drawback programs provide for the refund of duties paid on imported goods when such goods, or substituted domestic goods, are exported or incorporated in articles that are subsequently exported. Under certain circumstances, U.S. law allows for the non-payment of duties on imported articles placed into certain types of bonded warehouses where the resulting articles are subsequently exported.	Defines the goods that are subject to NAFTA drawback.
Foreign trade zones (FTZs), maquiladoras, and other in-bond operations will be charged duty for non-NAFTA components used in goods that are sold to other NAFTA parties just as if the goods were sold into their domestic markets.	Under current U.S. law, certain goods are entitled to duty-free entry under temporary importation bond pursuant to Chapter 98, Subchapter 13 of the HTS.	Amends sections 311 of the Tariff Act of 1930 to provide that articles manufactured in a bonded warehouse from goods that are subject to NAFTA drawback are subject to duty upon withdrawal from the warehouse. Such duties must be paid within 60 days of exportation, except that duties may be waived or reduced in an amount that does not exceed the lesser of the total amount of customs duties paid or owed on the materials imported into the United States or the total amount of customs duties paid to the NAFTA country to which the article is exported.

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Provides that the United States may maintain drawback on imported sugar used in goods exported to Mexico or Canada, and that the United States and Canada may maintain drawback on imported citrus products and certain textile and apparel goods. No Party may refund, waive, or reduce antidumping or countervailing duties applied to imported goods that are subsequently exported, fees applied pursuant to section 22 of the Agricultural Adjustment Act, or customs duties paid or owed on a good imported into its territory and substituted by an identical or similar good that is subsequently exported to the territory of another Party. Under Annex 303.8, drawback will be completely eliminated for non-NAFTA color picture tubes over 14 inches diagonal as of the date of implementation, except, for a limited time, for a specific number of tubes used by certain Mexican producers.	Under the U.S. FTZ program, imported goods may enter an authorized FTZ for manipulation or further manufacture without the payment of duties. When the finished goods are withdrawn from the zone for consumption in the United States, duties must be paid on the value of foreign components at either the component or finished-good tariff rate. If the goods are exported and do not enter U.S. commerce, no duties must be paid. *Under the CFTA, the United States and Canada are required to end drawback on exports to each other as of January 1, 1994, with limited exceptions. Beginning January 1, 1994, goods withdrawn from an FTZ or benefitting from a similar program must be treated the same whether destined for consumption in the United States or Canada, i.e., duties must be paid.*	Amends section 312 of the Tariff Act of 1930 to provide that duties must be paid, within 60 days of exportation to a NAFTA country, on metal-bearing materials that are refined or smelted in a bonded warehouse, except that such duties may be waived or reduced in an amount that does not exceed the lesser of the total amount of customs duties paid or owed on the materials imported into the United States or the total amount of customs duties paid to the NAFTA country to which the article is exported. Amends section 313 of the Tariff Act of 1930 to provide generally that, for goods subject to NAFTA drawback, no customs duties may be refunded, waived or reduced in an amount that exceeds the lesser of the total amount of customs duties paid or owed on the materials imported into the United States or the total amount of customs duties paid to the NAFTA country to which the article is exported. Limits drawback on certain color cathode-ray television picture tubes and on materials used for construction and equipment of vessels built for the government of or residents of a NAFTA country. Amends section 562 of the Tariff Act of 1930 to provide that the NAFTA drawback limitation applies to goods cleaned, sorted, or packed in bonded warehouses. Amends section 3(a) of the Foreign Trade Zones Act to bring the law into compliance with Article 303 of the NAFTA. Duties will be collected within 60 days of exportation to Canada or Mexico to the same extent as if the product were entered for domestic consumption, except that duties may be waived or reduced in an amount that does not exceed the lesser of the total amount of customs duties paid or owed on the merchandise upon importation into the United States or the total amount of customs duties paid on the article to the NAFTA country to which the good is exported. The amendments made to sections 311, 312, 313, and 562 of the Tariff Act of 1930 and to the FTZ Act apply on and after January 1, 1996 with respect to exports to Canada and on and after January 1, 2001 with respect to exports to Mexico.

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		Amends section 313(j) of the Tariff Act of 1930 to provide that, effective immediately, drawback may not be paid on exports to a NAFTA country of merchandise that is fungible with and substituted for imported merchandise. Provides that nothing in the bill shall be considered to authorize the refund, waiver, or reduction of countervailing or antidumping duties imposed on an imported good. Provides that the Secretary of the Treasury shall not, on condition of export, refund or reduce a fee applied pursuant to section 22 of the Agricultural Adjustment Act. Applies with respect to goods exported to Canada after December 31, 1995 and with respect to goods exported to Mexico after December 31, 2000.
Article 304: Waiver of Customs Duties		
Except as provided in Annex 304.1, the Parties may not adopt, expand, or extend duty waiver programs linked to performance requirements. Annex 304.1 provides that this general prohibition does not apply with respect to existing Mexican duty waivers, but Mexico's ability to extend or expand its existing programs is limited. Annex 304.2 provides that CFTA provisions apply as between Canada and the United States, requiring elimination of any duty waiver programs by January 1, 1998. Requires Mexico to eliminate its duty waiver programs by January 1, 2001. If any duty waivers have an adverse impact on the commercial interests of another Party, or a person of that Party, the Party granting the waiver must cease granting the waiver or make the waiver generally available to any importer.	The United States currently does not maintain any such duty remission programs.	
Article 305: Temporary Admission of Goods		
Requires each Party to grant temporary, duty-free admission of the following goods when imported from another Party: professional equipment imported by a business person; equipment for the print or broadcast media; goods intended for sports purposes and goods intended for display or	Under Chapter 98, Subchapter 13 of the HTS, certain goods when not imported for sale or for sale on approval may be admitted into the United States without the payment of duty, under bond, for their exportation within one year from the date of importation.	The President may proclaim the tariff modifications necessary or appropriate to comply with Article 305.

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demonstration; and commercial samples and advertising films. Allows the Parties to place certain conditions on duty-free temporary admission, including a bonding requirement and a requirement that the goods not be sold or leased while in the territory of the Party granting temporary admission. Limits the types of restrictions that a Party may place on the vehicles or containers used in international traffic that enter its territory temporarily.		
Article 306: Duty-Free Entry of Certain Commercial Samples and Printed Advertising Materials		
Requires each Party to grant duty-free entry of commercial samples of negligible value and printed advertising material imported from another Party, but duty-free entry may be subject to certain conditions.	HTS 9813.00.20 permits duty-free entry under bond of commercial samples. Printed advertising materials enter the United States duty free.	Existing U.S. law applies.
Article 307: Goods Re-Entered after Repair or Alteration		
With certain exceptions, no Party may impose customs duties on a good that re-enters its territory after it has been repaired or altered in the territory of another Party and no Party may impose duties on goods imported temporarily from another Party for purposes of repair or alteration. Preserves the provisions of the CFTA with respect to trade between the United States and Canada. Provides for phase-out of special duties on the repair of vessels re-entered from Mexico.	HTS 9813.00.05 permits duty-free importation under bond of articles to be repaired in the United States. HTS 9802.00.40 and 9802.00.50 provide that duties are assessed on the value of the repair or alteration on articles that are repaired abroad and returned to the United States, except that certain articles repaired under warranty and covered by the CFTA, the U.S.-Canada Auto Pact, or the GATT Agreement on Trade in Civil Aircraft reenter the United States duty-free. Section 466 of the Tariff Act of 1930 provides for a 50 percent ad valorem duty on the cost of vessel repairs.	The President may proclaim the tariff modifications necessary or appropriate to comply with Article 307.
Article 308: MFN Rates of Duty on Certain Goods		
Creates a common external tariff for the NAFTA Parties with respect to imports from non-NAFTA countries by harmonizing the MFN rates of duty of the following products: automatic data processing	The HTS sets forth the rates of duty for automatic data processing equipment, color picture tubes and LAN apparatus.	The President may proclaim the tariff modifications necessary or appropriate to implement Article 308.

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goods and parts; color television tubes; and local area network (LAN) apparatus. Annexes set out specific "target" rates of duty for these goods and provide for adjustment of the MFN rates under certain circumstances. Also provides that when the MFN tariff rates on these goods are harmonized, they will be treated as originating goods when imported from a NAFTA country. Requires the Parties to consult regarding the tariff classification of LAN apparatus and to endeavor to agree by January 1, 1994 on such classification.		Once NAFTA countries harmonize their tariffs on the goods described in Article 308, the goods shall be deemed to be originating goods notwithstanding the otherwise applicable rules of origin.
Article 309: Import and Export Restrictions		
Incorporates the Parties' GATT rights with respect to prohibitions or restrictions on trade in goods, except for those measures identified in Annex 301.3. Sets forth the understanding of the Parties that the GATT prohibits minimum export prices and minimum import prices (except as permitted in the enforcement of antidumping or countervailing duty orders). Nothing in the NAFTA is to be construed to prevent a Party from imposing restrictions on trade with non-Parties or requiring that its exports to a Party not be re-exported to such non-Party.		
Article 310: Customs User Fees		
Prohibits any Party from introducing certain new customs user fees or increasing such fees on originating goods from another Party. Requires the United States to phase out its merchandise processing fee with respect to Canadian originating goods according to the schedule set forth in CFTA Article 403, and for the United States and Mexico to eliminate their merchandise processing fees on originating goods by June 30, 1999.	Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) authorizes Customs to collect user fees, including a merchandise processing fee, through September 30, 1998. The merchandise processing fee is 0.19 percent ad valorem on formally entered imported merchandise (generally entries valued over $1,250), subject to a minimum fee of $21 per entry and a maximum fee of $400 per entry. On informal entries, the United States imposes a merchandise processing fee of $2, $5, or $8 depending on the type of entry. *Under section 203 of the CFTA Act, the merchandise processing fee on goods originating in Canada is eliminated by January 1, 1994.*	Amends the COBRA to provide that the merchandise processing fee may not be imposed on Canadian goods and may not be increased with respect to Mexican goods after December 31, 1993 and may not be imposed on Mexican goods after June 29, 1999.

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Article 311: Country of Origin Marking		
Sets out a series of obligations with respect to the country of origin markings that may be required by each Party. The annex permits a Party to require country of origin marking, and requires the Parties to establish marking rules by January 1, 1994. Requires that the Parties exempt from the marking requirement a good of another Party that: (1) is incapable of being marked; (2) cannot be marked prior to exportation without causing injury to the goods; (3) cannot be marked except at a cost that is substantial in relation to its customs value so as to discourage its exportation; (4) cannot be marked without materially impairing its function or substantially detracting from its appearance; (5) is in a container that is marked in a manner that will reasonably indicate the good's origin to the ultimate purchaser; (6) is a crude substance; (7) is imported for use by the importer and is not intended for sale in the form in which it was imported; (8) is to undergo production in the importing country in a manner that would result in the good becoming a good of the importing country; (9) by reason of its character, or the circumstances of its importation, the ultimate purchaser would reasonably know its country of origin even though it is not marked; (10) was produced more than 20 years prior to its importation; (11) was imported without the required marking and cannot be marked after its importation except at a cost that would be substantial in relation to its customs value, if the failure to mark the good before importation was not for the purpose of avoiding the marking requirement; (12) for purposes of temporary duty-free admission, is in transit or in bond or otherwise under customs administration control; (13) is an original work of art; or (14) certain ceramic building bricks, semiconductor devices and integrated circuits.	Section 304 of the Tariff Act of 1930 requires that each imported article produced abroad be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article permits, with the English name of the country of origin. The Secretary of the Treasury may authorize certain exemptions from the marking requirements if: (1) an article is incapable of being marked; (2) the article cannot be marked prior to shipment to the United States without injury; (3) an article cannot be marked prior to shipment to the United States except at an expense economically prohibitive of its importation; (4) the marking of a container of an article will reasonably indicate the origin of the article; (5) the article is a crude substance; (6) an article is imported for use by the importer and not intended for sale in its imported or any other form; (7) an article is to be processed in the United States by the importer or for his account otherwise than for the purpose of concealing the article and in such manner that any mark would be obliterated or concealed; (8) an ultimate purchaser, by reason of the character of an article or the circumstances of its importation, must necessarily know the country of origin of such article; (9) an article was produced more than 20 years before its importation; (10) an article is among the class of articles with respect to which the Secretary of the Treasury has given notice within two years after July 1, 1937; and (11) an article cannot be marked after importation except at an expense which is economically prohibitive and the failure to mark the article prior to importation was not done to avoid compliance with the marking requirements. Section 304 also provides that the exemptions shall not apply with respect to the marking of certain pipes and fittings, compressed gas cylinders, and certain manhole rings or frames. Special provisions apply to the marking of containers of goods exempted from the marking requirements.	Amends section 304 of the Tariff Act of 1930 to authorize that certain additional exemptions from the marking requirements apply to NAFTA origin goods: (1) where the buyer reasonably knows (instead of "necessarily knows" as under current law), by reason of the character of the goods or the circumstances of their importation, that they are NAFTA-origin goods; (2) for original works of art; and (3) for ceramic bricks, semiconductor devices, and integrated circuits. Provides that the special provisions regarding the marking of containers shall not apply with respect to these goods. Also amends section 304 to provide that the restrictions on the use of exemptions with respect to the marking of certain pipes and fittings, compressed gas cylinders, and manhole rings and covers not apply to NAFTA-origin goods.

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	Section 1907(c) of the 1988 Trade Act requires that, to the greatest extent possible, all Native-American style jewelry, arts, and crafts imported into the United States have the English name of the country of origin indelibly marked in a conspicuous place by a permanent method of marking.	Provides that NAFTA-origin goods are exempt from the marking requirements of the 1988 Trade Act, but that such goods are subject to the marking requirements of section 304.
Article 312: Wine and Distilled Spirits		
Prohibits Parties from adopting or maintaining any measure requiring that distilled spirits imported from another Party for bottling be blended with any distilled spirits of the importing Party.		
Article 313: Distinctive Products		
For purposes of standards and labelling, provides that the Parties shall recognize Bourbon Whiskey and Tennessee Whiskey as distinctive products of the United States, Canadian Whiskey as a distinctive product of Canada, and Tequila and Mezcal as distinctive products of Mexico.	The United States recognizes Canadian Whiskey as a distinctive product of Canada and Tequila as a distinctive product of Mexico.	
Article 314: Export Taxes		
Except for the products set out in Annex 314 (foodstuffs exported from Mexico), Parties are prohibited from imposing a tax on the export of goods to another Party unless such a tax is imposed on the export of such goods to all Parties and on domestically consumed goods.	Export taxes are unconstitutional.	
Article 315: Other Export Measures		
Allows Parties to adopt or maintain a GATT-permitted export restriction (such as in the event of a short supply emergency), but only if the restriction does not (1) reduce the proportion of total supply historically available to the other Party; (2) impose a higher price on exports than for comparable domestic sales; or (3) require the disruption of normal channels of supply or mix of products. This Article does not apply to Mexico.		

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Article 316: Consultations and Committee on Trade in Goods		
Establishes a Committee on Trade in Goods to meet at the request of any Party or the Free Trade Commission established under Chapter 20 to consider any matter arising under Chapter 3. Provides that at least once a year the Parties shall convene a meeting of their officials responsible for customs, immigration, inspection of food and agricultural products, border inspection facilities, and regulation of transportation to address issues relating to the movement of goods.		
Article 317: Third-Country Dumping		
Affirms the importance of cooperation with respect to actions under Article 12 of the GATT Antidumping Code. Requires consultations within 30 days if a Party presents an application to another Party requesting antidumping action on its behalf.	Section 1317 of the 1988 Trade Act permits the U.S. Trade Representative, on the basis of information submitted by a domestic industry, to submit, pursuant to Article 12 of the Antidumping Code, an application to the appropriate country requesting that appropriate antidumping action be taken.	Existing U.S. law applies.
Article 318: Definitions		
Sets forth definitions of key terms used in Chapter 3.		
Annex 300-A: Trade and Investment in the Automotive Sector		
Annex 300-A sets forth two general obligations applying to trade and investment in the automotive sector: (1) each Party shall extend to all existing producers of vehicles in its territory treatment no less favorable than it accords to any new producers; and (2) the Parties will review, by December 31, 2003, the status of the North American automotive sector. Appendices 300-A.1, 300-A.2, and 300-A.3 set forth the specific obligations assumed, respectively, by Canada, Mexico, and the United States.	*With respect to automotive trade between the United States and Canada, both countries are parties to the Auto Pact. Under the Auto Pact, as implemented by the Automotive Products Trade Act of 1965, the United States grants duty-free treatment to automotive products of Canadian origin. Canada grants duty-free treatment to U.S. goods meeting CFTA rules of origin and to automotive imports, regardless of origin, when imported by a Canadian automotive manufacturer which meets Canadian production requirements.* *Section 202 of the CFTA Act and General Note 3(c)(vii) of the HTS sets forth the CFTA rules of origin for automobiles.*	

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Appendix 300-A.1 provides that Canada and the United States may maintain their 1965 Auto Pact, in accordance with the restrictions set forth in Chapter 10 of the CFTA, except that the rules of origin of the NAFTA will replace the CFTA rules of origin. The appendix also incorporates by reference those CFTA provisions that limit the eligible recipients of Canada's export-based and production-based duty waivers and that require their phaseout by January 1, 1989 (for exports to the United States), by January 1, 1998 (for exports to other countries), and by January 1, 1996 (for production-based duty waivers). Appendix 300-A.2 establishes a 10-year transition period during which Mexico's restrictions on auto trade and investment will be phased out. Mexico is required to phase out its "trade balancing" requirement, which prohibits assemblers from having a trade deficit in their operations. The local content requirement must also be reduced over the transition period, and ultimately eliminated. The local content requirement must not exceed 34 percent for the first five model years, declining one percentage point per year thereafter until eliminated at the end of the transition period. (Alternatively, for existing assemblers, if the local content actually achieved in model year 1992 is lower than 34 percent, such assemblers may use the lower percentage until their local content percentage declines below the schedule of local content requirements specified in the NAFTA.) Mexico is required to eliminate its "truck decree" immediately upon implementation of the NAFTA, which will be replaced with a five-year transitional quota on imports of originating semi-trucks, heavy trucks, and buses. Mexico is also required to phase out, over 10 years, its embargo on imports of used motor vehicles. The phase-out will begin January 1, 2009. Appendix 300-A.3 requires the United States, by January 1, 2004, to add Mexico to the United States and Canada in the Corporate Average Fuel Economy (CAFE) definition of "domestically manufactured" vehicles.		Article 403 of the NAFTA regarding rules of origin for automotive goods is enacted as a statutory provision. [Commerce Committee to draft implementing language.]

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Annex 300-B: Textile and Apparel Goods		
Tariff and Quota Elimination. Requires the Parties to eliminate progressively their tariffs on originating textile and apparel products within 10 years, as set out in Appendix 2.1. For trade between the United States and Canada, tariffs will continue to be phased out in accordance with Annex 401.2, as amended, of the CFTA, with such tariffs reduced to zero on January 1, 1998.	Section 204 of the Agricultural Act of 1956 authorizes the President to negotiate and implement agreements limiting imports of textiles and textile products. U.S. imports of textiles and apparel from Mexico are governed by a bilateral agreement that expires on December 31, 1993.	Existing U.S. law applies to implement provisions relating to quantitative restrictions.
Provides for the elimination of restrictions and consultation levels on certain non-originating textile and apparel goods of Mexico exported to the United States during the transition period. Products of Mexico currently subject to such restrictions are assigned to one of three staging categories: immediate elimination; elimination after seven years; and elimination after 10 years. Provides for the elimination of restrictions or consultation levels on textile and apparel imports assembled in Mexico from fabrics wholly formed and cut in the United States. No quantitative restrictions or prohibitions may be maintained on NAFTA originating goods.	*Section 201 of the CFTA Act authorizes the President to proclaim the progressive elimination of U.S. customs duties on textile and apparel goods originating in Canada.*	The President may proclaim the tariff modifications necessary or appropriate to implement the NAFTA commitments in Annex 300-B regarding textile and apparel products. For articles covered by Annex 300-B imported from Mexico, for which the base rate in the HTS is a specific or compound rate of duty, the President may substitute an ad valorem rate that is equivalent to the specific or compound rate.
Bilateral Safeguards. Provides for a "tariff snapback" safeguard during the transition period, which may be invoked when an originating good is being imported in such increased quantities as to cause serious damage, or actual threat thereof, to a domestic industry producing a like or directly competitive good. A Party taking action under this provision may suspend the further reduction of the rate of duty or increase the rate to the MFN rate, for up to three years. If a Party takes such a safeguard action, it must provide compensation in the form of trade concessions.		
Provides that, during the transition period, a Party may take a safeguard action against non-originating textile or apparel goods, using the same standard of serious damage as applies to originating goods. Allows, for a maximum of 3-1/2 years, for the imposition of quantitative restrictions, but levels must be increased over the period of restraint in accordance with the formulas set out in this section. This provision does not apply to trade between the United States and Canada.		

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Rules of Origin. Appendix 6(A) sets forth special rules of origin applicable to certain carpets and sweaters. Appendix 6(B) provides for a limited exception to the NAFTA rules of origin. It provides that Parties shall establish Tariff Preference Levels (TPLs) under which specific quantities of certain goods that do not meet the rules of origin will be granted entry to each NAFTA market at the preferential rates of duty. Goods entered above the TPL will be subject to the MFN rate of duty.		The President may proclaim rules of origin applicable to certain carpets and sweaters.
Requires the Parties to review the rules of origin applicable to textiles and apparel within five years of the date of entry into force of the NAFTA. Provides for consultations at the request of any Party on whether particular goods should be subject to different rules of origin to address issues of availability of supply.		
Provides that the Subcommittee on Labelling of Textile and Apparel Goods established under Article 913(5) shall work toward the harmonization of labelling requirements through the adoption of uniform provisions.		
Establishes a Committee on Trade in Worn Clothing to assess the benefits and risks that may result from eliminating existing restrictions on trade in worn clothing and other articles.		

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CHAPTER 4. RULES OF ORIGIN		
Article 401: Originating Goods		
Sets forth the basic principles for determining whether imported goods are eligible for preferential treatment under the NAFTA. Goods are considered to originate in a NAFTA Party if: (1) they are wholly obtained or produced in the territory of one or more NAFTA Parties; (2) each of the non-originating materials used in the production of a good undergoes a change in tariff classification as a result of production that occurs entirely within one or more of the Parties or the good otherwise satisfies the origin requirements; (3) the good is produced entirely in one or more of the Parties exclusively from NAFTA-origin materials; or (4) in certain circumstances, the good is produced entirely in one or more of the NAFTA Parties and the regional value content of the goods (labor performed and parts produced within NAFTA countries) meets certain thresholds (at least 60 percent of the value of the goods or 50 percent of their net cost).	In general, goods are considered to be a product of a particular country if they are either wholly the growth, product, or manufacture of such country or if they have been "substantially transformed" in such country. The term "substantially transformed" is not statutorily defined, but rather has been the subject of interpretation by the courts. *Section 202 of the CFTA Act and General Note 3(c)(vii) of the HTS provides that goods are considered to be originating goods under the CFTA if they are wholly obtained or produced in the territory of either or both parties or if they have been transformed in the territory of either party so as to be subject to a change in tariff classification or such other requirements, including regional value content requirements, as described in CFTA Annex 301.2. Certain goods processed or assembled in either or both countries are considered originating goods if their regional value content is at least 50 percent of the value of the goods.*	Article 401 is enacted as a statutory provision in the implementing bill. These rules of origin are for purposes of implementing the tariff treatment and quantitative restrictions contemplated under the Agreement.
Annex 401: Specific Rules of Origin		
Sets forth specific rules of origin for each chapter of the HTS. Although the rules for most product sectors require a change in tariff classification, in some product sectors, particularly automotive and chemicals, the requirement for a change in tariff classification is supplemented by a regional value content requirement.	*Section 202 of the CFTA Act and General Note 3(c)(vii) of the HTS sets forth the rules of origin for the CFTA. Section 202 authorizes the President, subject to consultation and layover requirements, to proclaim such modifications to the rules as may be agreed to by the United States and Canada.*	The President is authorized to proclaim the rules set forth in Annex 401. [Proclamation/amendment authority to be addressed.]

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Article 402: Regional Value Content Sets forth the methodologies for calculating regional value content on the basis of transaction value or on the basis of net cost of the good. Provides that exporters and producers generally may elect to use either the transaction value method or net cost method. However, the net cost method is required for automotive goods, footwear, and goods for which a transaction value cannot be reliably determined (including sales between related parties). Except for certain motor vehicles and parts, the value of any non-originating materials used to make an originating material used in the production of a good is excluded from the calculation of the regional value content. Provides that a producer of a good may use one of three ways to allocate applicable costs when calculating the regional value content of a good using the net cost method: (1) calculate total costs, subtract non-allowable costs, and reasonably allocate the resulting net cost to the goods; (2) calculate total costs, reasonably allocate the total cost to the good and then subtract non-allowable costs; or (3) reasonably allocate each allowable cost that forms part of the total cost so that the aggregate of the costs does not include any non-allowable costs. Provides that the value of a material used in the production of a good shall generally be the transaction value of the material or otherwise be determined in accordance with the Customs Valuation Code. Provides that, with certain exceptions related to automotive goods, integrated producers may designate one self-produced material used in the production of a good as an "intermediate material" for purposes of calculating the regional value content of the good. Once it is determined that the intermediate material meets the applicable rule of origin, the total value of all costs to produce the intermediate material are treated as if they were originating costs.	*Section 202 of the CFTA Act and General Note 3(c)(vii) of the HTS provides that regional value content under the CFTA is determined by adding the value of materials originating in the territory of either or both Parties to the direct cost of processing performed in the territory of Canada or the United States.*	Article 402 is enacted as a statutory provision in the implementing bill.

Agreement Provision	Current U.S. Law/Practice	Draft Implementing Proposal
Article 403: Automotive Goods		
Automotive goods must meet both change in tariff classification requirements and regional value content requirements. Article 403 sets forth rules for calculating the regional value content of these products. Provides that the required regional content for passenger motor vehicles, light trucks, and their engines and transmissions is increased in stages from 50 percent for the first four years of NAFTA to 56 percent for the second four years to 62.5 percent thereafter. Other motor vehicles and other automotive parts are subject to a 50 percent regional content requirement for the first four years, 55 percent for the second four years, and 60 percent thereafter. The required regional value content is temporarily reduced to 50 percent for a five-year period for investors establishing new plants to produce vehicles not previously made by that producer in the region and for a two-year period following refit of an existing plant to produce a new vehicle. Requires that the value of non-NAFTA parts and components be traced throughout the production process; the tracing requirements are more extensive for passenger cars and light trucks than for other motor vehicles. Auto producers may average their regional value content calculations over the same model line of motor vehicles in a single class produced in the same plant, over the same class of motor vehicles produced in the same plant, or over the same model line produced in the territory of a NAFTA country. Annex 403.3 provides that, if certain conditions are met, vehicles produced by CAMI Automotive, Inc., in Canada may be averaged with vehicles produced by General Motors of Canada.	*Section 202 of the CFTA Act and General Note 3(c)(vii) of the HTS provides that, in order to qualify as goods originating in Canada under the CFTA, automobiles and light trucks must meet the applicable change in tariff classification requirement provided that the regional value content is not less than 50 percent of the value of the goods when exported to the United States.*	Article 403 is enacted as a statutory provision in the implementing bill. Also provides that, for certain motor vehicles exported from Canada on or after January 1, 1989, and before date of entry into force of the NAFTA, the importer may elect to use the NAFTA rules of origin in lieu of the CFTA rules of origin and may elect to use either of the methods provided in the NAFTA for tracing the value of non-originating materials in automotive products for purposes of determining eligibility for preferential treatment under the CFTA. Election must be made within 180 days after NAFTA entry into force. Any such election may be made only if the liquidation of such entry has not become final.
Article 404: Accumulation		
Clarifies that where more than one producer is involved in the production of a good, either in one NAFTA country or more than one NAFTA country, they may accumulate their regional processing in determining whether a good meets a required tariff classification change or regional value content requirement.		Article 404 is enacted as a statutory provision in the implementing bill.

Agreement Provision	Current U.S. Law/Practice	Draft Implementing Proposal
Article 405: De Minimis		
Goods may qualify as originating goods even if a small portion of the material (generally less than seven percent of the value or total cost of the good) fails to undergo an otherwise required change in tariff classification. For goods subject to a regional value content requirement, the calculation of that content is waived if the value of all non-originating materials is less than seven percent of the value or total cost of the good. The de minimis rule does not apply to certain agricultural products and home appliances.		Article 405 is enacted as a statutory provision in the implementing bill.
Article 406: Fungible Goods and Materials		
Where originating and non-originating fungible materials are used in the production of a good or are commingled and exported in the same form, the origin determination may be made on the basis of recognized inventory management methods.	*Article 406 is consistent with current Customs' practice under the CFTA.*	Article 406 is enacted as a statutory provision in the implementing bill.
Article 407: Accessories, Spare Parts, and Tools		
Standard accessories, spare parts, or tools delivered with an originating good are considered to be originating goods and shall not be considered in determining whether all the non-originating materials used in the good's production meet the required change in tariff classification.	*Section 202 of the CFTA Act and General Note 3(c)(vii) of the HTS provides that, under the CFTA, accessories, spare parts, or tools delivered with an article as part of its standard equipment are deemed to have the same origin as that article.*	Article 407 is enacted as a statutory provision in the implementing bill.
Article 408: Indirect Materials		
Clarifies that indirect materials (generally, goods used in the production, testing, or inspection of a good but not physically incorporated into the good, or a good used in the maintenance or operation of buildings or equipment) are originating materials without regard to where they are produced.	*Article 408 is consistent with current Customs' practice under the CFTA.*	Article 408 is enacted as a statutory provision in the implementing bill.

Agreement Provision	Current U.S. Law/Practice	Draft Implementing Proposal
Article 409: Packaging Materials and Containers for Retail Sale In determining whether all the non-originating materials used in the production of a good undergo the applicable change in tariff classification, packaging materials and containers associated with the retail sale shall be disregarded if they are classified with the good. If the good is subject to a regional value content rule, the value of the retail packaging materials shall be taken into account in calculating the regional value content.	*Article 409 is consistent with current Customs' practice under the CFTA.*	Article 409 is enacted as a statutory provision in the implementing bill.
Article 410: Packing Materials and Containers for Shipment Packing materials and containers in which a good is packed for shipment are to be disregarded in determining whether the materials used in production meet the applicable change in tariff classification requirement or the regional value content requirement.	*Under the CFTA, export packing costs are not included as part of the direct cost of processing, but packing is included in the value of materials.*	Article 410 is enacted as a statutory provision in the implementing bill.
Article 411: Transshipment Originating goods shipped outside the territories of the NAFTA Parties for further processing shall lose their status as originating goods.	*Section 202 of the CFTA Act and General Note 3(c)(vii) of the HTS provides that goods exported from Canada are deemed to originate in Canada only if they are not further processed in a third country before being shipped to the United States.*	Article 411 is enacted as a statutory provision in the implementing bill.
Article 412: Non-Qualifying Operations Provides that goods shall not be considered to be originating goods merely because they have been diluted with water or another substance or by reason of a production or pricing practice the object of which was to circumvent the rules of origin.	*Section 202 of the CFTA Act and General Note 3(c)(vii) of the HTS provides that goods are not considered to have originated in a CFTA country as a result of simple packaging or combining operations, mere dilution, or any process undertaken for the sole purpose of circumventing the rules of origin.*	Article 412 is enacted as a statutory provision in the implementing bill.
Article 413: Interpretation and Application Provides general guidelines for interpreting and applying the rules of origin.		Article 413 is enacted as a statutory provision in the implementing bill.

Agreement Provision	Current U.S. Law/Practice	Draft Implementing Proposal
Article 414: Consultation and Modifications Requires NAFTA Parties to consult regularly to ensure the effective, uniform, and consistent administration of the rules of origin. If a Party believes that modifications to the rules are warranted, it may submit a proposal to the other Parties for consideration.		
Article 415: Definitions Defines key terms used in Chapter 4.		Article 415 is enacted as a statutory provision in the implementing bill.

Agreement Provision	Current U.S. Law/Practice	Draft Implementing Proposal
CHAPTER 5. CUSTOMS PROCEDURES		
Article 501: Certificate of Origin		
Requires the Parties to establish a Certificate of Origin for originating goods by January 1, 1994 and to require a signed Certificate for any exportation for which preferential tariff treatment is claimed. Parties must accept Certificates for four years after the date of signature.	The United States requires certificates of origin for imports entering under preferential duty programs, including the CFTA, Israel Free Trade Agreement (IFTA), Generalized System of Preferences (GSP), Caribbean Basin Initiative (CBI), and Andean Trade Preferences.	Amends section 508 of the Tariff Act of 1930 to require persons signing a NAFTA Certificate of Origin to make, keep, and render for examination all records, including the Certificate of Origin, relative to the origin of the good for which a claim for preferential tariff treatment is made.
Article 502: Obligations Regarding Importations		
Requires importers claiming NAFTA preferential tariff treatment to make a written declaration that a good qualifies as an originating good and to make a corrected declaration and pay any duties owing if the importer has reason to believe that the Certificate of Origin on which the declaration is based contains incorrect information. Importers voluntarily making corrected declarations are not subject to penalties.	Section 484 of the Tariff Act of 1930 requires importers to produce such documentation as is necessary to enable the proper assessment of duties.	Amends section 592 of the Tariff Act of 1930 to prohibit the assessment of penalties against an importer who voluntarily and promptly makes a corrected declaration and pays any duties owing.
Requires Parties to permit importers that did not claim preferential tariff treatment at the time of importation to apply, within one year of importation, for a refund of excess duties paid upon presentation of the documents required to support such claim.		Amends section 520 of the Tariff Act of 1930 to allow the Customs Service to refund any excess duties paid on a good qualifying for preferential tariff treatment under the NAFTA for which no claim was made at the time of importation if the importer, within one year, files a claim which includes specified supporting documentation.
Article 503: Exceptions		
Certificates of Origin are not required for importations of low value (generally less than $1,000) or for those importations for which the importing Party has waived the requirement.	Customs' regulations provide that Customs may, under certain circumstances, waive the requirement for a Certificate of Origin under the various preferential duty programs.	
Article 504: Obligations Regarding Exportations		
Each Party must require that copies of Certificates of Origin be provided to its customs administration on request. Requires exporters or producers that have signed a Certificate of Origin and have reason to believe that it contains incorrect information to notify in writing all persons to whom the Certificate was given.	*Under section 205 of the CFTA Act, amending section 508 of the Tariff Act of 1930, exporters to Canada must comply with recordkeeping requirements and are subject to civil penalties not to exceed $10,000 for noncompliance.*	Amends section 508 of the Tariff Act of 1930 to require persons signing a NAFTA Certificate of Origin to make, keep, and render for inspection all records, including the Certificate of Origin, relating to the origin of a good for which a claim for preferential treatment is made.

Agreement Provision	Current U.S. Law/Practice	Draft Implementing Proposal
False certification shall generally have the same legal consequences as would apply to importers making false statements or representations. Each Party may apply such measures as are warranted where an exporter or producer fails to comply with any of the requirements of this Chapter. However, no Party may impose penalties where an exporter or producer has voluntarily provided written notification of the incorrect certification.		Also amends section 508 of the Tariff Act of 1930 to provide that a person who fails to retain required records shall be liable for a civil penalty of up to $10,000 or the general recordkeeping penalty under the customs laws, whichever is higher. Amends section 592 of the Tariff Act of 1930 to make it unlawful for any person to make a false certification in a Certificate of Origin. Generally applies the existing procedures and penalties for fraud, gross negligence, and negligence that apply to false statements in connection with the importation of merchandise. Provides that a person may not be considered to have made a false certification if the information on which the certification was based was correct at the time it was provided in a Certificate of Origin but was later rendered incorrect due to a change in circumstances and the person voluntarily and promptly provides written notice of the change to all persons to whom the Certificate was provided.
Article 505: Records		
Requires that exporters or producers that sign a Certificate of Origin and importers claiming preferential tariff treatment must maintain all records relating to the origin or importation of a good for a minimum of five years.	Section 508(a) of the Tariff Act of 1930 requires importers, owners, consignees, and their agents to make, keep and render for examination and inspection records pertaining to imports for a maximum of five years.	Existing U.S. law applies.
	Under section 205 of the CFTA Act, amending section 508(c) of the Tariff Act of 1930, exporters to Canada must keep records (including certifications of origin) pertaining to such exportations for a maximum of five years from date of entry.	Amends section 508(c) to require exporters and producers to make, keep, and render for inspection all records relating to the origin of a good. Records must be kept for a minimum of five years from the date a Certificate was signed.
Article 506: Origin Verifications		
Parties may conduct verifications of the origin of goods solely through (1) written questionnaires to the exporter or producer; (2) visits to the premises of the exporter or producer to review records and observe facilities; or (3) other procedures to which the Parties may agree.	Customs has broad authority, under section 509 of the Tariff Act of 1930, to examine records and witnesses to ascertain the correctness of any entry, determine liability for duty and taxes due, and ensure compliance with the laws.	

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Before conducting a verification visit, a Party must provide written notification to the exporter or producer whose premises are to be visited, the customs administration of the country in which the verification will be conducted, and, if requested, the appropriate Embassy in the country conducting the verification, and must obtain the written consent of the exporter or producer. If consent is not provided within 30 days, the notifying Party may deny preferential tariff treatment to the good in question. The customs administration of the exporting country may postpone a visit for up to 60 days. Requires each Party to permit the exporter or producer to designate two observers.		
Requires each Party to conduct verifications of a regional value-content requirement in accordance with Generally Accepted Accounting Principles.		
Requires the Party conducting the verification to provide a written determination.		
If verifications indicate a pattern of false or unsupported representations, the importing Party may withhold preferential tariff treatment until the exporter or producer establishes compliance with the NAFTA Rules of Origin.		Amends section 514 of the Tariff Act of 1930 to provide that Customs may deny preferential treatment to entries of certain goods exported or produced by a person if Customs finds indications of a pattern of conduct by that exporter or producer of false or unsupported representations that goods qualify under the rules of origin.
If an importing Party determines that a good is not an originating good based on a tariff classification or valuation applied to the materials used in the production of the good, and that classification or valuation differs from the classification or valuation applied to the same materials by the exporting Party, the determination shall not become effective until the importer and signer of the Certificate of Origin are notified in writing. If the importer or signer demonstrates that it has relied in good faith on the tariff classification or valuation applied by the exporting Party, the importing Party shall postpone the effective date of the denial for up to 90 days. A Party may not apply such a determination to imports made before the effective date of the determination if the exporting Party has, before notification of the determination, issued a ruling on the		

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classification or value of the materials or given consistent treatment to the entry of such materials.		
Article 507: Confidentiality		
Requires each Party to maintain the confidentiality of confidential business information. Such information may only be disclosed to the authorities responsible for administering and enforcing origin determinations and customs and revenue matters.	The Trade Secrets Act, 18 U.S.C. 1905, prohibits the disclosure of entry information unless authorized by law. Under Customs' regulations, privileged or confidential trade secrets and commercial or financial information are not available to the public.	
Article 508: Penalties		
Requires each Party to maintain measures imposing criminal, civil, or administrative penalties for violations of the laws and regulations relating to Chapter 5.	Section 592 of the Tariff Act of 1930 provides civil penalties for fraud, gross negligence, or negligence for violations of the Customs laws. Fraud is punishable by a civil penalty in an amount not to exceed the value of the merchandise. Gross negligence is punishable by a civil penalty in an amount not to exceed the lesser of the value of the merchandise or four times the lawful duties owed the United States. If the grossly negligent violation does not affect the assessment of duties, the penalty may not exceed 40 percent of the dutiable value of the merchandise. Negligence is punishable by a civil penalty in an amount not to exceed the lesser of the domestic value of the merchandise or two times the lawful duties owed the United States. If the negligent violation does not affect the assessment of duties, the penalty may not exceed 20 percent of the dutiable value of the merchandise. Criminal penalties for entry of goods by means of false statements provide for fines of $5,000 or a maximum of two years imprisonment, or both.	Amends section 592 of the Tariff Act of 1930 to provide that identical provisions apply to persons making false certifications under NAFTA.
	Under section 508(b) of the Tariff Act of 1930 exporters to Canada must comply with recordkeeping requirements and are subject to civil penalties not to exceed $10,000 for noncompliance.	Amends section 508 of the Tariff Act of 1930 to provide that persons who fail to keep required records are liable for a civil penalty not to exceed $10,000 or the general recordkeeping penalty under the customs laws, whichever is greater.

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Article 509: Advance Rulings		
Requires each Party to provide for the prompt issuance of advance rulings concerning compliance with the rules of origin and country of origin marking requirements, eligibility for preferential treatment under the NAFTA, and other matters. Requires each Party to adopt procedures for the issuance of advance rulings, including a detailed description of the information required to process an application for a ruling. Provides that the Parties' customs administrations may request supplemental information, must issue advance rulings within periods specified under the Uniform Regulations to be developed in accordance with Article 511, and must provide a full explanation for unfavorable rulings. Requires each Party to provide the same treatment as it provided to any other person to whom it issued an advance ruling, provided that facts and circumstances are identical in all material respects. Permits the issuing Party to modify or revoke an advance ruling in specified circumstances. Any modification or revocation shall be effective no earlier than the date of issue. If the person to whom the advance ruling was issued demonstrates that it has relied in good faith to its detriment on that ruling, the modification or revocation shall be postponed for up to 90 days. Provides that when a Party's customs administration examines the regional value content of a good for which it has issued an advance ruling, it shall evaluate compliance with the terms and conditions of the advance ruling, consistency of operations with the facts on which the advance ruling is based, and the accuracy of the supporting data and computations used in calculating value or allocating costs. If these requirements are not satisfied, the advance ruling may be revoked or modified. If a person to whom an advance ruling was issued demonstrates that it used reasonable care and acted in good faith in presenting the facts and	Customs' regulations provide for the issuance of rulings with respect to prospective transactions.	Current regulations apply, with conforming changes to provide for advance rulings of specific NAFTA transactions.

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circumstances, that person will not be subject to penalties if the customs administration determines that the ruling was based on incorrect information. If a person has misrepresented or omitted material facts or circumstances, or has failed to comply with the terms of the ruling, the Party may apply such measures as are warranted.		
Article 510: Review and Appeal Provides for review and appeal of marking determinations, country of origin determinations, and advance rulings, including access to at least one level of independent administrative review and to judicial or quasi-judicial review of the decision taken at the final level of administrative review.		Section 514 of the Tariff Act of 1930 permits importers and persons paying charges, seeking delivery or entry, or filing drawback claims to seek review (through the filing of a protest) of certain decisions of Customs officers. Amends section 304 of the Tariff Act of 1930 to provide exporters and producers a right to intervene in any protest proceeding initiated by an importer regarding an adverse marking decision, or to protest an adverse marking decision if the importer does not file a protest. Provides for judicial review of the denial of a protest. Amends section 514 of the Tariff Act of 1930 to permit any exporter or producer of merchandise subject to a NAFTA determination of origin to protest such a determination. Provides that protests filed by different persons with respect to one category of merchandise shall be deemed part of a single protest. Amends section 514 of the Tariff Act of 1930 to require that, except where there are indications of a pattern of false or unsupported representations, an exporter or producer must be provided advance notice of an adverse country of origin determination.
Article 511: Uniform Regulations Requires the Parties to establish and implement by January 1, 1994, Uniform Regulations regarding the interpretation, application, and administration of Chapters 4 and 5 and other agreed matters. Parties must implement any modification of or additions to the Uniform Regulations within 180 days after the Parties agree on such changes.		

Agreement Provision	Current U.S. Law/Practice	Draft Implementing Proposal
Article 512: Cooperation		
Requires the Parties to notify each other of certain determinations concerning the origin of a good, measures establishing or significantly modifying policies that are likely to affect future determinations of origin and marking requirements, and advance rulings.	Section 628 of the Tariff Act of 1930 permits the Secretary of the Treasury to authorize Customs officers to exchange certain information or documents with foreign customs or law enforcement agencies.	Amends section 628 of the Tariff Act of 1930 to provide that the Secretary of the Treasury may authorize exchanges of information with another NAFTA country if the Secretary believes such exchange is necessary to implement Chapters 3, 4, and 5 of the NAFTA, so long as the other country provides assurance that it will maintain confidentiality of the information.
Provides that the Parties shall cooperate in the enforcement of their respective customs laws and regulations implementing the NAFTA, in the enforcement of prohibitions or quantitative restrictions to detect and prevent unlawful transshipments of textiles and apparel, in the exchange of statistics and in the storage and transmission of customs-related documentation.		
Article 513: Working Group and Customs Subgroup		
Establishes a Working Group on Rules of Origin (required to meet at least four times a year) to monitor and ensure effective implementation of the rules of origin and other customs-related provisions and propose any necessary modifications. Provides that Parties shall endeavor to implement agreed modifications within 180 days after the Commission agrees to the modification.		
Requires the Working Group to establish a Customs Subgroup to consider the uniform interpretation and application of the rules of origin and other customs-related matters, including matters referred to it.		
Article 514: Definitions		
Sets forth definitions of the key terms used in Chapter 5.		

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CHAPTER 6. ENERGY AND BASIC PETROCHEMICALS

Chapter 6 sets out the rights and obligations of the Parties regarding crude oil, gas, refined products, basic petrochemicals, coal, electricity, and nuclear energy, with Mexico reserving to itself certain activities, including investment and the provision of services, in most of these sectors.

Chapter 6 expressly incorporates GATT disciplines regarding quantitative restrictions on imports and exports as they apply to energy and basic petrochemical trade, including a prohibition on minimum import or export price requirements (subject to certain exceptions). Parties may maintain a system for licensing imports and exports of energy and basic petrochemical goods as long as the system complies with the NAFTA rules.

Parties may not impose a tax, duty, or charge on exports of energy or basic petrochemical goods unless such a charge is imposed on the export of such goods to all Parties and on domestically consumed goods.

Chapter 6 (and Chapter 9 of the CFTA) goes beyond GATT Articles XI and XX in limiting the circumstances under which a NAFTA Party may restrict exports when conserving resources to address a domestic shortage or protect a domestic price control program. A Party whose export restrictions are otherwise permissible under GATT Articles XI and XX may not reduce the proportion of total supply made available to the other NAFTA countries below the level of the preceding three years; impose a higher price on exports to a NAFTA country than the domestic price; or disrupt normal supply channels. This tighter discipline does not apply to Mexico.

Energy regulatory measures are subject to the rules regarding national treatment, import and export restrictions and export taxes.

Chapter 6 also limits the grounds on which a NAFTA country may restrict energy and basic petrochemical exports or imports for national security reasons, but this tighter discipline does not apply to Mexico.

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Special provisions require the Parties to permit suppliers and end-users of natural gas and basic petrochemical goods, and any required state enterprise, to negotiate supply contracts for cross-border trade and allow their state enterprises to negotiate performance clauses in their service contracts. Mexico must also permit independent power producers, its state-owned electric utility, and electric utilities in the United States and Canada to negotiate power purchase and sale contracts for cross-border trade in electricity. U.S. and Canadian investors will also be allowed to acquire, establish, and operate electric generating plants in Mexico for self-generation, co-generation, and independent power production.		

Agreement Provision	Current U.S. Law/Practice	Draft Implementing Proposal
CHAPTER 7: AGRICULTURE AND SANITARY AND PHYTOSANITARY MEASURES		
Section A - Agriculture		
The NAFTA's agricultural provisions (Articles 701-708 and Annexes 702.1, 702.3, 703.2, and 703.3) apply to bilateral trade between the United States and Mexico and between Canada and Mexico. Agricultural trade between the United States and Canada remains subject to the terms of the CFTA and CFTA Act. Key provisions are:		The President may proclaim the tariff modifications necessary or appropriate to implement Article 703 and Annexes 703.2 and 703.3.
(1) Consultations: Provides that before adopting a measure that may affect agricultural trade between the Parties, a Party shall consult with the others.		
(2) Market Access: Sets out the basic market access commitments on agriculture, except for the tariff schedules, which are in Annex 302.2. The United States and Mexico agree not to impose quantitative restrictions, or apply customs duties, on each other's agricultural goods (those that qualify under the NAFTA's rules of origin). (This includes a U.S. commitment not to adopt or maintain any fee under section 22 of the Agricultural Adjustment Act of 1933 on Mexican goods, and the commitment by both countries not to seek a voluntary restraint agreement (VRA) on each other's meat exports.)	The Meat Import Act of 1979 requires the President to impose quotas on imports of beef, veal, mutton, and goat meat when the aggregate quantity of such imports on an annual basis is expected to exceed a prescribed trigger level. The trigger level is 110 percent of the base quantity level, which is established by statute and adjusted annually to reflect domestic supply levels. Annual import quotas may not be set below 1.193 billion pounds (assuming that no import limitation on Canadian products is in effect). The quotas are allocated on their historic shares of the U.S. market. The President may suspend or raise these quotas based on overriding economic or national security interests, inadequate domestic supplies at reasonable prices, or trade agreements implementing the policy. In recent years, the United States has negotiated VRAs with one or more supplier countries if necessary to avoid triggering quotas.	
	Under Article 704 of the CFTA, the two countries agreed to exempt each other from import quotas under their respective meat import laws. (Section 301(b) of the CFTA Act sets forth the changes made to the Meat Import Act pursuant to this provision.) To reflect the elimination of Canada's historic share from the overall figure, the base quantity under the U.S. law was lowered to 1.1476 billion pounds.	Amends the Meat Import Act of 1979 to remove qualifying Mexican meat from the formula calculations of the Act (the quantities that may be imported without triggering the quota) and to adjust the trigger level and the minimum import level accordingly. In determining whether a particular article originates in Mexico for purposes of the Act (and therefore is a "qualifying good"), operations performed in or

Agreement Provision	Current U.S. Law/Practice	Draft Implementing Proposal
		materials obtained from Canada shall be treated as if they were performed in or obtained from another (i.e., non-NAFTA) country.
	Section 22 of the Agricultural Adjustment Act of 1933 authorizes the President to impose import fees or quantitative restrictions (quotas) as he determines is necessary in order that imports of a product not undermine a domestic farm support program. The President makes his determination based on a report of the ITC. The import fees imposed under this provision may not exceed 50 percent ad valorem. An import quota imposed under this provision may not exceed 50 percent of the quantity imported during a representative period (as determined by the President). Since its enactment, section 22 has been used to impose import restrictions on 12 different commodities; several of those restrictions have since been terminated. Section 22 authority supersedes any inconsistent provisions in international agreements entered into by the United States; to remedy the inconsistency with GATT Articles II and XI, the United States in 1955 received a waiver of its GATT obligations.	
	Pursuant to Articles 705.5 and 707 of the CFTA, section 301(c) of the CFTA Act amended section 22 to permit the President to exempt specified Canadian grain and sugar-containing products from any import restrictions imposed under the provision. (This authority has not been used by the President.)	[Agriculture Committee to draft implementing language.]
(3) Restrictions on Duty Refunds: Prohibits the United States or Mexico from refunding customs duties paid, or waiving or reducing the duties owed, on any imported agricultural good that is substituted for an identical or similar good subsequently exported to the other country.		Amends section 313(j) of the Tariff Act of 1930 to provide that, with certain exemptions, duty drawback may not be paid upon the exportation to a NAFTA country of merchandise that is fungible with and substituted for imported merchandise.
(4) Trade in sugar and syrup goods: The United States and Mexico are to determine jointly, over the first 14 years of the NAFTA, whether either has been, or is projected to become, a "net surplus producer" of sugar in a given marketing year. Sugar that is a qualifying good enters duty-free up to 7,258 metric tons. Where the	Since 1967, a headnote in the U.S. tariff schedule has provided the authority to impose duties and quotas on imports of sugars, syrups, and molasses. In 1982, President Reagan proclaimed an absolute quota on sugar imports, allocated based on the export countries' historic shares of the U.S. market. After an adverse GATT panel finding, this	Existing U.S. law applies.

exporting country is projected to have a net production surplus for that year, such surplus or 25,000 metric tons (whichever is less) may enter duty-free during the first six years. Starting in the seventh year, qualifying sugar may enter duty-free up to the lesser of the net production surplus or 150,000 metric tons (an amount that increases 10 percent annually in years 8-14). But if the Parties have determined the exporting country to be a net surplus producer in any two consecutive years, the surplus amount (however large) may enter duty-free starting in the seventh year. In addition, Mexico must implement (not later than six years after the NAFTA enters into force) a tariff-rate quota regime that conforms with the U.S. program.

(5) Special safeguard: Provides that a Party may maintain a tariff rate quota (whereby the most-favored-nation (MFN) rate is applied above the designated quota level) on those agricultural goods it lists in an annex. (The United States lists seven such items.) This special safeguard may not be used at the same time on the same good as a "regular" safeguard measure under Chapter Eight.

(6) Domestic supports/export subsidies: Addresses these practices and their potential trade distorting effects, but does not impose any new disciplines on them. Establishes a mechanism for consultations on the subsidization (either by one of the Parties or by a non-Party) of exports into the market of another Party. Preserves the CFTA prohibition on export subsidies on agricultural goods exported to the other Party.

was replaced (effective October 1, 1990) by a two-tier, tariff-rate quota system.

Under this system, the Secretary of Agriculture establishes a quantity of sugar subject to current tariff rates (the "lower tier" rate), taking into account expected domestic production and consumption and the need to operate the domestic sugar program at no net cost to the Government. This quantity is allocated by the USTR on a country-by-country basis to the eligible sugar exporting countries. Any additional quantities of sugar imported above the allocated amounts are subject to the 16 cents per pound "upper tier" tariff rate.

Agreement Provision	Current U.S. Law/Practice	Draft Implementing Proposal
Section B - Sanitary and Phytosanitary Measures		
Articles 709-724 establish a framework of rules to guide the development, adoption, and enforcement by the Parties of measures to protect human, animal, or plant life or health from risks arising from the introduction or spread of a pest or disease, the presence of a contaminant or toxin in a food, and related matters (e.g., plant and animal quarantines, packaging and labelling requirements related to food safety). This applies to any such measure that may, directly or indirectly, affect trade between the Parties.	The Department of Agriculture administers sanitary and photosanitary measures primarily through the Animal and Plant Health Inspection Service and the Food Safety and Inspection Service. Some of the measures are required by statutes, such as the Federal Plant Pest Act, the Federal Noxious Weed Act, the Federal Meat Inspection Act, and the Poultry Products Inspection Act. The Environmental Protection Agency (EPA) and the Food and Drug Administration (FDA) administer food safety measures required by the Federal Insecticide, Fungicide, and Rodenticide Act.	[Agriculture Committee to draft implementing language.]
While international standards shall be used as a basis for such measures, where appropriate, each Party may maintain measures that are more stringent or otherwise different than international standards. Each Party may establish the levels of protection considered appropriate, but shall apply the measures only to the extent necessary to achieve such levels of protection. The measures shall be based on scientific principles and on a risk assessment (as appropriate to the circumstances and based on specified criteria), are to be non-discriminatory (conforming to the principles of national treatment and MFN treatment), and may not be adopted, maintained, or applied so as to create a disguised restriction on trade between the Parties.		
Without reducing the level of protection, the Parties shall, to the greatest extent practicable, seek equivalence of their respective measures.		
Other provisions set forth how each Party shall conduct control, inspection, and approval procedures; provide notification on the adoption or modification of measures; establish a point of inquiry concerning measures and procedures; and provide technical cooperation. The Parties establish a Committee on Sanitary and Phytosanitary Measures to facilitate implementation of the objectives of this section.		

Agreement Provision	Current U.S. Law/Practice	Draft Implementing Proposal
CHAPTER 8: EMERGENCY ACTION		
Article 801: Bilateral Actions Annex 801.1: Bilateral Actions	*Bilateral import relief under CFTA*	
Bilateral emergency actions between the United States and Canada, other than for textiles and apparel, are governed by Article 1101 of the CFTA (applicable during transition period ending January 1, 1998). Article 801 governs bilateral emergency actions between the United States or Canada and Mexico, other than for textiles and apparel:	*Section 302(a) of the CFTA Act established a new procedural mechanism to implement CFTA Article 1101 under U.S. law strictly for the application of import relief measures on a bilateral basis. A petition requesting action to adjust to U.S. obligations under the Agreement may be filed with the International Trade Commission (ITC) by an entity (including a trade association, firm, union, or group of workers) that is representative of an industry. The ITC must promptly initiate an investigation to determine within 120 days whether, as a result of the reduction or elimination of a duty provided for under the CFTA, an article originating in Canada is being imported into the United States in such increased quantities in absolute terms and under such conditions that imports of that Canadian article alone constitute a substantial cause of serious injury to the domestic industry producing a like or directly competitive article.*	Establishes a procedural mechanism under U.S. law strictly for the application of import relief measures on a bilateral basis, other than on textiles and apparel. The provisions are nearly identical to section 302(a) of the CFTA Act, except for the following:
During the transition period only, a NAFTA Party may take emergency action against imports from another Party if, as a result of the reduction or elimination of a duty provided for under the NAFTA, the goods are being imported in such increased quantities, in absolute terms, and under such conditions that the imports from that Party alone constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good.		
The importing Party may, to the minimum extent necessary to remedy or prevent the injury:		
(a) suspend any further duty reduction on the good;		
(b) increase the rate of duty on the good to a level not to exceed the most-favored-nation rate; or		
(c) in the case of a seasonal rate of duty, increase the duty to a level not to exceed the MFN rate for the corresponding season immediately preceding entry into force of the NAFTA.		
A Party must deliver to any Party that may be affected written notice and a request for consultations regarding institution of a proceeding that could result in emergency action; any action must be initiated within one year after instituting the proceeding.		
No action can stay in effect more than 3 years, except an action may be extended for one year provided that the duty during the initial period	*If the determination is affirmative, the ITC shall find, and recommend to the President the amount of relief necessary to remedy the injury, limited to the relief available under this provision. The ITC must report to the President and make public (except for confidential information) its determination and the basis and any remedy finding within 30 days after the determination is made.* *Within 30 days after receiving a report of an affirmative determination, the President shall provide relief on imports of the article originating in Canada to the extent and for such time, not to exceed 3 years, that the President determines necessary to remedy the injury. The President is not required to provide import relief if the President determines relief would not be in the national economic interest. The relief is limited to: (1) suspension of any further duty reductions under the CFTA on the article; (2) a tariff "snapback" to the MFN rate on the article; or (3) if a seasonal duty applies on the article originating in Canada, an increase in the duty not to exceed the MFN rate for the corresponding*	(1) The ITC shall determine in the case of Mexican articles whether increased imports alone constitute either a substantial cause of serious injury or a threat of serious injury to the domestic industry. (2) The President is not required to provide import relief if the President determines it will not provide greater economic and social benefits than costs. (3) The import relief cannot exceed 3 years, except that if the article is subject to 15-year tariff staging (C+ category) and the President determines that the affected industry has undertaken adjustment and requires an extension, the President may, after obtaining ITC advice, extend relief for up to one year if the duty applied during the initial period is substantially reduced at the beginning of the extension period. Import relief may be granted under these provisions through December 31, 1998, on Canadian articles, and until the end of the 10 or 15-year tariff staging period on Mexican articles. These provisions do not apply to textile or apparel articles.

is substantially reduced at the beginning of the extension period if the good is subject to 15-year staged tariff elimination (category C+) and the Party determines that the industry has undertaken adjustment and requires an extension of relief. On termination of the action the rate of duty shall be the rate that would have been in effect one year after initiation of the action.

An action against a particular product may be taken only once during the transition period.

No bilateral action can extend or be taken beyond expiration of the transition period except with the consent of the affected Party.

The Party taking an action must provide mutually agreed trade liberalizing compensation to the affected Party; otherwise the affected Party may take tariff action having substantially equivalent trade effects.

season immediately prior to the entry into force of the CFTA.

Bilateral import relief action may be taken only once on a particular article during the 10-year transition period. Compensation authority under section 123 of the Trade Act of 1974 applies to any import relief action.

Article 802: Global Actions

Any Party taking an emergency action under GATT Article XIX, shall exclude imports from each other Party unless--

(a) imports from a Party, considered individually, account for a substantial share of total imports; and

(b) imports from a Party, considered individually or in exceptional circumstances considered collectively, contribute importantly to the serious injury or threat thereof caused by imports.

Imports normally shall not be considered a substantial share if the Party is not among the top 5 suppliers during the most recent 3-year period. Such factors as the change in import share and the level and changes in the level of imports of each Party shall be considered in determining whether imports from a Party or Parties contribute importantly; imports from a Party normally shall not be deemed to contribute importantly if the growth rate during the period the injurious surge occurred is appreciably lower

Sections 201-204 of the Trade Act of 1974 authorize the President to provide import relief after receiving a report from the ITC that an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or threat thereof, to the domestic industry producing a like or directly competitive article. The ITC investigation is with respect to imports from all sources.

The ITC must make its injury determination within 120 days (150 days in extraordinarily complicated cases); its remedy recommendation and report must be submitted to the President within 180 days. Any Presidential action must be taken within 60 days of receiving an affirmative determination. The President may provide provisional import relief for perishable agricultural products within 28 days after the petition is filed if the ITC has monitored imports for at least 90 days and makes an affirmative preliminary injury determination. On other products, the President may provide provisional import relief generally within 127 days after a petition is filed if the ITC

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than the growth rate of imports from all sources over the same period. The Party taking action may subsequently include imports from another Party or Parties initially excluded if a surge in imports from such Party undermines the effectiveness of the global action. No action can have the effect of reducing imports of the good from a Party below the trend of imports from that Party over a reasonable recent representative base period with allowance for growth. A Party must deliver written notice to the other Parties of the institution of a proceeding that may result in emergency action. No restriction may be imposed without prior written notice to the Commission and adequate opportunity for advance consultation with the Party or Parties to be affected. The Party taking emergency action must provide mutually agreed trade liberalizing compensation to the other Party or Parties; otherwise the affected Party may take action having substantially equivalent trade effects.	makes an affirmative injury determination and also determines critical circumstances exist. Import relief may take the form of a tariff, tariff-rate quota, quantitative restriction, orderly marketing agreement, adjustment or other measures, or any combination thereof. Any tariff increase may not exceed 50 percent above the existing rate; any quantitative restriction must permit the importation of a quantity or value of the article not less than the level imported during the most recent representative period. Import relief actions may not exceed 8 years. A subsequent investigation of an article which has been the subject of import relief cannot be initiated for a period of time equivalent to the period of relief. Section 123 of the Trade Act of 1974 authorizes the President to enter into trade agreements to provide new concessions as compensation for import relief actions.	
	Global import relief under CFTA *Section 302(b) of the CFTA Act establishes criteria and procedures for implementing global import relief measures on imports from Canada. If the ITC makes an affirmative injury determination in an investigation under the standard import relief provisions of the Trade Act of 1974, the ITC must also find and report to the President whether imports of the article from Canada are substantial and are contributing importantly to the serious injury or threat thereof. The ITC shall not normally consider imports from Canada in the range of 5-10 percent or less of total imports of the article to be "substantial". The term "contributing importantly" means an important cause, but not necessarily the most important cause, of the serious injury or threat thereof.*	Provides criteria and procedures for global relief measures on imports from Mexico or Canada, which are identical to section 302(b) of the CFTA Act except for the following: (1) If the ITC makes an affirmative injury determination under the import relief provisions of the Trade Act of 1974, the ITC shall also find and report to the President whether imports of the article from a NAFTA country, considered individually, account for a substantial share of total imports and such imports considered individually or, in exceptional circumstances, imports from NAFTA countries considered collectively contribute importantly to the serious injury or threat thereof. Imports normally shall not be considered to account for a substantial share of total imports if the country is not among

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	The President shall exclude imports from Canada from a relief action if the President determines that such imports are not substantial and do not contribute importantly to the serious injury or threat thereof. If the President subsequently determines that a surge in imports from Canada undermines the effectiveness of the relief, the President may include imports from Canada in the relief action. If the relief action excludes imports from Canada, any entity that is representative of an industry for which the action is being taken may request the ITC to conduct an investigation of imports of the article from Canada. Upon receiving such a request, the ITC shall conduct an investigation to determine whether a surge in such imports undermines the effectiveness of the action. The ITC shall submit its findings to the President within 30 days after the request. The term "surge" means a significant increase in imports over the trend for a reasonable recent base period for which data are available. (Provisional relief provisions, added to the 1988 Act, were not enacted in time to apply to the CFTA Act.)	the top 5 suppliers of the article subject to investigation during the most recent 3-year period. In determining whether imports from a NAFTA country or countries contribute importantly to the serious injury or threat thereof, the ITC shall consider such factors as the change in the share and the level and change in level of imports of the country or countries. Normally such imports shall not be considered to contribute importantly if the growth rate during the period an injurious import surge occurred is appreciably lower that the growth rate of total imports from all sources over the same period. (2) The President shall exclude from a relief action imports from a NAFTA country which the President determines, considered individually, do not account for a substantial share of total imports and considered individually or, in exceptional circumstances, considered collectively do not contribute importantly to the serious injury or threat thereof. (3) The provisional relief provisions of current law apply.
Article 803: Administration of Emergency Action Proceedings Annex 803.3: Administration of Emergency Action Proceedings Each Party shall ensure consistent, impartial and reasonable administration of its laws, regulations, decisions, and rulings governing all proceedings. Each Party shall entrust injury determinations to a competent investigating authority, subject to judicial or administrative review, to the extent provided by domestic law. Each Party shall adopt or maintain equitable, timely, transparent and effective procedures for proceedings in accordance with the requirements of Annex 803.3. This Article does not apply to emergency actions on textiles and apparel.		The ITC shall adopt such procedures and rules and regulations as are necessary to bring its procedures into conformity with Chapter 8 (to be specified in statement of administrative action).

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Article 804: Dispute Settlement in Emergency Action Matters No Party may request the establishment of an arbitral panel under Article 2008 regarding any proposed emergency action.		
Article 805: Definitions Annex 805: Country-Specific Definitions Defines various terms used in Chapter 8.		

Agreement Provision	Current U.S. Law/Practice	Draft Implementing Proposal
PART THREE: TECHNICAL BARRIERS TO TRADE		
CHAPTER 9: STANDARDS-RELATED MEASURES		
Articles 901-915 and accompanying annexes establish a framework of rules to guide the development, adoption, and enforcement of standards-related measures (other than those covered in Chapter 7, Section B, covering Sanitary and Phytosanitary Measures), intended to build on commitments under the GATT Standards Code. Each Party has the right to establish the levels of protection it considers appropriate. It may not establish and use such measures in a discriminatory manner or to create an unnecessary obstacle to trade between the Parties. The Parties are to use international standards as a basis for their measures (except where those would be ineffective and inappropriate for fulfilling legitimate objectives), but each may adopt, apply, and enforce measures that result in a higher level of protection than would be achieved by measures based on the international standards. The Parties are to seek to make their measures and conformity assessment procedures (which are used to determine whether the requirements set forth in standards are fulfilled) more compatible with one another. The Chapter also sets out procedures for notification and publication pertaining to a Party's adoption or modification of a technical regulation; the establishment of a point of inquiry; and technical cooperation. A Committee on Standards-Related Measures, with several specified subcommittees, is established to facilitate the implementation of this Chapter. (The Land Transportation Standards Subcommittee, in Annex 913.5.a-1, is referenced in the description of Chapter 12.)	U.S. policy concerning the application of standards and certification procedures to imports is based on the GATT Standards Code and Title IV of the Trade Agreements Act of 1979. The Standards Code established multilateral rules regarding the procedures by which standards and certification systems are prepared and applied. It permits technical regulations and standards to be used for legitimate public policy objectives (e.g., to protect human, animal, or plant life or health or to preserve the environment), but establishes principles and procedures in order that standards not create unnecessary obstacles to trade. Revisions to the Code are currently being negotiated as part of the Uruguay Round. *Chapter Six of the CFTA includes certain clarifications of terms, and expansions of coverage, of the Standards Code. The CFTA Act does not include any standards provisions.*	[Commerce Committee to draft implementing language.]

Agreement Provision	Current U.S. Law/Practice	Draft Implementing Proposal
PART FOUR: GOVERNMENT PROCUREMENT CHAPTER 10: GOVERNMENT PROCUREMENT **Section A - Scope and Coverage and National Treatment** (Articles 1001-1007; Annexes 1001.1a-c, 1001.2a-c)		
Each Party shall treat the goods, suppliers of such goods, and service suppliers of another Party no less favorably than it treats its domestic goods and suppliers (i.e., accord national and nondiscriminatory treatment) with respect to measures relating to procurement by specified Federal government departments and agencies and Federal government-controlled enterprises (parastatals) of goods, services, and construction services specified in Annexes 1001.	Title III of the Trade Agreements Act of 1979 authorizes the President to waive Buy American Act and other restrictions on government procurement purchases only of eligible products covered by the GATT Government Procurement Code from other Code signatories on a reciprocal basis. The Code and waiver authority do not apply to contracts valued below the threshold of 130,000 SDRS (currently $176,000 US). Buy American Act preferences still apply to contracts valued below the threshold, purchases by noncovered entities, and procurement from countries not eligible for a waiver; special Buy American restrictions under other laws (e.g., small business set-asides, required domestic sourcing of particular goods) are also not affected. Canada is a signatory to the Code; Mexico is not a signatory.	[Governmental Affairs Committee to draft implementing language.]
Thresholds. The obligation applies where the value of the contract to be awarded is estimated to equal or exceed a threshold level (adjusted at U.S. inflation rate for Mexico) -- (a) for Federal government entities: Over US $50,000 for goods and services; over US $6.5 million for construction services; (b) for government enterprises: Over US $250,000 for goods and services; over US $8 million for construction services.	*Section 306 of the CFTA Act amended Title III of the 1979 Act to implement a lower threshold (a contract value of $25,000 or more) under the CFTA on goods and services incidental to goods of Canada subject to the authority to waive U.S. Buy American and other government procurement restrictions on purchases covered by the GATT Government Procurement Code.*	
The thresholds in the CFTA (US $25,000) continue to apply to goods contracts (which may include incidental services) between the United States and Canada.		
Coverage and exceptions. Chapter 10 does not apply to purchases by state and local or provincial governments.		
Mexico will phase in its coverage over a transition period (immediately open 50 percent of energy sector procurement to U.S. and Canadian suppliers, increasing progressively to fully open procurement by the eleventh year except for a set-aside program).		
Procurement includes purchase, lease or rental. Each Party explicitly exempts certain procurement		

from coverage, such as procurements for national security purposes; the United States also specifically exempts all purchases under its small and minority business set-aside programs. Chapter 10 also does not apply to certain purchases by the Department of Defense, including those subject to Berry Amendment restrictions; purchases by the Department of Agriculture for farm support programs and human feeding programs; purchases by the Agency for International Development to implement foreign assistance projects; measures necessary to protect public morals, order or safety; human, animal or plant life or health; intellectual property; goods or services of handicapped persons, philanthropic institutions, or prison labor; purchases of dredging services; purchases of certain services including research and development, specified telecommunication services, and transportation services.

Rules of origin. The same rules of origin apply to goods imported from another Party for procurement purposes as apply in the normal course of trade. On covered procurement, Parties cannot discriminate between locally established suppliers less favorably on the basis of degree of foreign affiliation or ownership, or discriminate against a locally established supplier on the basis that the goods or services offered by that supplier are goods or services of another Party. Subject to prior notification and consultation, a Party may deny benefits to a service supplier of another Party where the Party establishes that the service is being provided by an enterprise that is owned or controlled by persons of a non-Party and that has no substantial business activities in any Party.

Offsets. Each Party is required to ensure that its entities do not consider, seek, or impose offsets (conditions that encourage local development or improve the Party's balance of payments accounts by requirements of local content, licensing of technology, investment, countertrade, or similar requirements) in the evaluation of bids or the award of contracts.

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Section B - Tendering Procedures (Articles 1008-1016; Annex 1010.1)		
Each Party must ensure that its entities following specified procedures on covered procurement, similar to the GATT Agreement on Government Procurement, with respect to technical specifications, qualification of suppliers, transparency, selective and limited tendering, time limits, documentation, award of contracts, and other aspects of the procurement process.		
Section C - Bid Challenge (Article 1017)		
Each Party must adopt and maintain specified bid challenge procedures for an independent authority to review and make recommendations on challenges by suppliers to contract tenders and awards for covered procurements.	The United States currently maintains effective bid challenge procedures.	
Section D - General Provisions (Articles 1018-1025)		
Parties shall cooperate to provide information on their respective government procurement systems with a view to maximizing access to procurement opportunities, including establishment of a Committee on Small Business within 12 months after the Agreement enters into force to report annually to the Commission on efforts of the Parties to promote procurement opportunities for small business.		
The Parties shall commence <u>further negotiations no later than December 31, 1998, to seek to expand coverage and review thresholds</u>. Parties shall endeavor to hold prior consultations with their state and provincial governments with a view to obtaining commitments, on a voluntary and reciprocal basis, to include procurement by state and provincial government entities and enterprises within Chapter 10.		

Agreement Provision	Current U.S. Law/Practice	Draft Implementing Proposal
PART FIVE: INVESTMENT, SERVICES, AND RELATED MATTERS		
CHAPTER 11: INVESTMENT		
Section A - Investment		
Sets out the key provisions governing the treatment by each Party of investors and investments of the other Parties: (1) National Treatment/Non-Discrimination: Each Party is to treat investors of the other Parties at least as favorably in like circumstances as its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale of investments. (2) MFN Treatment: Each Party is to treat investors of another Party at least as favorably in like circumstances as investors of any other Party or a non-Party with respect to the above activities. (3) Performance Requirements: No Party may impose or enforce, in connection with an investment in its territory, measures that require an investor to export a set amount of goods or services, achieve a set amount of domestic content, purchase goods or services made in its territory, relate the amount of imports to that of exports or to foreign exchange inflows from the investment, relate sales to the volume or value of exports or foreign exchange earnings, or transfer technology to a person in its territory (with limited specified exceptions to the final restriction). (4) Freedom of Transfer: Each Party shall permit transfers relating to an investment (including of profits, dividends, and sales proceeds) by investors of the other Parties within its territory to be made freely and without delay.	The United States maintains measures that are inconsistent with obligations in the Chapter, but all such measures have been grandfathered by being reserved in the relevant annex.	

Agreement Provision	Current U.S. Law/Practice	Draft Implementing Proposal
(5) Expropriation: No Party may nationalize or expropriate an investment by an investor of one of the other Parties, except in accordance with generally accepted international legal standards (including those governing the amount of and process for providing compensation). The Parties may maintain investment measures that do not conform to (1)-(3) above. Such measures at the Federal level are listed as reservations in an annex. State or provincial measures must be listed in annexes within two years after the Agreement enters into force. Local measures are exempted. **Section B - Settlement of Disputes Between a Party and an Investor of Another Party** Establishes a mechanism for the settlement of investment disputes between one Party and an investor of another Party. Allows an investor to submit to an arbitral tribunal (rather than a national administrative tribunal or court) a claim that another Party has breached an investment obligation under relevant provisions of the NAFTA and, as a result, the investor has incurred loss or damage. Lays out the procedures for submitting a claim to arbitration, appointment of the arbitral tribunal, and the making and enforcement of an award by the tribunal.		

Agreement Provision	Current U.S. Law/Practice	Draft Implementing Proposal

CHAPTER 12: CROSS-BORDER TRADE IN SERVICES

Sets out the basic rules for measures relating to the cross-border trade by service providers of another Party, including:

(1) National Treatment/Non-Discrimination: Each Party shall treat service providers of another Party at least as favorably in like circumstances as its own providers.

(2) MFN Treatment: Each Party shall treat service providers of another Party as least as favorably in like circumstances as service providers of any other Party or any non-Party.

(3) Local Presence: No Party may require a service provider of another Party to establish or maintain any form of enterprise, or to be resident, in its territory as a condition of the cross-border provision of a service.

The Parties may take reservations to maintain measures that do not conform with these rules. Reservations for existing non-conforming measures at the Federal level must be listed in an annex; measures at the state or provincial level are exempted for two years but must be set out by the end of that period in order to continue to be exempted; and existing non-conforming local measures are exempted completely. Such measures may not, however, be made more restrictive.

Certain services are excluded from the coverage of Chapter 12. These include financial services (covered by Chapter 14), most air services, procurement of services (covered by Chapter 10), and the provision of subsidies to services providers.

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An annex on professional services (those for which a provider must have a college or other specialized post-secondary education, or its equivalent in training) sets out factors relating to the licensing and certification of qualified persons from other Parties. Specific provisions cover the licensing of lawyers of one NAFTA country as foreign legal consultants in the others, and temporary licensing of engineers. Each Party is encouraged, but not required, to develop procedures for the temporary licensing of professional service providers of the other Parties. All Federal and state licensing and certification requirements must be met, but the Parties shall, within two years of the NAFTA's entry into force, eliminate any citizenship or permanent residency requirement maintained for purposes of licensing or certification of professional service providers.		
The Parties agree to liberalize access to their land transportation sectors (covering trucking, railroad, bus, and landside port services), subject to the reservations and phase-in periods for foreign investment and the provision of cross-border services set out in Annex I to the NAFTA. Pursuant to Annex 913.5.a-1 establishing a Land Transportation Standards Subcommittee of the Committee on Standards-Related Measures, the Parties agree to a work program to make their land transportation standards (as specified in that Annex) compatible within the listed time periods. Annex 1212 sets out the contact points in each country on matters such as operating authority and safety requirements, provides for review of the liberalization provided in the NAFTA, and provides for consultations within seven years to determine the possibilities for further liberalization of the land transportation sector.	There is a moratorium on the issuances by the Interstate Commerce Commission of Certificates of Public Convenience and Necessity ("operating authority") to Mexican-owned or controlled truck or bus operations beyond border commercial zones. A certificate of registration is needed to operate in those zones. The President has the authority to lift or modify the moratorium based on specified guidelines.	

Agreement Provision	Current U.S. Law/Practice	Draft Implementing Proposal
CHAPTER 13: TELECOMMUNICATIONS		
Each Party shall ensure that persons of another Party, for the conduct of their business, may use any public telecommunications network or service offered in its territory or across its borders on reasonable and non-discriminatory terms. This includes the ability to buy or lease, and attach equipment to, the public networks; interconnect leased channels with the public networks; and perform switching, signalling, and processing functions. A Party may maintain measures to ensure the security of messages and the privacy of network subscribers. Each Party also is to ensure that its licensing process for the provision of enhanced services is transparent and non-discriminatory.		
Measures affecting the broadcast or cable distribution of either television or radio programming are not covered.		

Agreement Provision	Current U.S. Law/Practice	Draft Implementing Proposal
CHAPTER 14: FINANCIAL SERVICES		
Sets out the basic rules applicable to a Party's measures relating to financial institutions of another Party, investments in financial institutions in its territory, and cross-border trade in financial services, including:		
(1) Right of Establishment: Investors of another Party are permitted to establish financial institutions on the basis of national treatment, except incorporation may be required and subject to the limitations in an annex).		
(2) Cross-Border Trade: Financial services providers are permitted to sell services across borders (with any specific limitations set forth in an annex).		
(3) National Treatment/MFN Treatment: Each Party shall accord investors of another Party treatment no less favorable, in like circumstances, than it accords its own investors and those of any other Party or non-Party, with respect to investments in financial institutions in its territory.	The United States maintains measures that are inconsistent with the obligations in the Chapter, but all such measures have been grandfathered by being reserved in the relevant annex.	
Each Party may maintain non-conforming measures: Federal measures must be listed as reservations, while state or provincial measures must be listed after a short transition period and local non-conforming measures need not be listed. A Party may maintain measures for "prudential reasons," such as the protection of depositors and maintenance of the integrity of financial institutions.		

Agreement Provision	Current U.S. Law/Practice	Draft Implementing Proposal
CHAPTER 15: COMPETITION POLICY: MONOPOLIES AND STATE ENTERPRISES		
The Parties shall adopt or maintain measures to proscribe anti-competitive business conduct and cooperate on issues relating to the enforcement of their competition laws. State-owned or controlled enterprises are to act consistently with the Agreement when exercising any delegated governmental authority. The NAFTA's dispute settlement procedures do not apply to matters covered under this Chapter.		

Agreement Provision	Current U.S. Law/Practice	Draft Implementing Proposal
CHAPTER 16: TEMPORARY ENTRY FOR BUSINESS PERSONS		
Sets out rules to facilitate, on a reciprocal basis, the temporary entry (where there is no intent to establish permanent residence) of four categories of business persons: (1) business visitors who retain their main place of business outside the country granting temporary entry; (2) traders and investors who carry on significant trade between their own country and that which they wish to enter, or are engaged in the operation of an investment in that country involving a substantial amount of capital; (3) intra-company transferees employed in a managerial or executive capacity, or a job involving specialized knowledge, and transferred within the same company from one NAFTA country to another; and (4) listed categories of professionals who satisfy minimum educational requirements or have alternative credentials, usually gained through training and experience. A maximum of 5,500 Mexican professionals may enter the United States annually; this limit can be increased and will expire 10 years after the NAFTA takes effect, unless removed earlier. There is no limit on the temporary entry of U.S. professionals into Mexico. (Chapter 16 sets out the standards for temporary admission of professionals. Commitments concerning the licensing of professional service providers are set out separately in Chapter 12.) In addition to meeting the applicable criteria for temporary entry, each business person also must satisfy general entry requirements relating to public health and safety and national security. Admission may be refused if the temporary entry might adversely affect the settlement of a labor dispute or the employment of a person involved in such dispute.	Section 101(a)(15) of the Immigration and Nationality Act of 1952 (INA) sets out 12 categories of "nonimmigrant aliens" (a term used to distinguish these persons under the statute from those aliens who intend to immigrate into the United States). These include three of the four categories of nonimmigrants covered by the provisions in Chapter Sixteen of the NAFTA: business visitors; treaty traders and investors; and intra-company transferees. CFTA professionals are admitted under section 214(e) of the INA, but in practice are treated as though non-immigrants under section 101(a)(15). Regulations adopted pursuant to those provisions establish the specific procedures, administered by the INS, for granting nonimmigrant visas to the persons covered by these categories. *Chapter 15 of the CFTA provides for temporary entry of business persons in these four categories. Section 307 of the CFTA Act modifies the INA as necessary to implement the CFTA's provisions on two of these four categories: (1) traders and investors; and (2) professionals.*	[Judiciary Committee to draft implementing language.]

Agreement Provision	Current U.S. Law/Practice	Draft Implementing Proposal
PART SIX: INTELLECTUAL PROPERTY		
CHAPTER 17. INTELLECTUAL PROPERTY		
Chapter 17 obligates each NAFTA Party to provide adequate and effective protection and enforcement of intellectual property rights, while ensuring that measures to enforce intellectual property rights do not themselves become barriers to trade. A Party may implement more extensive protection of intellectual property rights than is required under the NAFTA, as long as such protection is consistent with the NAFTA.		[Judiciary Committee to draft implementing language.]
The NAFTA Parties are required to give effect to the substantive provisions of four specific international agreements (the Geneva Convention, the Berne Convention, the Paris Convention, and the International Convention for the Protection of New Varieties of Plants), as well as the provisions of Chapter 17.		
Each NAFTA Party is required to accord national treatment to the nationals of the other NAFTA Parties with regard to the protection and enforcement of intellectual property rights. Specific substantive commitments concern the protection of copyrights, sound recordings, satellite signals, trademarks, patents, integrated circuits (semiconductor chips), trade secrets, geographical indications, and industrial designs. Specific commitments include: protecting computer programs as literary works and data bases as compilations; providing rental rights for computer programs and sound recordings; providing a term of protection of at least 50 years for sound recordings; providing product and process patents for inventions, including pharmaceuticals and agricultural chemicals; precludes discrimination among inventions based on the field of technology or the territory where the invention was made or based on whether products embodying the invention were imported or locally produced; and protecting service marks to the same extent as trademarks.		

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Chapter 17 sets forth detailed obligations regarding enforcement procedures (including provisions on damages, injunctive relief, and general due process issues) and enforcement of intellectual property rights at the border (including safeguards to prevent abuse).		

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CHAPTER 18: PUBLICATION, NOTIFICATION, AND ADMINISTRATION OF LAWS		
Chapter 18 establishes various transparency requirements that apply to Federal and State governments with respect to any matter covered by the NAFTA. These requirements include the designation by each Party of a "contact point" to facilitate communications between the Parties; publication of laws, regulations, procedures, and administrative rulings of general application, to the extent possible in advance with a reasonable opportunity for comment on proposed measures; and notice of measures that might materially affect the operation of, or another Party's interests under, the NAFTA. In addition, each Party shall ensure in its administrative proceedings affecting any matter covered by the NAFTA that, wherever possible, persons of another Party directly affected are provided reasonable notice and a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action. Each Party shall adopt or maintain independent and impartial judicial or administrative tribunals or procedures for prompt review and correction, where warranted, of final administrative actions regarding matters covered by the NAFTA. These appeal rights must include a reasonable opportunity to support or defend positions and a decision based on the evidence and administrative record, as required by domestic law.	U.S. law and administrative practice currently comply with NAFTA requirements.	

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CHAPTER 19: REVIEW AND DISPUTE SETTLEMENT IN ANTIDUMPING AND COUNTERVAILING DUTY MATTERS		
Article 1901: General Provisions		
Article 1901.1 provides that Article 1904 (which replaces judicial review of final antidumping (AD) and countervailing duty (CVD) determinations with binational panel review) applies only with respect to goods which the competent investigating authority of the importing Party determines are goods of another Party.	*Section 401(c) of the CFTA Act provides that the administering authority (Department of Commerce) determines whether a proceeding involves Canadian merchandise.*	Identical provision, except for conforming amendments.
Annex 1901.2: Establishment of Binational Panels		
Establishment of roster of panelists. Annex 1901.2 provides for the establishment of binational panels and the selection of individuals to serve as panelists. On the date the NAFTA enters into force, the Parties shall establish and thereafter maintain a roster of individuals to serve as panelists under Chapter 19, which shall include judges or former judges to the fullest extent practicable. The Parties shall consult in developing the roster of at least 75 candidates; each Party shall select at least 25 candidates, all of whom must be U.S., Mexican, or Canadian citizens. Candidates shall not be affiliated with a Party or take instructions from a Party. Parties may amend the roster, when necessary, after consultations.	*Section 405 of the CFTA Act establishes an interagency group chaired by USTR to: (1) prepare by January 3 of each year a list of individuals qualified to serve as members of binational panels or extraordinary challenge committees convened under Chapter 19; (2) prepare by July 1 of each year a list of individuals qualified to be added to the final candidate list if the USTR so requests; (3) oversee the administration of the U.S. Secretariat; and (4) make recommendations to the USTR regarding the convening of extraordinary challenge committees.*	Provides that panels, extraordinary challenge committees and special committees shall be comprised to the fullest extent practicable of judges and former judges, and that the USTR shall give priority to the appointment of judges and former judges to such panels and committees convened under Chapter 19.
		[Procedures for U.S. selection of candidates and panelists and committee members to be addressed.]
Schedule for appointing panelists. Within 30 days of a request for a panel, each involved Party shall appoint 2 panelists in consultation with the other involved Party, normally from the roster. Peremptory challenges and the selection of alternative panelists shall occur within 45 days of the request.	*The USTR shall select individuals from the lists for placement on preliminary candidate lists to serve on panels or committees and, by January 3 of each year, shall submit these lists to the House Ways and Means and Senate Finance Committees. The USTR may add or delete individuals after consulting with the Committees and providing written notice of any addition or deletion. By March 31 of each year, the USTR shall submit to the Committees final lists of candidates selected by the USTR as eligible to serve on panels and committees convened under Chapter 19 during the one-year period beginning on April 1. An individual not on a preliminary list may be included on the final candidate list only if the USTR provided written notice of the addition to the Committees at least 15 days before submission of that final list. No additions may be made to the final lists for a particular year after they are submitted to the Committees unless the USTR, before July 1 of that year, determines that*	
Within 55 days of the request, the involved Parties shall agree on the selection of a fifth panelist. If the Parties are unable to agree, they shall decide by lot which of them shall select by the 61st day the fifth panelist from the roster, excluding candidates eliminated by peremptory challenges.		

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	additional individuals are needed. A similar selection, Committee notice and consultation process then applies, and the USTR must submit the final form of any proposed amendment to a final candidate list to the Committees by September 30 of that year to take effect on October 1 for eligibility to serve during the six-month period to April 1 of the following year.	
Qualifications of panelists and chair; Code of Conduct. A majority of the panelists on each panel must be lawyers. The panelists shall appoint a chairman from among the lawyers by majority vote of the panelists or, if no majority, appointed by lot from among the lawyers on the panel. Panelists shall be subject to a code of conduct established pursuant to Article 1909. A panelist may engage in other business during the term of the panel but may not appear, while acting as a panelist, as counsel before another panel.	*The selection of panelists for any lists or rosters or appointment by the USTR to serve on panels or committees must be based on criteria in Chapter 19 and without regard to political affiliation as well as on requirements in the Statement of Administrative Action (e.g., financial disclosures) and a joint code of conduct.*	Identical provision, except for conforming amendments.
Panelists' use of protective orders. Each panelist is required to sign a protective order or disclosure undertaking in order to qualify as a panelist and receive access to information covered by such order or undertaking. Each Party must establish appropriate sanctions for violations of protective orders or disclosure undertakings issued by or given to any Party and shall enforce such sanctions with respect to any person within its jurisdiction.	*Section 403(d) of the CFTA Act amends section 777 of the Tariff Act of 1930 to provide for disclosure of all proprietary material (but not privileged material) in the administrative record of a proceeding under protective order. Persons authorized to have access to such material include the members and staff of the binational panel or extraordinary challenge committee and the Secretariat; counsel for parties to the binational panel or committee proceedings and their employees; and any officer or employee of the U.S. Government designated by the administering authority or the ITC. Decisions by the administering authority or ITC concerning access to information shall not be subject to judicial review.* *Section 403(d) also makes it unlawful for any person to violate any provision of a U.S. protective order or an undertaking with Canada to protect proprietary material. Any person who is found by the administering authority or ITC (after notice and opportunity for a hearing) to have violated a provision of a protective order or undertaking shall be liable for a civil penalty of up to $100,000 for each violation and shall be subject to such other administrative sanctions*	Identical provision, except for conforming amendments.

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	(including disbarment from practice before the agency) as the administering authority or ITC determines appropriate. Each day of a continuing violation shall constitute a separate offense. *Any person against whom sanctions are imposed may obtain judicial review of such action by the Court of International Trade.* *The provision authorizes the filing of an action in the ITC to enforce the sanctions and to have access to documents, to summon witnesses and to issue subpoenas; and authorizes enforcement of subpoenas by a U.S. district or territorial court.*	
Immunity from suit. With the exception of violations of protective orders or undertakings, panelists and committee members shall be immune from suit and legal process relating to acts performed by them in their official capacity.	*Individuals serving on panels or committees and individuals designated to assist them shall be immune from suit and legal process relating to acts they perform in their official capacity and within their functions as panelists, committee members, or assistants, with the exception of violations of protective orders or undertakings.*	Identical provision, except for conforming amendments.
Decisions of panel. Decisions of the panel shall be by majority vote and based upon the votes of all members of the panel. The panel shall issue a written decision with reasons.		
Article 1902: Retention of Domestic Antidumping Law and Countervailing Duty Law		
Each Party reserves the right to apply its AD law and CVD law to goods imported from any other Party. AD law and CVD law include relevant statutes, legislative history, regulations, administrative practice, and judicial precedents. Each Party reserves the right to change or modify its AD law or CVD law provided that -- (a) an amendment shall apply to goods from another Party only if the amending statute specifies that it applies to goods from that Party or the Parties; (b) the amending Party notifies in writing the Parties to which the amendment applies of the amending statute as far in advance as possible of the date of enactment of such statute;	*Section 404 of the CFTA Act specifies that any amendment to any U.S. statute which provides for judicial review of final AD/CVD determinations or indicates the standard of review to be applied, shall apply to Canada only to the extent specified in the amendment.*	Identical provision, except for conforming amendments.

(c) following notification, the amending Party, on request of any Party to which the amendment applies, consults with that Party prior to the enactment of the amending statute; and

(d) such amendment as applicable to that other Party, is not inconsistent with the GATT, the Antidumping Code, the Subsidies Code, or any successor agreement to which the original NAFTA signatories are party, or with the object and purpose of the NAFTA and Chapter 19 (which is to establish fair and predictable conditions for the progressive liberalization of trade between the Parties while maintaining effective and fair disciplines on unfair trade practices).

Article 1903: Review of Statutory Amendments
Annex 1903.2: Panel Procedures under Article 1903

A Party to which an amendment of another Party's AD or CVD law applies may request in writing that such amendment be referred to a binational panel for a declaratory opinion as to whether:

(a) the amendment does not conform to the provisions in Article 1902 on consistency, or

(b) such amendment has the function and effect of overturning a prior decision of a panel made pursuant to Article 1904 and does not conform to the provisions of Article 1902 on consistency.

If the panel recommends modifications to the amending statute to remedy a nonconformity that it has identified in its opinion, then --

(a) the Parties shall immediately begin consultations and shall seek to achieve a mutually satisfactory solution to the matter within 90 days of the issuance of the panel's final declaratory opinion. Such solution may include seeking corrective legislation;

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(b) if corrective legislation is not enacted within 9 months from the end of the 90-day consultation period and no other mutually satisfactory solution has been reached, the Party that requested the panel may (i) take comparable legislative or equivalent executive action, or (ii) terminate this Agreement with regard to the amending Party upon 60-day written notice to that Party.		
Article 1904: Review of Final Antidumping and Countervailing Duty Determinations		
Each Party shall replace judicial review of final AD and CVD determinations with binational panel review.	Section 516A of the Tariff Act of 1930, as amended, provides for judicial review of final determinations under the AD and CVD laws by the U.S. Court of International Trade (CIT), with a right of appeal in the U.S. Court of Appeals for the Federal Circuit and by certiorari to the U.S. Supreme Court. Within 30 days of publication of any applicable final determination, an interested party who is a party to the proceeding may commence an action in the CIT by filing a summons and complaint, with the content and in form, manner, and style prescribed by the rules of the court, contesting any factual findings or legal conclusions on which the determination is based.	
	Section 401 of the CFTA Act amends section 516A of the Tariff Act of 1930 to provide that final AD and CVD determinations with regard to Canadian merchandise shall not be reviewable under section 516A, and no U.S. court has power or jurisdiction to review the determination on any question of law or fact by an action in the nature of mandamus or otherwise.	Identical provisions, except for conforming amendments.
Judicial Standard of Review. The panel shall apply the standard of review set out in Annex 1911 and the general legal principles that a court of the importing Party otherwise would apply to a review of a determination of the competent investigating authority.	The judicial standard of review under section 516A of the Tariff Act of 1930, applicable to the CIT and to panels, provides that they shall hold unlawful any determination, finding, or conclusion that they find: (1) to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, in the case of a determination by the administering authority not to initiate an investigation, a determination by the ITC not to review a determination based on changed circumstances, or a negative ITC	Existing U.S. law applies.

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	reasonable indication of injury determination; or (2) to be unsupported by substantial evidence on the record or otherwise not in accordance with law, in all other determinations.	
Request for Panel Review. An involved Party may request that a panel review, based upon the administrative record, a final AD or CVD determination of a competent investigating authority of an importing Party to determine whether such determination was in accordance with the AD or CVD law of the importing Party. A request for a panel must be made in writing to the other involved Party within 30 days following the date of publication, or receipt of notice by the other involved Party, of the final determination in question. An involved Party on its own initiative may request review of a final determination by a panel and shall, on request of a person who would otherwise be entitled under the law of the importing Party to commence domestic procedures for judicial review of that final determination, request such review. The competent investigating authority that issued the final determination in question and other persons who, pursuant to the law of the importing Party, otherwise would have had the right to appear and be represented in a domestic judicial review proceeding concerning the determination, shall have the right to appear and be represented by counsel before the panel. The panel may uphold a final determination, or remand it for action not inconsistent with the panel's decision. The panel shall establish as brief a time as is reasonable for compliance with a remand; in no event shall the time permitted for compliance with a remand exceed the maximum amount of time permitted by statute for the competent investigating authority to make a final determination in an investigation. If review of the action taken by the competent investigating authority on remand is needed, such review shall be before the same panel, which shall normally issue a final decision within 90 days of the date on which such remand action is submitted to it. The decision of a panel shall be binding on the involved Parties with respect to the particular	*Section 401(8) of the CFTA Act amends section 516A of the Tariff Act of 1930 to provide that an interested party who was a party to the AD or CVD proceeding may file a request for a binational panel review of the determination with the U.S. Secretary within 30 days after publication of the notice of the final determination or, in the case of class or kind rulings, receipt of the notice of the determination by the Government of Canada. Receipt of such a request by the U.S. Secretary shall be deemed a request for binational panel review. The party making the request must notify any other interested party and the administering authority or ITC, as appropriate. The U.S. Secretary must notify interested parties and the administering authority or ITC, as appropriate, if the Canadian Government requests a panel review. Absent a request by an interested party, the U.S. Government cannot request binational panel review.* *The 30-day time limit for requesting judicial review under section 516A shall not begin until the 31st day after the publication of notice of the AD or CVD determination.* *Interested parties have the right to appear and be represented by their own counsel before the binational panel. The administering authority and the ITC will be represented by attorneys who are employees of those agencies.* *Under section 408 of the CFTA Act, a U.S. person may request, no later than 5 days before the United States may request a binational panel, review of a Canadian AD or CVD determination. On receipt of such request, the U.S. Secretary shall request a panel and notify all interested parties to the proceeding.*	Identical provisions, except for conforming amendments.

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matter between the Parties that is before the panel. A final determination shall not be reviewed under any judicial review procedures of the importing Party if either Party requests a panel with respect to that determination within the time limits. No Party may provide in its domestic legislation for an appeal from a panel decision to its domestic courts.		
Exceptions to panel review. The provisions of this Article shall not apply where: (a) neither Party seeks panel review of a final determination; (b) a revised final determination is issued as a direct result of judicial review of the original final determination by a court of the importing Party in cases where neither involved Party sought panel review of that original final determination; or (c) a final determination is issued as a direct result of judicial review that was commenced in a court of the importing Party before the entry into force of this Agreement.	*Section 401 of the CFTA Act establishes three exceptions to the general rule that binational panel review replace judicial review. These exceptions provide that determinations continue to be subject to judicial review under section 516A if:* *(1) Neither the United States nor Canada requested review of the determination by a binational panel, but only if the Party seeking judicial review has provided timely notice of its intent to commence such review to the U.S. and Canadian Secretaries, all interested parties to the proceeding, and the administering authority or the ITC, as appropriate;* *(2) The determination is a revised determination issued as a direct result of judicial review if neither the United States nor Canada requested review of the original determination; or* *(3) The determination is issued as a direct result of judicial review that was commenced prior to entry into force of the Agreement.*	Identical provision.
	Constitutional challenge procedure. In addition, there is a two-track procedure for judicial review of any general challenge to the constitutionality of this legislation implementing the binational panel review system, or of any constitutional issues arising out of a particular AD or CVD determination: *(1) An action for declaratory judgment or injunctive relief, or both, regarding a determination on the grounds that the legislation implementing the Chapter 19 binational panel system violates the Constitution may be brought in*	Identical provision.

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	the U.S. Court of Appeals for the D.C. Circuit (determined by a 3-judge court), with any final judgment reviewable by appeal filed within 10 days directly to the U.S. Supreme Court; and *(2) Constitutional issues arising with respect to a particular AD or CVD determination shall be assigned to a 3-judge panel of the CIT.* *On constitutional issues, any interested party to the proceeding may commence an action only within the 30-day period following publication of notice of the completion of a binational panel review. If there is a finding of unconstitutionality, the President is authorized to accept the decision of any binational panel or extraordinary challenge committee remanding a determination to the administering authority or the ITC. If the President so accepts such a determination, the administering authority or the ITC shall take action not inconsistent with the decision within the time period specified. Frivolous claims of unconstitutionality are subject to dismissal and sanctions under existing law.* *The President may advise the administering authority, the ITC and the U.S. Customs Service as appropriate of the international obligations of the United States under Article 1904 of the Agreement with respect to a final decision of a binational panel or an extraordinary challenge committee. The Statement of Administrative Action states that panel decisions are binding as a matter of international law.* *U.S. Standard of Review* *Section 401 of the CFTA Act amends section 516A of the Tariff Act of 1930 to provide that in making a decision in any judicial review proceeding brought under section 516A, a U.S. court is not bound by (but may take into consideration) a final decision of a binational panel or extraordinary challenge committee. The Statement of Administrative Action clarifies the application of this provision by providing an illustration of how the CIT should treat a decision of a binational panel in a case in which imports from Canada were cumulated with imports from other countries.*	Existing U.S. law applies.

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	Regulations *Section 405 of the CFTA Act authorizes the administering authority, the ITC, and the USTR to issue regulations necessary or appropriate to implement their responsibilities under Chapter 19; initial regulations shall be issued prior to entry into force of the Agreement.*	Identical provision.
	Miscellaneous Conforming Amendments to Title 28 U.S. Code Regarding Court of International Trade and to the Tariff Act of 1930 *Sections 401-403 of the CFTA Act make various amendments to section 516A of the Tariff Act (requiring continued suspension of liquidation of entries pending binational panel review of a final determination, if requested by an interested party who is a participant in the binational panel review); section 771 of the Tariff Act (creating a new subsection 18 defining the "U.S.-Canada Agreement" as the U.S.-Canada Free Trade Agreement); section 777 of the Tariff Act of 1930 (providing for disclosure of business proprietary information under protective order; administrative sanctions for violation of protective orders); sections 1581(i), 2631(i), and 2643(c) of title 28 of the U.S. Code (limiting the jurisdiction of the U.S. Court of International Trade); and chapter 95 of title 28 of the U.S. Code (conferring exclusive jurisdiction to the U.S. Court of International Trade for civil actions to enforce administrative sanctions in connection with violations of administrative protective orders).*	Identical provisions, except for conforming amendments. [Certain provisions to be drafted by the Judiciary Committee.]
Annex 1904.13: Extraordinary Challenge Procedure ECP standard. An involved Party may avail itself of the extraordinary challenge procedure set forth in Annex 1904.13 where, within a reasonable period of time after the panel decision is issued, it alleges that -- (a) a member of the panel was guilty of gross misconduct, bias, or a serious conflict of interest, or otherwise materially violated the rules of conduct; the panel seriously departed from a fundamental rule of procedure; or the		

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panel manifestly exceeded its powers, authority or jurisdiction, for example by failing to apply the appropriate standard of review; and (b) any of the actions under (a) has materially affected the panel's decision and threatens the integrity of the binational panel review process. ECP selection and process. The involved Parties shall establish, within 15 days of a request, an extraordinary challenge committee comprised of 3 members selected from a 15-person roster comprised of judges or former judges of a federal court of the United States or of Mexico or a court of superior jurisdiction of Canada. Each Party shall name 5 persons to this roster. Each involved Party shall select one member from this roster and the involved Parties shall decide by lot which of them shall select the third member from the roster. Rules of procedure to be established by the Parties by the date of entry into force of the NAFTA shall provide for a committee decision within 90 days of its establishment. Committee decisions shall be binding on the Parties with respect to the particular matter that was before the panel. After examination of the legal and factual analysis underlying the findings and conclusions of the panel's decision and on finding that one of the grounds for the challenge has been established, the committee shall vacate the original panel decision or remand it to the original panel for action not inconsistent with the committee's decision; if the grounds are not established, it shall deny the challenge and, therefore, the original panel decision shall stand affirmed. If the original decision is vacated, a new panel shall be established.		
ECP rules of procedure. The Parties shall adopt rules of procedure by January 1, 1994, to implement the provisions of this Article based, where appropriate, on judicial rules of appellate procedure. The rules shall be designed to result in final panel decisions within 315 days of the date on which a panel request is made (time limits are set forth for each stage of the process).	*Section 407 of the CFTA Act authorizes an extraordinary challenge committee to have access to information and documents, to summon witnesses, take depositions, and issue subpoenas, and to have its subpoenas enforced by any U.S. district or territorial court.*	Identical provision, except for conforming amendments.

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Annex 1904.15: Amendments to domestic laws The Parties shall amend their AD and CVD statutes and regulations as necessary to implement this Article, in particular to ensure certain specified procedures are met and including the amendments listed in Annex 1904.15.		
	Import Monitoring. Section 409(b) of the CFTA Act establishes a right for an entity (including a trade association, firm, union, or group of workers) that is representative of a U.S. industry to file a petition if the entity has reason to believe that (A) it is likely to face increased competition from (1) subsidized Canadian imports with which it directly competes or (2) subsidized imports with which it directly competes from any other country designated by the President as benefiting from a reduction of tariffs under a trade agreement that enters into force after January 1, 1989, and (B) the industry is likely to experience a deterioration of its competitive position before rules and disciplines relating to the use of government subsidies have been developed with respect to the United States and that country. Under the petition, the industry may request that the U.S. Trade Representative compile information or request that the International Trade Commission conduct a study of the foreign practices, following the completion of which the Trade Representative may take any appropriate action.	No change to existing U.S. law.
Article 1905: Safeguarding the Panel Review System Annex 1905.6: Special Committee Procedures Grounds for special committee review. A Party may request in writing consultations with another Party regarding allegations that the application of that Party's domestic law: (a) has prevented the establishment of a panel requested by the complaining Party; (b) has prevented a panel requested by the complaining Party from rendering a final decision;		

(c) has prevented the implementation of the decision of a panel requested by the complaining Party or denied it binding force and effect; or

(d) has resulted in a failure to provide opportunity for review of a final determination by a panel or court of competent jurisdiction that is independent of the competent investigating authorities, that examines the basis for the authority's determination and whether the authority properly applied domestic AD and CVD law in reaching the challenged determination, and that employs the relevant standard of review identified in Article 1911.

Procedures for special committees. The consultations shall begin within 15 days of the date of the request. If the matter is not resolved within 45 days of the request, or such other period as the consulting Parties agree, the complaining Party may request the establishment of a special committee. Unless otherwise agreed by the disputing Parties, the special committee shall be established within 15 days of a request. The special committee shall comprise 3 members selected from the roster for extraordinary challenge committees and under the procedures established under Annex 1904.13.

If the special committee makes an affirmative finding, the Parties involved shall begin consultations within 10 days and seek to achieve a mutually satisfactory solution within 60 days of the issuance of the committee's report.

Suspension of panel and ECP review after affirmative Special Committee finding. If the Parties are unable to reach a mutually satisfactory solution within the 60-day period, or the Party complained against has not demonstrated to the satisfaction of the special committee that it has corrected the problem or problems, the complaining Party may suspend, within 30 days after the end of the 60-day consultation period:

(a) the operation of Article 1904 with respect to the Party complained against; or

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(b) the application to the Party complained against of such benefits under the NAFTA as may be appropriate under the circumstances. If the operation of Article 1904 is suspended, the Party complained against may reciprocally suspend the operation of Article 1904 within 30 days after the suspension by the complaining Party. Either Party shall provide written notice of a suspension to the other Party. At the request of the Party complained against, the special committee shall reconvene to determine whether (a) the suspension of benefits by the complaining Party is manifestly excessive; or (b) the Party complained against has corrected the problem or problems subject to the affirmative committee finding. The special committee shall present a report within 45 days of the request to both Parties containing its determination. Where the special committee determines that the Party complained against has corrected the problem or problems, any suspension by either or both Parties of Article 1904 or benefits under the NAFTA shall be terminated. Stay of panel and ECP review after affirmative Special Committee finding. If the special committee makes an affirmative finding with respect to one of the allegations, then effective as of the day following the issuance of the committee's report (a) binational panel or extraordinary challenge committee review under Article 1904 shall be stayed in specified circumstances, and (b) the time for requesting panel or committee review shall not run unless and until resumed. The running of the time resumes under Article 1905.12 if either Party suspends the operation of Article 1904 or if the suspension of the operation of Article 1904 does not become effective. Irrevocable referral of pending panel and ECP review in the event of affirmative Special Committee finding. If either Party suspends the operation of Article 1904, the panel or committee review stayed in the suspending Party shall be terminated and challenges to final determinations shall be irrevocably referred to the appropriate domestic court for decision by request in		Provides that at such time as the United States suspends application of Article 1904 to a NAFTA country that (1) any panel review pending with regard to persons of that country at the time the United States suspends application of Article 1904 to that country shall be irrevocably referred to the U.S. Court of International Trade and (2) any ECP review pending of a panel review involving

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specified circumstances. If the complaining Party suspends the application of benefits under the Agreement, panel or committee review stayed and any running of time suspended shall resume. Each Party shall provide in its domestic legislation that, in the event of an affirmative finding by a special committee, the time for requesting judicial review of a final AD or CVD determination shall not run unless and until the Parties concerned have negotiated a mutually satisfactory solution, have suspended the operation of Article 1904, or the application of other benefits.		persons of that country at the time the United States suspends application of Article 1904 to that country shall be irrevocably referred to the U.S. Court of Appeals for the Federal Circuit. Provides that the time for requesting binational panel review and any unexpired time for providing notice of intent to commence judicial review be suspended during the pendency of a stay.
Article 1906: Prospective Application Chapter 19 shall apply only prospectively to: (a) final determinations of a competent investigating authority made after the entry into force of this Agreement; and (b) with respect to declaratory opinions under Article 1903, amendments to AD or CVD statutes enacted after the entry into force of the NAFTA.		Transition provision. Provides that the changes to U.S. law necessary to implement Chapter 19 of the NAFTA shall not apply with respect to any binational panel review under the CFTA or any extraordinary challenge committee review arising from such review.
Article 1907: Consultations The Parties shall consult annually, or on the request of any Party, to consider any problems that may arise with respect to the implementation or operation of Chapter 19 and recommend solutions, where appropriate. The Parties shall each designate one or more officials, including officials of the competent investigating authorities, to be responsible for ensuring that consultations occur, when required. The Parties further agree to consult on: (a) the potential to develop more effective rules and disciplines concerning the use of government subsidies; and (b) the potential for reliance on a substitute system of rules for dealing with unfair transborder pricing practices and government subsidization.	Negotiating authority to address unfair pricing and government subsidization: *Section 409(a) of the CFTA Act provides negotiating authority for the President to enter into an agreement with Canada to deal with unfair pricing and government subsidization and provide for increased discipline on government subsidies.* *If no agreement is entered into between the United States and Canada on a substitute system of rules for AD and CVD before the end of 7 years after the Agreement takes effect, and the President decides not to terminate the Agreement, he shall submit a report to Congress explaining why continued adherence to the Agreement is in the national economic interest of the United States. If a binational panel review is pending or has been*	Provides that in calculating the 7-year period specified in the CFTA Act, any time during which the CFTA is not in effect shall be disregarded.

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The competent investigating authorities of the Parties shall consult annually, or on the request of any Party, and may submit reports to the Commission, where appropriate. In the context of these consultations, the Parties agree to specific procedures listed in the Article that are desirable in the administration of the AD and CVD laws.	*requested on the date the Agreement should cease to be in force, the determination shall be reviewable under section 516A(a) by request filed within 30 days of the termination of the Agreement. An investigation or enforcement proceeding and sanctions concerning violation of a protective order would continue.*	
Article 1908: Special Secretariat Provisions The Parties shall establish a section within the Secretariat established pursuant to Article 2002 to facilitate the operation of Chapter 19, including the work of panels or committees. The Secretaries of the Secretariat shall act jointly to provide administrative assistance to all panels or committees established pursuant to Chapter 19.		
Article 1909: Code of Conduct The Parties shall, by the date of entry into force of this Agreement, exchange letters establishing a code of conduct for panelists and members of committees established pursuant to Articles 1903, 1904, and 1905.		
Article 1910: Miscellaneous On request of another Party, the competent investigating authority of a Party shall provide to the other Party copies of all public information submitted to it for purposes of the AD or CVD investigation with respect to goods of that other Party.		
Article 1911: Definitions Annex 1911: Country-Specific Definitions Defines various terms used in Chapter 19.		
	Termination provisions. Section 410(b) of the CFTA Act provides that: (1) on the date on which the United States or Canada ceases to be a CFTA country, any investigation or enforcement proceeding relating to the violation of a protective order shall continue and sanctions may continue to be imposed; and (2) if on the date the United States or Canada ceases to be a CFTA	Identical provisions, except for conforming amendments.

country a panel review is pending or has been requested concerning an AD or CVD determination, such determination shall be reviewable under section 516A by the U.S. Court of International Trade and the time limits for requesting judicial review shall not begin to run until the CFTA ceases to be in force with respect to that country.

Agreement Provision	Current U.S. Law/Practice	Draft Implementing Proposal
CHAPTER 20: INSTITUTIONAL ARRANGEMENTS AND DISPUTE SETTLEMENT PROCEDURES		
Section A - Institutions		
Article 2001: The Free Trade Commission Annex 2001.2: Committees and Working Groups		
The Parties establish the Free Trade Commission, comprising cabinet-level representatives of the Parties or their designees, to supervise implementation of the NAFTA, oversee its further elaboration, resolve disputes regarding its interpretation or application, supervise the work of all committees and working groups referred to in Annex 2001.2, and consider any other matter that may affect NAFTA operation. The Commission may establish and delegate responsibilities to ad hoc or standing committees, working groups or expert groups; seek advice from non-governmental persons or groups; and take such other action in the exercise of its functions as the Parties may agree. The Commission shall convene at least once a year in regular session, chaired successively by each Party. All decisions shall be taken by consensus, except as the Commission may otherwise agree.		
Article 2002: The Secretariat Annex 2002.2: Remuneration and Payment of Expenses		
The Commission shall establish and oversee a Secretariat comprising national Sections to provide assistance to the Commission; provide administrative assistance to panels and committees established under Chapters 19 and 20; and, as the Commission may direct, support the work of other committees and groups established under the NAFTA and otherwise facilitate its operation.	*Section 405(e) of the CFTA Act authorizes the President to establish within any department or agency a U.S. Secretariat which, subject to interagency oversight, shall facilitate the operation of Chapters 18 and 19 and the work of binational panels and extraordinary challenge committees convened under Chapters 18 and 19.*	Identical provision with conforming amendments.
Each Party shall establish a permanent office of its section; be responsible for the operation and costs of its Section and the remuneration and expenses of panelists and members of committees and scientific review boards established under the NAFTA; designate an individual to serve as Secretary for its Section; and notify the Commission of the Section's office location.	*Section 406(a) authorizes appropriations to the department or agency within which the U.S. Secretariat under Chapter 19 of the CFTA is established (Department of Commerce) the lesser of such sums as may be necessary or $5,000,000 for each fiscal year after 1988 for the establishment and operations of the U.S. Secretariat and for payment of the U.S. share of expenses of dispute settlement proceedings under Chapter 18.*	Identical provision with conforming amendments.

Agreement Provision	Current U.S. Law/Practice	Draft Implementing Proposal
	Section 406(b) authorizes appropriations to the USTR of a specific sum by fiscal year to pay the U.S. share of expenses of binational panels and extraordinary challenge committees convened pursuant to Chapter 19. The USTR is authorized to transfer to any U.S. department or agency from such appropriations or from annual appropriations to the USTR under section 141 of the Trade Act of 1974 such funds as may be necessary to facilitate payment of the Chapter 19 expenses. The U.S. Secretariat may retain and use funds provided by the Canadian Secretariat for payment of its share of such expenses.	[Authorization of appropriations for Chapter 19 panel and committee expenses to be addressed.]
Section B - Dispute Settlement		
Article 2003: Cooperation		
The Parties shall at all times endeavor to agree on the interpretation and application of the NAFTA, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.		
Article 2004: Recourse to Dispute Settlement Procedures Annex 2004: Nullification and Impairment		
Except for matters covered by Chapter 19 (AD and CVD matters) and as otherwise provided in the NAFTA, Chapter 20 applies with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of the NAFTA or whenever a Party considers that an actual or proposed measure of another Party is or would be inconsistent with the obligations of the NAFTA or cause nullification or impairment in the sense of Annex 2004.	Sections 301-309 of the Trade Act of 1974 provide the domestic counterpart to consultation and dispute settlement procedures under the GATT, CFTA, and other trade agreements, and authority under U.S. law to enforce U.S. rights against violations of trade agreements by foreign countries or foreign unjustifiable, unreasonable, or discriminatory acts, policies, practices that burden or restrict U.S. commerce. Section 301 investigations may be initiated by petition or self-initiated by USTR.	Existing U.S. law applies.

Agreement Provision	Current U.S. Law/Practice	Draft Implementing Proposal
Article 2005: GATT Dispute Settlement		
Disputes regarding any matter arising under both the NAFTA and the GATT may be settled in either forum at the discretion of the complaining Party. Before initiating a dispute settlement proceeding in the GATT on a matter that could be initiated under the NAFTA, the complaining Party shall notify any third Party of its intention. If a third Party wishes recourse to proceedings under the NAFTA, those Parties shall consult to seek agreement on a single forum; if agreement is not reached, the dispute will normally proceed under the NAFTA.		
If the responding Party claims that its action is subject to an environmental or conservation agreement listed in Article 104 or if the dispute arises under Chapter 7 or 9 concerning an environmental, health, safety, or conservation measure, dispute settlement will proceed solely under the NAFTA if the responding Party so requests in writing within 15 days. Once selected, dispute settlement shall proceed in that forum exclusively based upon the procedural rules of that forum.		
Article 2006: Consultations		
Any Party may request in writing consultations with any other Party regarding any actual or proposed measure or any other matter that it considers might affect the operation of the NAFTA. Unless the Commission otherwise provides in its rules and procedures, a third Party that considers it has a substantial interest in the matter shall be entitled to participate in the consultations.	Section 303 of the Trade Act of 1974 requires the USTR, on the date a section 301 investigation is initiated, to request consultations with the foreign government concerned regarding the issues involved.	Existing U.S. law applies.
Consultations regarding perishable agricultural goods shall commence within 15 days of the request.		
The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of any matter through consultations.		

Agreement Provision	Current U.S. Law/Practice	Draft Implementing Proposal
Article 2007: Commission - Good Offices, Conciliation and Mediation		
If the consulting Parties fail to resolve a matter through consultations within (a) 30 days of delivery of a request for consultations, (b) 45 days of such request if any other Party has subsequently requested or participated in the consultations; (c) 15 days of such request regarding perishable agricultural goods; or (d) such other period as they may agree, any such Party may request in writing a meeting of the Commission. Unless it decides otherwise, the Commission shall convene within 10 days of delivery of the request and shall endeavor to resolve the dispute promptly. The Commission may call on such technical advisers or create such working groups or expert groups as it deems necessary; have recourse to good offices, conciliation, mediation, or other dispute resolution procedures; or make recommendations as may assist the consulting Parties to reach a mutually satisfactory resolution.		
Articles 2008 - 2017: Panel Proceedings		
Panel requests. If a dispute referred to the Commission has not been resolved within 30 days or such other period as the consulting Parties agree, the Commission shall establish an arbitral panel on written request by any consulting Party. A third Party that considers it has a substantial interest in the matter shall be entitled to join as a complaining Party on delivery of written notice no later than 7 days after the panel request of its intention to participate. If a third Party does not join as a complaining Party, it shall normally refrain thereafter from initiating or continuing a dispute settlement proceeding under the NAFTA or the GATT regarding the same matter absent a significant change in economic or commercial circumstances.	Section 303 of the Trade Act of 1974 requires the USTR to request dispute settlement proceedings if applicable under a trade agreement if a mutually acceptable resolution on issues in a section 301 investigation is not reached before the earlier of the close of the consultation period in the agreement or 5 months.	Existing U.S. law applies.

Agreement Provision	Current U.S. Law/Practice	Draft Implementing Proposal
Panel selection. The Parties shall establish by January 1, 1994, and maintain a roster of up to 30 individuals to serve as panelists, who shall be appointed by consensus for 3-year terms and may be reappointed. Panelists must meet specified qualifications, be independent of, and not affiliated with or take instructions from any Party, and comply with a code of conduct to be established by the Commission. Each panel shall consist of 5 members. The disputing Parties select the chairman or, if agreement is not possible, the disputing Party or Parties chosen by lot select a chair who is not a citizen of that Party or Parties. The panelist selection process depends on whether there are two or more than two Parties to the dispute but generally involves selection by the Parties on both sides of the dispute, within 15 days after selection of the chair, of two panelists each from citizens of the opposing Party or Parties. If a Party does not select a panelist within 15 days, the panelist will be chosen by lot. Panelists will normally be selected from the roster. Panel procedures. The Commission shall establish Model Rules of Procedure by January 1, 1994. The procedures shall assure the right to at least one hearing before the panel and an opportunity to provide initial and rebuttal written submissions; panel hearings, deliberations, and initial report and written communications and submissions shall be confidential. A Party that is not a disputing Party shall be entitled to attend all hearings, to make submissions to the panel, and to receive submissions from the disputing Parties. Scientific advice. On request of a disputing Party or on its own initiative, the panel may seek information and technical advice from any person or body it deems appropriate, provided the disputing Parties so agree and subject to such terms and conditions as they may agree. A panel, on request of a disputing Party or on its own initiative unless the disputing Parties disapprove, may request a written report of a scientific review board on any factual issue concerning environmental, health, safety, or other scientific matters raised by a disputing Party in a proceeding, subject to such terms and conditions		

as such Parties may agree. The board shall be selected by the panel from among highly qualified, independent experts in the scientific matters, after consultations with the disputing Parties and the scientific bodies set out in the Model Rules. The Parties shall be provided advance notice of and an opportunity to comment to the panel on the proposed factual issues to be referred to the board; and a copy of the board's report and an opportunity to comment to the panel on the report. The panel shall take the board's report and any comments by the Parties into account in preparing its report.

Panel reports. Unless the disputing Parties otherwise agree, the panel shall present an initial report to such Parties within 90 days after the last panelist is selected or such other period provided by the Model Rules. The report shall contain findings of fact; the panel's determination as to whether the measure is or would be inconsistent with the NAFTA or cause nullification or impairment, or any other determination requested; and its recommendations, if any, for dispute resolution.

A disputing Party may submit written comments to the panel on the initial report within 14 days. The panel, after considering such comments, may request the views of any participating Party, reconsider its report, and make any further examination that it considers appropriate.

The panel shall present a final report to the disputing Parties within 30 days after the initial report, unless the disputing Parties otherwise agree. The disputing Parties shall transmit the final report to the Commission within a reasonable period of time on a confidential basis, including any report of a scientific review board and any written views that a disputing Party desires to be appended. Unless the Commission decides otherwise, the final panel report shall be published within 15 days after its transmission.

Agreement Provision	Current U.S. Law/Practice	Draft Implementing Proposal
Articles 2018 - 2019: Implementation of Panel Reports		
On receipt of the final panel report, the disputing Parties shall agree on the resolution of the dispute, which normally shall conform with the panel's determinations and recommendations. Wherever possible, resolution shall be non-implementation or removal of a measure not conforming with the NAFTA or causing nullification or impairment or, failing resolution, compensation. If a mutually satisfactory resolution is not agreed within 30 days of receiving the final report, any complaining Party may suspend the application to the Party complained against of benefits of equivalent effect until the Parties have reached agreement on a resolution. A complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the panel has found to be inconsistent with the NAFTA or to have caused nullification or impairment; benefits may be suspended in other sectors if a complaining Party considers it is not practicable or effective to suspend benefits in the same sector or sectors. On the written request of any disputing Party, the Commission shall establish a panel to determine whether the level of benefits suspended by a Party is manifestly excessive. The panel shall present its determination within 60 days after the last panelist is selected or such other period as the disputing Parties may agree.	Section 301 of the Trade Act of 1974 authorizes the USTR to take appropriate retaliatory action of equivalent effect if the USTR determines on the basis of the investigation, consultations, and dispute settlement proceedings, if applicable, that U.S. trade agreement rights are being denied or violated, or a foreign unfair trade practice is actionable under section 301. Determinations must be made generally within 18 months after the investigation is initiated or 30 days after conclusion of dispute settlement, whichever is earlier. Retaliatory action must be implemented within 30 days, unless delayed for up to 6 months in certain circumstances.	Existing U.S. law applies.

Agreement Provision	Current U.S. Law/Practice	Draft Implementing Proposal

Section C - Domestic Proceedings and Private Commercial Dispute Settlement

Article 2020: Referrals of Matters from Judicial or Administrative Proceedings

If an issue of interpretation or application of the NAFTA arises in any domestic judicial or administrative proceeding of a Party that any Party considers would merit its intervention, or if a court or administrative body solicits the views of a Party, that Party shall notify the other Parties and the Commission shall endeavor to agree on an appropriate response as expeditiously as possible for submission by the Party to the court or administrative body. If the Commission is unable to agree, any Party may submit its own views to the court or administrative body.

Article 2021: Private Rights

No Party may provide for a private right of action under its domestic law against any other Party on the ground that a measure of another Party is inconsistent with the NAFTA.

Article 2022: Alternative Dispute Resolution

Each Party shall, to the maximum extent possible, encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties in the free trade area. Each Party shall provide appropriate procedures to ensure observance of agreements to arbitrate and for the recognition and enforcement of arbitral awards in such disputes. The Commission shall establish an Advisory Committee on Private Commercial Disputes to report and provide recommendations to the Commission on issues referred to it by the Commission respecting the availability, use and effectiveness of arbitration, and other procedures for the resolution of such disputes.

Agreement Provision	Current U.S. Law/Practice	Draft Implementing Proposal

PART EIGHT: OTHER PROVISIONS

CHAPTER 21: EXCEPTIONS

Article 2101: General Exceptions

The provisions of GATT Article XX, which exempts certain measures from GATT obligations, are incorporated into and made part of the NAFTA for purposes of Part Two (Trade in Goods) and Part Three (Technical Barriers to Trade). Article 2101 states explicitly that measures referred to in GATT Article XX(b) (an exception for measures necessary to protect human, animal, or plant life or health) includes environmental measures, and that GATT Article XX(g) (an exception for measures relating to the conservation of exhaustible natural resources) applies to living as well as non-living exhaustible natural resources.

Article 2101 also creates an exemption with respect to cross-border trade in services (Parts Two and Three to the extent provisions apply to services and Chapters 12 and 13) for the adoption or enforcement by any Party of measures necessary to secure compliance with laws or regulations that are not inconsistent with the NAFTA (including those relating to health and safety and consumer protection), provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or disguised restriction on trade.

Article 2102: National Security

Nothing in the NAFTA requires any Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; prevents any Party from taking any actions that it considers necessary for the protection of its essential security interests; or prevents any Party from taking action in pursuit of its obligations under the UN Charter to maintain international peace and security. Article 2102 does not apply to actions related to trade in energy and basic petrochemicals or to measures related to government procurement, each of which have separate national security exceptions (Articles 607 and 1018).

Agreement Provision	Current U.S. Law/Practice	Draft Implementing Proposal

Article 2103: Taxation
Annex 2103.4: Specific Taxation Measures
Annex 2103.6: Competent Authorities

As a general matter, nothing in the NAFTA shall affect the rights and obligations of any Party under any tax convention; in the event of any inconsistency between the NAFTA and any tax convention, that convention shall prevail to the extent of the inconsistency. The only exceptions to the tax convention override are national treatment obligations, consistent with GATT Article III, and prohibitions against export taxes, which shall apply to taxation measures.

Subject to the tax convention override, the national treatment and most-favored-nation obligations under the NAFTA on cross-border trade in services and financial services and on investment shall apply to certain taxation measures, except that non-conforming provisions of any existing taxation measures are grandfathered, including continuation or prompt renewal of such measures, or amendments to such measures that do not decrease their conformity with these NAFTA obligations. These obligations also do not apply to any new taxation measure aimed at ensuring the equitable and effective imposition or collection of taxes that does not arbitrarily discriminate between persons, goods, or services of the Parties or arbitrarily nullify or impair benefits. No MFN obligation applies to an advantage accorded by a tax convention.

Subject to the tax convention override, certain restrictions on investment performance requirements and on investment expropriation shall apply to taxation measures. An investor must refer the issue of whether the measure is not an expropriation to the appropriate competent tax authorities for a determination.

Agreement Provision	Current U.S. Law/Practice	Draft Implementing Proposal
Article 2104: Balance of Payments		
Nothing in the NAFTA prevents a Party from adopting or maintaining measures that restrict transfers where the Party experiences serious balance-of-payments difficulties, or the threat thereof, and such restrictions are consistent with specific conditions set forth in Article 2104. General rules apply to all restrictions, including IMF review and consultations; two sets of specific rules also govern the use of two distinct groups of transactions: cross-border financial services; and all other trade, investment, and service transactions.	Section 122 of the Trade Act of 1974 requires the President to impose temporary import restrictions (import surcharge/quotas) if certain BOP deficit conditions exist (unless imposition would be contrary to the national interest), and authorizes import liberalizing actions if certain BOP surplus conditions exist.	
Article 2105: Disclosure of Information		
Nothing in the NAFTA shall be construed to require a Party to furnish or allow access to information the disclosure of which would impede law enforcement or would be contrary to the Party's law protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions.		
Article 2106: Cultural Industries **Annex 2106: Cultural Industries**		
The provisions of Article 2005 of the CFTA shall govern any measure adopted or maintained with respect to cultural industries, and any measure of equivalent commercial effect taken in response, as between Canada and the United States and between Canada and any other Party. Those provisions exempt (with limited exceptions) cultural industries from the NAFTA; the exemption does not apply to tariff elimination (Article 302). A Party may take measures of equivalent commercial effect in response to actions that would have been inconsistent with the CFTA but for the exemption. (This right is not subject to prior invocation of the dispute settlement provisions.)	*CFTA Statement of Administrative Action* *States that at such time as the President takes remedial action in response to actions that would have been inconsistent with the CFTA but for Article 2005 "with respect to enactment by the Canadian Government of legislation, proclamation, or other action having the force and effect of law which, either directly or indirectly, impedes the production, distribution, sale or exhibition of film, TV programs or video recordings, the President shall endeavor to fashion a response in such a manner as to discourage the creation of similar nontariff barriers in other countries. In taking such action, the President shall consult closely with the affected industry to ensure that the equivalent commercial effect of such barriers is fully assessed."*	
Article 2107: Definitions		
Defines various terms used in Chapter 21.		

Agreement Provision	Current U.S. Law/Practice	Draft Implementing Proposal
CHAPTER 22: FINAL PROVISIONS		
Article 2201: Annexes		
The Annexes are an integral part of the Agreement.		
Article 2202: Amendments	Changes in statutes to implement a requirement, amendment, or recommendation:	
The Parties may agree to any modification or addition to the NAFTA, which shall be an integral part of the NAFTA when so agreed and approved in accordance with applicable legal procedures of each Party.	*Section 102(e) of the CFTA Act applied the fast track procedures of section 3(c) of the Trade Agreements Act of 1979 whenever the President determines it is necessary or appropriate to amend, repeal or enact a U.S. statute in order to implement any requirement, amendment, recommendation, finding, or opinion under the CFTA, but only to a bill submitted to the Congress not more than 30 months after the CFTA entered into force. Normal legislative procedures applied after 30 months.*	[Proclamation/amendment authority to be addressed.]
	Section 3(c) requires the President to consult with the House Ways and Means Committee, Senate Finance Committee, and each other committee of jurisdiction at least 30 calendar days (rather than 90 days) before submitting the bill; fast track implementing procedures apply. Section 3(c) of the 1979 Act also applies to amendments of the U.S.-Israel Free Trade Area Agreement.	
	Consultation and layover requirements:	
	Certain provisions of the CFTA authorize the President to implement actions by proclamation, subject to consultation and layover requirements under section 103(a) of the CFTA. Agreed modifications of the staging of duty reductions or other tariff modifications, changes in Annex Rules applied under the rules of origin (but not amendments in the basic rules of origin themselves, which require implementing legislation), and additional drawback eligible goods may be proclaimed only if --	
	(1) the President has obtained advice regarding the proposed action from appropriate private sector advisory committees and from the ITC;	

Agreement Provision	Current U.S. Law/Practice	Draft Implementing Proposal
	(2) the President has submitted a report to the House Ways and Means and Senate Finance Committees setting forth the proposed action and reasons therefor and the advice obtained; and *(3) at least 60 calendar days have expired since submission of the report and the President has consulted the committees during this period.* Other proclamations: *Section 103(b) of the CFTA provides that actions proclaimed under authorities of the Act which are not subject to the consultation/layover requirements can only take effect 15 days after the proclamation is published in the Federal Register.*	
Article 2203: Entry into Force The NAFTA shall enter into force on January 1, 1994, on an exchange of written notifications certifying completion of necessary legal procedures.	*Section 101(b) of the CFTA Act authorized the President, at such time as he determined Canada had taken measures necessary to comply with the obligations of the CFTA, to exchange notes with the Government of Canada providing for the entry into force, on or after January 1, 1989, of the CFTA with respect to the United States. Section 501 of the CFTA provided an effective date for implementing provisions and amendments to other statutes generally as of the date the CFTA entered into force.* *Section 101(c) required the USTR, within 60 days after enactment of the CFTA Act but not later than December 15, 1988, to submit a report to the Congress identifying, to the maximum extent practicable, major current Canadian practices and their legal authority that, in the opinion of the USTR, (1) were not in conformity with the CFTA; and (2) required a change of Canadian law, regulation, policy, or practice to enable Canada to conform with its international obligations under the CFTA.*	At such time as the President determines that Canada or Mexico has taken measures necessary to comply with the obligations of the NAFTA, the President is authorized to exchange notes with the government of that country providing for entry into force of the NAFTA, on or after January 1, 1994, with respect to such country.

Agreement Provision	Current U.S. Law/Practice	Draft Implementing Proposal
	Section 105 authorized the President, subject to consultation/layover requirements and any other applicable restriction or limitation under the Act to proclaim such actions, and for U.S. Government officers to issue such regulations as may be necessary to ensure that any provision of the Act that took effect on the date the CFTA entered into force was appropriately implemented on, but not prior to, that date.	Identical provision with conforming amendments.
Article 2204: Accession		
Any country or group of countries may accede to the NAFTA subject to such terms and conditions as may be agreed between the country or countries and the Commission and following approval in accordance with the applicable legal procedures of each country. The NAFTA shall not apply between any Party and any acceding country or group of countries if, at the time of accession, either does not consent to such application.		Congressional approval of the NAFTA may not be construed as conferring Congressional approval of entry into force of the NAFTA with respect to countries other than Canada and Mexico.
Article 2205: Withdrawal		
A Party may withdraw from the NAFTA 6 months after it provides written notice to the other Parties. The NAFTA shall remain in force for the remaining Parties.	Section 125(a) of the Trade Act of 1974 requires that trade agreements entered into under that Act be subject to termination upon not more than 6 months notice. *Under section 501(c) of the CFTA Act, provisions of the Act and amendments made to U.S. law by the Act cease to have effect on the date the CFTA ceases to be in force (i.e., if terminated by either Party upon 6 months notice).* *Section 304(f) requires the President to submit to Congress every two years a report regarding the effectiveness of operation of the CFTA generally and actions taken by the Parties to implement further the objectives of the CFTA, as well as the status of negotiations and the effectiveness and operation of any agreement authorized by the CFTA Act.*	On the date the NAFTA enters into force for the United States and Canada, the CFTA is suspended. The suspension is to remain in effect for such time as the United States and Canada are both parties to the NAFTA. If either country withdraws from the NAFTA, the provisions of the CFTA Act are restored. The NAFTA Act would cease to have effect upon withdrawal of Mexico and Canada or upon withdrawal of the United States.
Article 2206: Authentic Texts		
The English, French, and Spanish texts of the NAFTA are equally authentic.		

CHAIRMAN'S PROPOSAL

UNITED STATES CUSTOMS SERVICE
FISCAL YEARS (FY) 1994 AND 1995 BUDGET AUTHORIZATIONS

Thursday, October 14, 1993

A. FY 1994 and FY 1995 Budget Authorizations

	FY 1993	FY 1994		FY 1995
	Appropriation	Request	Chairman's Proposal	Chairman's Proposal
Salaries & Expenses				
Non-Commercial Operations		$ 540,783,000	$ 540,783,000	$ 527,000,000
Commercial Operations		$ 771,036,000	$ 771,036,000	$ 748,000,000
TOTAL	$1,315,917,000	$1,311,819,000	$1,311,819,000	$1,275,000,000
Air & Marine Interdiction	$ 132,416,000	$ 95,156,000	$ 95,156,000	$ 128,000,000

Explanation.--The FY 1994 authorizations reflect the President's budget request. The FY 1995 authorizations extend the FY 1994 authorizations, with adjustments to maintain current operating levels and to reflect the next installments of the President's directives mandating cuts in administrative costs and personnel reductions. The FY 1995 authorization for salaries and expenses assumes no pay increase in FY 1995.

B. Reporting Requirements Regarding Proposed Customs Actions

Amend 19 U.S.C. 2075(g) to repeal two provisions: (1) a provision prohibiting a reduction in the number of Customs personnel assigned to the headquarters office of any Customs district designated by statute before April 7, 1986; and (2) a provision requiring that the total number of Customs employees be equivalent to at least 17,174 full-time employees. Further amend 19 U.S.C. 2075(g) by providing for a 90-day review period (rather than 180-day review) of certain proposed actions of the Customs Service. These review requirements would continue to apply to any action that would: (1) result in any significant reduction in force of employees other than by means of attrition; (2) result in any significant reduction in hours of operation or services rendered at any Customs office; (3) eliminate or relocate any Customs office; (4) eliminate any port of entry; or (5) significantly reduce the number of employees assigned to any Customs office or port of entry.

Specifically, the Chairman's proposal would strike paragraphs (1) and (3) of 19 U.S.C. 2075(g) and amend paragraph (2) by substituting "90 days" for "180 days."

Explanation.--The Chairman's proposal eliminates restrictions that unnecessarily hamper Customs' ability to allocate its resources most effectively. The change in the lay-over period, from 180 days to 90 days, should permit Customs to implement any reorganization plans more promptly while still providing the Committee with a meaningful period in which to review proposed organizational or personnel changes.

CHAIRMAN'S PROPOSAL

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE (USTR)
FISCAL YEARS (FY) 1994 AND 1995 BUDGET AUTHORIZATIONS

Thursday, October 14, 1993

FY 1993	FY 1994		FY 1995	
Appropriation	Request	Chairman's Proposal	Request	Chairman's Proposal
$20,492,000[1/]	$20,143,000	$20,693,000	$20,419,000	$20,969,000

1/ The original FY 1993 appropriation was $19,992,000; an additional $500,000 was provided in July 1993 through a supplemental appropriation.

Explanation.--The Chairman's proposal increases USTR's funding by $550,000 over the levels requested for both FY 1994 and FY 1995. Those request levels represented increases of $151,000 and $427,000, respectively, over the original FY 1993 appropriation, but were below the final FY 1993 appropriation level (including the $500,000 supplemental appropriation passed in July).

The increase in the Chairman's proposal has two components: (1) restoration of $250,000 for the five full-time equivalent (FTE) positions cut in the FY 1994 request (which reduced the FTE level from 162 to 157); and (2) restoration of $300,000 to cover Foreign Administrative Assistance Support (FAAS) expenses. These are costs historically paid by USTR to the State Department for services such as worldwide cable traffic, security at the Geneva office, and interpreters. The FY 1993 appropriation required the State Department to absorb these expenses, but in FY 1994 USTR again has to reimburse the State Department for them.

CHAIRMAN'S PROPOSAL

UNITED STATES INTERNATIONAL TRADE COMMISSION (ITC)
FISCAL YEARS (FY) 1994 AND 1995 BUDGET AUTHORIZATIONS

Thursday, October 14, 1993

FY 1993	FY 1994		FY 1995	
Appropriation	Request	Chairman's Proposal	Request	Chairman's Proposal
$44,852,000	$45,888,000	$45,416,000	$47,041,000	$45,974,000

Explanation.--The Chairman's proposal reduces the ITC's FY 1994 budget request by $472,000 and its FY 1995 budget request by $1,067,000. These reductions provide the ITC with the full funding levels requested less general, cost-of-living pay increases of 2.2 percent in FY 1994 and 2.0 percent in FY 1995. Subsequent to the ITC's formal budget submission, ITC Chairman Newquist sent Chairman Moynihan a letter setting out the ITC's budget with these pay increases omitted, conforming the ITC with the Administration's budget reduction directives for Executive Branch agencies. The Chairman's proposal is consistent with the budget figures provided by the ITC in that letter.

The Chairman's proposal also repeals section 410 of the Trade Act of 1974, which established the East-West Trade Statistics Monitoring System. This required the International Trade Commission to monitor U.S. imports to, and exports from, non-market economy countries and publish and transmit such data to Congress on a quarterly basis.

REPORT LANGUAGE OFFERED BY SENATOR PACKWOOD TO ACCOMPANY THE AMENDMENT OF 19 U.S.C. SECTION 2075(g)

The Committee on Finance understands that the United States Customs Service is undertaking an extensive nationwide reorganization study, in which it will examine the distribution of its resources. The purpose of the study is to determine the most efficient way in which Customs can distribute its resources in the face of declining budgets and deficit reduction. The Committee further understands that based on this study, Customs may have to close or relocate offices or facilities and/or may have to reduce significantly personnel at Customs Service offices. However, as Customs undertakes this reorganization, the Committee urges Customs to take into consideration the impact on communities in which offices slated for closure, relocation, or significant reductions in personnel are located.

The Committee expects, therefore, that before Customs takes action to move or relocate a Customs office or reduce significantly the personnel of a Customs office, it will first consult with Members of the United States House of Representatives and Senate representing the impacted community. Additionally, Customs should notify and seek comments from state and municipal law enforcement officials, port authorities, importers, and customs brokers in the impacted community as appropriate and practicable under the circumstances. Finally, in the event the Commissioner of Customs decides that closure or relocation of a Customs office is warranted, Customs should include in the required notification to the Committees on Ways and Means and Finance an explanation of the reasons for the closure or relocation.

THE UNITED STATES TRADE REPRESENTATIVE
Executive Office of the President
Washington, D.C. 20506

The Honorable Jaime Serra Puche
Secretary of Commerce and Industrial Development
Alfonso Reyes 30, Piso 10
Colonia Condesa
06140 Mexico D.F.

Dear Dr. Serra:

I have the honor to confirm the following understanding reached between the delegations of the United States of America and Mexico, in the course of negotiation of the North American Free Trade Agreement (hereinafter referred to as the "NAFTA"):

1. The NAFTA shall not apply in respect of Guam, the Commonwealth of the Northern Mariana Islands, American Samoa and the U.S. Virgin Islands.

2. References in the NAFTA to a state of the United States shall be deemed to refer also to the District of Columbia and the Commonwealth of Puerto Rico.

I have the further honor to propose that this letter, and your letter of confirmation in reply, constitute an agreement between our two governments, to enter into effect upon the entry into force of the NAFTA.

Sincerely,

Carla A. Hills

THE UNITED STATES TRADE REPRESENTATIVE
Executive Office of the President
Washington, D.C. 20506

The Honorable Jaime Serra Puche
Secretary of Commerce and Industrial Development
Alfonso Reyes 30, Piso 10
Colonia Condesa
06140 Mexico D.F.

Dear Dr. Serra:

I have the honor to confirm the following understanding reached between the delegations of the United States of America and the United States of Mexico in the course of negotiations regarding Chapter 7 (Agriculture and Sanitary and Phytosanitary Measures) of the North American Free Trade Agreement (NAFTA).

> In recognition that our two Governments have reached a satisfactory agreement in the NAFTA on concessions for agricultural goods relating to market access and "tariffication," neither Government will request the other to improve the terms or conditions of those concessions in the Uruguay Round of Multilateral Trade Negotiations under the General Agreement on Tariffs and Trade.

I would be grateful if you would confirm that this understanding is shared by your government.

Sincerely,

Carla A. Hills

THE UNITED STATES TRADE REPRESENTATIVE
Executive Office of the President
Washington, D.C. 20506

The Honorable Michael H. Wilson
Minister of Industry, Science
and Technology and
Minister for International Trade
Ottawa, Ontario K1A 0H5

Dear Minister Wilson:

I have the honor to confirm the following understanding reached between the delegations of the United States of America and Canada in the course of negotiation of the North American Free Trade Agreement (hereinafter referred to as the "NAFTA"):

1. The NAFTA shall not apply in respect of Guam, the Commonwealth of the Northern Mariana Islands, American Samoa and the U.S. Virgin Islands.

2. References in the NAFTA to a state of the United States shall be deemed to refer also to the District of Columbia and the Commonwealth of Puerto Rico.

I have the further honor to propose that this letter, and your letter of confirmation in reply, constitute an agreement between our two governments, to enter into effect upon the entry into force of the NAFTA.

Sincerely,

Carla A. Hills

THE UNITED STATES TRADE REPRESENTATIVE
Executive Office of the President
Washington, D.C. 20506

The Honorable Michael H. Wilson
Minister of Industry, Science
and Technology and
Minister for International Trade
Ottawa, Ontario K1A 0H5

Dear Minister Wilson:

I have the honor to confirm the following understanding reached between the delegations of the United States of America and Canada in the course of negotiation of the North American Free Trade Agreement (hereinafter referred to as the "NAFTA") regarding the continuing application, as between our two governments, of certain provisions of Article 708 of the United States-Canada Free Trade Agreement (hereinafter referred to as the "FTA") that are not incorporated into the NAFTA.

Subject to such arrangements regarding the transition from the FTA to the NAFTA as might be agreed by the United States and Canada:

1. The United States and Canada shall act in accordance with paragraphs 1 and 4 of Article 708, and with Annex 708.1 and the Schedules thereto.

2. The bilateral technical working groups established in accordance with paragraph 4 of Article 708 shall continue to meet and work towards the implementation of these provisions. These groups shall take full account of activities already undertaken by them, and any reports and recommendations made to date.

3. The Joint Monitoring Committee established under paragraph 4(c) of Article 708 shall continue to perform its functions as provided for in that paragraph. Any reports or recommendations of the Joint Monitoring Committee that have been adopted by the two governments shall continue to be operative.

4. The Technical Working Group on Fish and Fishery Product Inspection shall continue to meet in accordance with the Terms of Reference adopted at the meeting of the United States - Canada Trade Commission held on December 30, 1989.

5. In order to avoid unnecessary duplication of efforts, the working groups and committee referred to in paragraphs 3-4 shall coordinate their work, where appropriate, with that of the Committee on Sanitary and Phytosanitary Measures established under Chapter [illegible] of the NAFTA.

6. Any issues arising out of the implementation of paragraphs 1 and 4 of Article 708, and Annex 708.1 and the Schedules thereto, that would have been subject to dispute settlement procedures under Chapter 18 of the FTA shall be deemed to be matters "that might affect the operation of this Agreement" under Article 2006 of the NAFTA, in respect of which Canada and the United States may have recourse to dispute settlement procedures under Chapter Twenty of the NAFTA. It is understood that the Government of the United Mexican States has concurred with this arrangement.

I have the honor to propose that this letter, and your letter of confirmation in reply, which is authentic in English and French, constitute an agreement between our two governments, to enter into force on the date of entry into force of the NAFTA for the United States and Canada and to remain in effect for such time as they remain parties to the NAFTA.

Yours sincerely,

Carla A. Hills

THE UNITED STATES TRADE REPRESENTATIVE
Executive Office of the President
Washington, D.C. 20506

The Honorable Jaime Serra Puche
Secretary of Commerce and Industrial Development
Alfonso Reyes [illegible]
Colonia Condesa
06140 Mexico D.F.

Dear Dr. Serra:

Enclosed is an exchange of letters between Minister Wilson and me regarding certain matters currently covered by Chapter 7 of the United States - Canada Free Trade Agreement (FTA). I would be grateful for your confirmation of our understanding, recorded in point six of the attached letters, that issues arising out of the implementation of Article 708 of the FTA shall be deemed matters "that might affect the operation of this Agreement" under Article 2006 of the North American Free Trade Agreement (NAFTA), in respect of which the United States and Canada may have recourse to dispute settlement procedures under Chapter Twenty of the NAFTA.

Sincerely,

Carla A. Hills

Enclosure

ER

Ministre des Affaires étrangères
et ministre du Commerce extérieur

Ambassador Carla A. Hills
United States Trade Representative
600 Seventeenth Street N.W.
Washington, D.C. 20506

Dear Ambassador Hills:

I have the honour to confirm the following understanding reached between the delegations of Canada and the United States of America in the course of negotiation of the North American Free Trade Agreement (hereinafter referred to as the "NAFTA"):

1. The NAFTA shall not apply in respect of Guam, the Commonwealth of the Northern Mariana Islands, American Samoa and the U.S. Virgin Islands.

2. References in the NAFTA to a state of the United States shall be deemed to refer also to the District of Columbia and the Commonwealth of Puerto Rico.

I have the honour to propose that this letter, which is authentic in English and French, and your letter of confirmation in reply, constitute an agreement between our two Governments, to enter into effect upon the entry into force of the NAFTA.

Yours sincerely,

Michael H. Wilson

Ottawa Canada K1A 0H5

Minister of Industry, Science and Technology and Minister for International Trade

Ministre de l'Industrie, des Sciences et de la Technologie et ministre du Commerce extérieur

JAN 3 993

Ambassador Carla A. Hills
United States Trade Representative
600 Seventeenth Street, N.W.
Washington, D.C. 20506

Dear Ambassador Hills:

I have the honour to confirm the following understanding reached between the delegations of Canada and the United States of America in the course of negotiation of the North American Free Trade Agreement (hereinafter referred to as the "NAFTA") regarding the continuing application, as between our two Governments, of certain provisions of Article 708 of the Canada-United States Free Trade Agreement (hereinafter referred to as the "FTA") that are not incorporated into the NAFTA.

Subject to such arrangements regarding the transition from the FTA to the NAFTA as might be agreed by Canada and the United States:

1. Canada and the United States shall act in accordance with paragraphs 1 and 4 of Article 708, and with Annex 708.1 and the Schedules thereto.

2. The bilateral technical working groups established in accordance with paragraph 4 of Article 708 shall continue to meet and work towards the implementation of these provisions. These groups shall take full account of activities already undertaken by them, and any reports and recommendations made to date.

3. The Joint Monitoring Committee established under paragraph 4(c) of Article 708 shall continue to perform its functions as provided for in that paragraph. Any reports or

.../2

recommendations of the Joint Monitoring Committee that have been adopted by the two Governments shall continue to be operative.

4. The Technical Working Group on Fish and Fishery Product Inspection shall continue to meet in accordance with the Terms of Reference adopted at the meeting of the Canada-United States Trade Commission held on December 19, 1989.

5. In order to avoid unnecessary duplication of efforts, the working groups and committee referred to in paragraphs 2-4 shall coordinate their work, where appropriate, with that of the Committee on S&P Measures established under Chapter 7 of the NAFTA.

6. Any issues arising out of the implementation of paragraphs 1 and 4 of Article 708, and Annex 708.1 and the Schedules thereto, that would have been subject to dispute settlement procedures under Chapter 18 of the FTA shall be deemed to be matters "that might affect the operation of this Agreement" under Article 2006 of the NAFTA, in respect of which Canada and the United States may have recourse to dispute settlement procedures under Chapter Twenty of the NAFTA. It is understood that the Government of the United Mexican States has concurred with this arrangement.

I have the honour to propose that this letter, which is authentic in English and French, and your letter of confirmation in reply, constitute an agreement between our two Governments, to enter into force on the date of entry into force of the NAFTA for Canada and the United States and to remain in effect for such time as they remain parties to the NAFTA.

Yours sincerely,

Michael H. Wilson

DR. JAIME SERRA

Mexico, City January [illegible], 1993.

Ambassador Carla A. Hills
United States Trade Representative
600 Seventeenth Street, N. W.
Washington, D. C. 20506

Dear Ambassador Hills:

I am pleased to receive your letter dated January 19, 1993, which reads as follows:

"I have the honor to confirm the following understanding reached between the delegations of Mexico and the United States of America in the course of negotiation of the North American Free Trade Agreement (hereinafter referred to as the "NAFTA")

1. The NAFTA shall not apply in respect of Guam, the Commonwealth of the Northern Mariana Islands, American Samoa and the U. S. Virgin Islands.

2. References in the NAFTA to a state of the United States shall be deemed to refer also to the District of Columbia and to the Commonwealth of Puerto Rico.

DR. JAIME SERRA

I have the further honor to propose that this letter, and your letter in confirmation in reply, constitute an agreement between our two Governments, to enter into effect upon the entry into force of the NAFTA".

I have the honor to confirm that the understanding expressed in your letter is shared by my Government, and that your letter and this reply shall constitute an agreement between our respective Governments, to enter into effect upon the entry into force of the NAFTA.

Yours sincerely

DR. JAIME SERRA
[illegible]
FOMENTO INDUSTRIAL

(Courtesy translation)

Mexico City, January 13, 1993.

Ambassador Carla A. Hills
United States Trade Representative
600 Seventeenth Street, N. W.
Washington, D. C. 20506

Dear Ambassador Hills:

I am pleased to receive your letter of today's date, containing the following text:

"I have the honor to confirm the following understanding reached between the delegations of the United States of America and the United States of Mexico in the course of negotiations regarding Chapter 7 (Agriculture and Sanitary and Phytosanitary Measures) of the North American Free Trade Agreement (NAFTA).

In recognition that our two Governments have reached a satisfactory agreement in the NAFTA on concessions for agricultural goods relating to market access and "tariffication", neither Government will request the other to improve the terms or conditions of those concessions in the Uruguay Round of Multilateral Trade Negotiations under the General Agreement on Tariffs and Trade.

DR. JAIME SERRA

... would be grateful if you could confirm that this understanding is shared by your government".

I have the honor to confirm that the understanding expressed in your letter is shared by my Government, and that your letter and this reply shall constitute an agreement between our respective Governments.

Yours sincerely

(Courtesy translation)

Mexico City, January 17, 1993.

Ambassador Carla A. Hills
United States Trade Representative
600 Seventeenth Street, N. W.
Washington, D. C. 20506

Dear Ambassador Hills:

I am pleased to receive your letter of today's date, which reads as follows:

> "Attached is an exchange of letters between Minister Wilson and me regarding certain matters currently covered by Chapter 7 of the Canada - U.S. Free Trade Agreement (FTA). I would be grateful for your confirmation of our understanding, recorded in point six of the attached letters, that issues arising out of the implementation of Article 708 of the FTA shall be deemed matters "that might affect the operation of this Agreement" under Article 2006 of the North American Free Trade Agreement (NAFTA), in respect of which Canada and the United States may have recourse to dispute settlement procedures under Chapter Twenty of the NAFTA".

I have the honor to confirm that the understanding expressed in your letter is shared by my Government, and that your letter and this reply shall constitute an agreement between our respective Governments, to enter into effect upon the entry into force of the NAFTA.

Yours sincerely

No. 017

The Embassy of the United States of America presents its compliments to the Department of External Affairs and International Trade and has the honor to refer to the proposed North American Free Trade Agreement (NAFTA) between the United States, Canada and Mexico.

It is the understanding of the Government of the United States that the Governments of the United States and Canada intend to make arrangements for the suspension of the operation of the United States - Canada Free Trade Agreement (FTA) upon the entry into force of the NAFTA for our two Governments, the suspension to remain in effect for such time as our two Governments are Parties to the NAFTA.

It is also the understanding of the Government of the United States that our two Governments intend to make appropriate transitional arrangements to take effect at the time of the suspension of the FTA.

It is the further understanding of the Government of the United States that officials of the two Governments will consult to reach and record an agreement on these arrangements before the entry into force of the NAFTA.

The Embassy would be grateful if the Department of External Affairs and International Trade would

confirm that this understanding is shared by the Government of Canada.

The Embassy renews to the Department of External Affairs and International Trade the assurances of its highest consideration.

Embassy of the United States of America,

Ottawa, January 19, 1992.

Drafted:ECON:TABrees

Cleared:ECON:MLCasse

No. 19

The Embassy of Canada presents its compliments to the Department of State and has the honour to refer to the North American Free Trade Agreement (NAFTA) between Canada, the United Mexican States and the United States of America.

It is the understanding of the Government of Canada that the Governments of Canada and the United States intend to make arrangements for the suspension of the operation of the Canada-U.S. Free Trade Agreement (FTA) upon the entry into force of the NAFTA for our two Governments, the suspension to remain in effect for such time as the two Governments are Parties to the NAFTA.

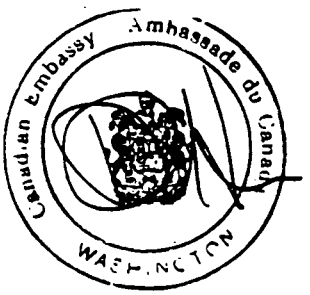
It is also the understanding of the Government of Canada that our two Governments intend to make appropriate transitional arrangements to take effect at the time of the suspension of the FTA.

It is the further understanding of the Government of Canada that officials of the two Governments will consult to reach and record an agreement on these arrangements before the entry into force of the NAFTA.

The Embassy would be grateful if the Department of State would confirm that this understanding is shared by the Government of the United States of America.

The Embassy of Canada avails itself of this opportunity to renew to the Department of State the assurance of its highest consideration.

Washington, D.C.
January 19, 1993



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DEPUTY UNITED STATES TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON, D.C. 20506

December 15, 1992

The Honorable Donald W. Campbell
Deputy Minister
International Trade
External Affairs and
International Trade Canada
125 Sussex Drive
Ottawa, K1A 0G2
CANADA

Dear Deputy Minister Campbell:

You are familiar with the difficulties we have encountered in reaching agreed interpretations of certain provisions in the rules of origin in the Canada - U.S. Free Trade Agreement (FTA) relating to the importation of certain automobiles into the United States. Representatives of our two Governments have met on several occasions to discuss these differences, and have reviewed the matter carefully in the context of the North American Free Trade Agreement ("NAFTA") negotiations. Most recently, you and I met on November 10 to discuss the matter.

As we both understood in the NAFTA negotiations, and as I reaffirmed to you in our November 10 discussions, the U.S. view is that, no later than the entry into force of the NAFTA, the NAFTA rule of origin for automotive products will be applied by both the United States and Canada to all entries of automobiles and light trucks that remain unliquidated or that have not been finally liquidated. I am enclosing a copy of the statement to this effect that we provided some months ago to the United States Senate Committee on Finance in response to a question from Senator Riegle. All subsequent customs entries for automobiles and light trucks imported into the United States would then be subject to the new NAFTA rules of origin. Entries of goods that meet the NAFTA rules of origin would then receive preferential tariff treatment. Those that do not meet the new rules would not receive such preferential treatment.

To the extent that legislation is necessary to ensure that the new NAFTA rules apply to unliquidated entries, we will include such a provision as part of the NAFTA implementing legislation to be submitted to the Congress. In this regard, we would consider an entry not to be finally liquidated if liquidation has been protested under U.S. Customs procedures and the U.S. Customs Service has not denied the protest. Therefore, entries that have been protested under Customs procedures and that the U.S. Customs

Service has not denied by the time the NAFTA rules of origin are enacted would be considered to be not finally liquidated.

I believe that this clarifies our intentions with respect to the application of the NAFTA rules of origin for automotive products.

Sincerely,

Julius L. Katz

Enclosure

External Affairs and International Trade Canada
Deputy Minister International Trade

Affaires extérieures et Commerce extérieur Canada
Sous-ministre du Commerce extérieur

January 19, 1993

The Honourable Julius L. Katz
Deputy United States Trade Representative
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20506

Dear Ambassador Katz:

Thank you for your letter dated December 15, 1992, concerning the application of the rules of origin of the North American Free Trade Agreement (NAFTA) to certain entries of motor vehicles made under the Canada-U.S. Free Trade Agreement (FTA).

In addition to these points raised in your letter, it is our understanding that Government of Canada and U.S. Department of the Treasury officials discussed last summer as part of the NAFTA negotiations the manner in which the NAFTA rules of origin would need to be applied in order to take account of the circumstances surrounding these FTA entries.

First, the negotiators noted that there are no tracing requirements currently applicable, and therefore, that the producers and importers of the goods subject to the FTA entries probably could not reasonably be expected to have available the documentation necessary to comply with the most extensive NAFTA tracing rules for passenger automobiles and light trucks for entries prior to enactment of the implementing legislation. In order to improve the accuracy of the calculation of U.S. and Canadian content to the greatest extent possible, the negotiators discussed the application to the entries of NAFTA Article 403(2) tracing requirements.

.../2

125 promenade Sussex Drive
Ottawa, K1A 0G2

Second, they noted that a company whose fiscal year began later than January 1, 1989 should be able to include the period between that date and the beginning of its fiscal year as a part of its 1989-90 fiscal year for the purpose of averaging, just as a company would be able to do in the first year after the NAFTA comes into force.

Finally, the negotiators discussed the deferral of review of any protest regarding such entries under Customs procedures until legislation applying the NAFTA rules of origin to such entries of motor vehicles has been enacted, assuming that accelerated disposition of a protest is not requested and that legislation is enacted prior to the expiration of the two-year protest period for any such entry. The deferral of review of such protests would avoid disputes over the implementation of the FTA rules of origin.

It is our understanding that Canadian Customs and U.S. Treasury Department officials have stated they have no difficulty in applying these aspects of the rules of origin in the manner discussed.

Yours sincerely,

Donald W. Campbell

DR. HERMINIO BLANCO MENDOZA
JEFE DE LA NEGOCIACION DEL
TRATADO DE LIBRE COMERCIO

México, D.F., Diciembre 14, 1992

Embajador Julius Katz
Representante Comercial Adjunto
de Estados Unidos

Estimado Embajador Katz:

Para efectos del Anexo 300-A, incluido el Apéndice 300-A.2, del propuesto Tratado de Libre Comercio de América del Norte, se consideraran empresas productoras de "vehiculos automotores", existentes en México con anterioridad a los vehículos modelo 1992, a las siguientes compañias: Ford Motor Company S.A. de C.V., Chrysler de México S.A., General Motors de México S.A. de C.V., Volkswagen de México S.A. de C.V. y Nissan Mexicana S.A. de C.V.

A t e n t a m e n t e

Sen. Riegle

The Washington Post

October 6, 1993, Wednesday, Final Edition

SECTION: FINANCIAL; PAGE F1

LENGTH: 1078 words

HEADLINE: A High-Tech, Low-Wage Lure; Hughes's Move to Mexico Illustrates a Thorny NAFTA Issue

SERIES: Occasional

BYLINE: Tod Robberson, Washington Post Foreign Service

DATELINE: TIJUANA, Mexico

BODY: When former Hughes Aircraft Co. project manager William Lewis was assigned the task in 1988 of defending a company decision to transfer high-technology U.S. defense work from Newport Beach, Calif., to a Hughes plant here in Mexico, he was suspicious.

"I had to live the lie," Lewis said in a telephone interview, referring to claims that jobs wouldn't be lost. "I knew that somewhere down the line, people would lose their jobs because of this."

What Lewis didn't anticipate was that his job would be among them.

He was one of several hundred laid-off Hughes employees who are confronting the harsh reality that their skilled jobs are just as vulnerable to competition from Mexico's low-cost labor force as are the assembly line jobs of U.S. auto workers or other blue-collar employees. They are finding that not even government contract work, supported by taxpayer dollars, is immune to the lure of cost efficiency offered here in Mexico.

As Mexico joins the Clinton administration in the battle for U.S. congressional approval of the proposed North American Free Trade Agreement (NAFTA) , it is finding that cheap labor and cost efficiency -- two

of this country's strongest economic selling points -- are turning into political hand grenades in the NAFTA debate.

Labor groups and other critics say that the United States, having already lost thousands of manufacturing jobs to Mexico, would be foolish to ratify an accord that could encourage even more U.S. companies to move south.

Proponents argue that NAFTA will open up Mexico's market for the first time to a host of U.S. products and services, thus expanding employment north of the border. In addition, the agreement's defenders say the pact will help the United States to compete better against other world trading blocs, also stimulating U.S. employment.

Hughes's experience illustrates some of the economic pressures central to the debate over NAFTA.

Lewis and other former Hughes employees said that only a few years ago, the U.S. defense industry had seemed immune to the southbound trend of lower technology industries. The precision work performed by defense contractors was regarded as too sensitive to delegate to workers in a developing country such as Mexico.

But all that changed in April 1989. That's when the Air Force broke new ground by authorizing Hughes's missile systems group to transfer some production of microcircuits -- for missiles, jet fighters and other defense-related products -- to a maquiladora plant in Tijuana.

Maquiladora facilities are foreign-owned factories, based in Mexico, that make goods strictly for export. Hundreds of U.S. companies have used maquiladoras to lower their labor costs by shifting jobs south, and NAFTA's critics say the pact would open the door for more job losses.

"We recognize this move [to Tijuana] improves your competitiveness and ultimately benefits the government," wrote Air Force contracting officer Robert C. Smith in an April 1989 letter to Hughes.

Now, high-tech companies such as Hughes are finding that with proper training and supervision, Mexican workers are just as capable as their U.S. counterparts in manufacturing the complex microchips that go into aerospace and defense products. And the savings is significant in an industry where labor makes up 30 percent to 50 percent of production costs.

Ron E. Shaver, operations manager for Hughes's microelectronic circuits

division, said the cost savings in Mexico are critical to Hughes's remaining competitive -- and preserving some related jobs in the United States.

"Yes, we are taking work from the United States, but we wouldn't have the business at all if we didn't have the plant here," Shaver said. "If we can save five jobs [in the United States] by having this operation here, blending work [with U.S. plants] and holding onto a contract, then we're saving jobs. If we lose the contract, more jobs are lost."

The starting wage in Tijuana for line operators -- the people manning the microscopes and chip assembly lines -- is 20 Mexican pesos per day, or about $ 6.40, according to plant manager Jose L. Gaitan. A more highly trained technician has a starting wage of 35 pesos per day, or less than $ 1.50 per hour. By comparison, a newly hired technician at the Newport Beach plant earns about $ 17 per hour, a former Hughes technician said.

Inside dust-free production rooms here at Hughes's Circuitos Binacionales de Tijuana maquiladora, Mexicans from nearby dirt-poor neighborhoods don smocks and surgical masks each day to operate $ 100,000 machines. They produce and test tiny microcircuits whose construction is so intricate that microscopes are required to examine wiring one-eighth the thickness of a human hair.

According to former Hughes employees and government documents, the finished microchips are sent back to the United States, where at least some are assembled inside weapons such as the Air Force's advanced medium-range air-to-air missile, or AMRAAM.

Until 1989, AMRAAM microcircuits were produced almost exclusively at Hughes's Newport Beach plant. But Hughes officials said that as federal defense spending dropped with the end of the Cold War, the company began seeking ways of cutting production costs to remain competitive.

"The government placed upon us the necessity to get into competitive bidding. [The move to Tijuana] was a sure-fire way of containing costs and maintaining competitiveness," Lewis said. A "direct cause and effect," he said, was that 300 to 400 employees were laid off in Newport Beach.

Hughes spokesman William Herrman said instead that layoffs at Newport Beach were part of an across-the-board "downsizing" plan, and even jobs at the Tijuana plant have been slashed from a 1988 high of 225 employees to the current level of 120 workers. Worldwide, Hughes has dropped from a high of 83,000 employees in the mid-1980s -- when roughly 80 percent of its contracts

were defense-related -- to around 57,000 now.

Former Hughes employees, including some who support NAFTA, argued that the Air Force's acceptance of Hughes's move to Tijuana sent the wrong signal to defense contractors that U.S. jobs should be regarded as expendable.

"I don't begrudge the Mexicans who want to work," said Robert Dingman, a former Hughes technician who helped manage the expansion of the Tijuana plant. "But how can [Hughes and the government] justify using U.S. tax dollars to take away American jobs?"

GRAPHIC: ILLUSTRATION, MADE IN MEXICO (GRAPHIC WAS UNAVAILABLE.), JACKSON DYKMAN

October 14, 1993

nafta.opn

STATEMENT OF
SENATOR DONALD W. RIEGLE

FINANCE COMMITTEE WALK-THRU
ON NAFTA IMPLEMENTING LEGISLATION

OCTOBER 14, 1993

Mr. Chairman, I admit that I am sorry to see that this day has come. I had hoped that during the NAFTA debate over the past several years, we would mutually agree that a free trade agreement with Mexico does not make sense. Since 1990, I have argued that a free trade agreement with Mexico at this time would hurt U.S. workers, the U.S. economy, and the U.S. environment -- in short, NAFTA would be detrimental to the interests of the American people.

As everyone in this room knows, I strongly oppose the North American Free Trade Agreement. My views have not changed -- in fact, as more information has come to light, and as I have learned more about the text of the agreement actually negotiated, the strength of my belief that this agreement would be a disaster has only grown stronger.

For some time, I held out hope that the side agreements being negotiated by the Clinton Administration would resolve the problems. Now that these negotiations have been completed, I have concluded that the side agreements did little -- if anything -- to deal with the threat to the U.S. job base and the environment.

I am pleased to work with the growing opposition to this agreement. At this time, a majority of the House of Representatives opposes NAFTA. The votes in the Senate are less clear -- although it is certain that there is more opposition in the Senate now to the agreement than there was six months ago. It is possible that NAFTA could fail in a vote in the Senate -- I don't know. I believe this agreement should be defeated.

Yet, we find ourselves here today to consider implementing legislation which will not -- indeed cannot -- deal with the real issues presented by NAFTA. Will the implementing legislation eliminate "El Pacto" and ensure that Mexican wages rise with productivity? Will the implementing legislation close the wage gap that exists between U.S. and Mexican workers? How will the implementing legislation integrate an additional 50 million Mexican workers into the U.S. work force, particularly since those workers are willing to accept wages of as little as a dollar an hour.

In fact, the implementing legislation will not deal with any of these concerns. All we are offered is vague promises that NAFTA will result in more jobs, even though common sense says that NAFTA will cost U.S. jobs.

I have recently been struck by a line of argument begun by my colleague, Bill Bradley. Senator Bradley has argued that we need to provide American workers with a security package to allow them to accept the changes that occur in a global economy. We must provide secure pensions,

health care, lifetime education and other services to allow our workers to adapt and grown in a changing environment. In his speech in North Carolina earlier this week, the President adopted a similar theme.

I agree that there is a compelling need to enact an economic security package. But I think it is wrong to increase the risks for American workers while holding out "pie-in-the-sky" ideas about such a program. I think that we should enact an economic security program before we take steps like NAFTA, that are likely to hurt the most vulnerable workers in our society the most.

To that end, I will oppose NAFTA in every way that I can. We must begin to adopt policies that help the working people of this country, and NAFTA is clearly a step in the wrong direction.

~~Chapter 5 (p.5-2, 5-3, article 505)~~

LACK OF STRONG ENFORCEMENT. We have been told that NAFTA is subject to strict implementation provisions that will prevent fraud. Yet, that is not how I read the agreement. Let us suppose that the U.S. believes that a Mexican exporter has not complied with the rules of origin for NAFTA. You would assume that the U.S. could immediately suspend imports from this Mexican exporter until an investigation could be completed. But that is not how the agreement works. In fact, the steps are so bureaucratic that no effective remedy is truly available. Let me describe the process.

First, the U.S. can verify the origin of goods through a written questionnaire or visits to the premises of the exporter or producer. Now, a written questionnaire seems like a absurd way of determining whether there has been fraud, so let's pursue the idea of a visit to the premises. Before conducting a verification visit, and the rest is a direct quote from the staff document summarizing the agreement,

> "a Party must <u>provide written notification</u> to the exporter or producer whose premises are to be visited, the customs administrator of the country in which the verification will be conducted, and if requested, the appropriate Embassy in the country conducting the verification, and <u>must obtain the written consent of the exporter or producer</u>."

Could you imagine enforcing any U.S. law in this manner? For instance, would it work to require the U.S. government to provide written notification prior to inspecting the books of a securities firm. This provision is designed to prevent effective enforcement of the rules of origin -- which are already too weak.

Chapter 7

AGRICULTURE. Senator Conrad will take the lead on this chapter.

RULES OF ORIGIN FOR AUTOMOTIVE GOODS. I again want to emphasize how NAFTA allows Mexico to become an export platform into the U.S. for automotive goods. If I understand correctly, article 403 provides that for the first 4 years of NAFTA, passenger motor vehicles, light trucks and their engines and transmissions are required to have only 50 percent regional content. Logically, that means that 50 percent of the content of passenger motor vehicles, light trucks and their engines and transmissions may come from outside the U.S., Mexico and Canada -- for instance, a Japanese manufacturer could ship parts from Japan. After 4 years, the required content moves to an unacceptably low 56 percent -- by the year 2002, the content requirement goes to 62.5 percent, which I still think is too low.

The slow phase in of these content requirements allows, in fact encourages, foreign manufacturers to set up operations in Mexico to gain duty free access to the U.S. market. None of this seems to be in the best interest of the U.S. auto worker.