

**SENATE FINANCE COMMITTEE REPUBLICAN STAFF
SUMMARY OF THE UNITED STATES-AUSTRALIA
FREE TRADE AGREEMENT IMPLEMENTATION ACT
6-21-2004**

Sec. 1 Short Title; Table of Contents

This section provides that the short title of the Act is the “United States-Australia Free Trade Agreement Implementation Act.”

Sec. 2 Purposes

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

Sec. 3 Definitions

This section provides definitions for the Act.

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

Sec. 101 Approval and Entry into Force of the Agreement

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

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

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

This section also clarifies the relationship between the Agreement and state law and precludes any private right of action or remedy against a federal, state, or local government, or against a private party, based on the provisions of the Agreement.

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

This section provides the authority for new or amended regulations to be issued, and for the President to proclaim actions implementing the provisions of the Agreement, on or after the date the Agreement enters into force.

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

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

Sec. 105 Administration of Dispute Settlement Proceedings

This section authorizes the President to establish within the Department of Commerce an office responsible for providing administrative assistance to dispute settlement panels established under Chapter 21 of the Agreement. This section also authorizes the appropriation of funds to support this office.

Sec. 106 Effective Dates; Effect of Termination

This section provides effective dates for the Act. Section 106 also provides that the provisions of the Act will no longer be in effect should the Agreement cease to be in force.

TITLE II – CUSTOMS PROVISIONS

Sec. 201 Tariff Modifications

This section authorizes the President to implement by proclamation the continuation, modification or elimination of tariffs as the President determines to be necessary or appropriate to carry out the terms of the Agreement.

Sec. 202 Additional Duties on Certain Agricultural Goods

Section 202(a) sets forth general provisions which apply to any additional duties assessed under the horticulture safeguard, the quantity-based beef safeguard, and the price-based beef safeguard. In general, the duty rate is the lesser of the column 1 general (most-favored nation or MFN) rate of duty at the time of entry or the MFN duty rate as of December 31, 2004. Section 202(a)(5) provides that no additional duty may be imposed if the good is already subject to import relief under the general U.S.-Australia safeguard or under Section 201 of the Trade Act of 1974.

Section 202(a)(6) terminates the applicability of the horticulture safeguard and the quantity based beef safeguard on the day such products become duty free under the

Agreement. The price-based beef safeguard remains in effect as long as the Agreement remains in effect.

Section 202(b) provides for additional duties to be imposed on horticulture safeguard goods (as defined in the Act) above the preferential duty rate established in the Agreement whenever the import price of the good is less than the trigger price of the good specified in the Agreement. If the difference between the import price and the trigger price is less than or equal to 10 percent of the trigger price, no additional duty is imposed.

If the difference between the import price and the trigger price is greater than 10 percent, but equal to or less than 40 percent of the trigger price, the additional duty shall be 30 percent of the difference between the MFN duty rate and the preferential duty rate provided for in the Agreement.

If the difference between the import price and the trigger price is greater than 40 percent, but equal to or less than 60 percent, the additional duty shall be 50 percent of the difference between the MFN duty rate and the preferential duty rate provided for in the Agreement.

If the difference between the import price and the trigger price is greater than 60 percent, but equal to or less than 75 percent, the additional duty shall be 70 percent of the difference between the MFN duty rate and the preferential duty rate provided for in the Agreement.

If the difference between the import price and the trigger price is greater than 75 percent, the additional duty shall be 100 percent of the difference between the MFN duty rate and the preferential duty rate provided for in the Agreement.

Section 202(c) provides for additional duties to be imposed on certain beef safeguard goods based upon the quantity of imports. This safeguard provides for additional duties to be imposed on certain types of beef in years nine through eighteen of the Agreement if the total volume of beef is equal to or greater than 110 percent of the volume established for that year in the Agreement. The additional amount of duty is equal to seventy-five percent of the difference between MFN duty rate and the preferential duty rate.

Section 202(c)(4) authorizes the United States Trade Representative to waive application of this provision in extraordinary circumstances.

Section 202(d) provides for additional duties to be imposed on certain beef safeguard goods based upon prevailing price levels in the U.S. market. This safeguard provides for additional duties equal to 65 percent of the applicable MFN duty rate to be imposed on certain types of beef over a specified quantity beginning in year 19 of the Agreement if the monthly average index price falls below the twenty-four month average trigger price during any two months of the current calendar year or during any month of the fourth quarter of the calendar year.

Section 202(d)(5) authorizes the United States Trade Representative to waive application of this provision in extraordinary circumstances.

Sec. 203 Rules of Origin

This section provides the rules of origin for goods under the Agreement, including a rule of origin for certain automotive goods similar to the NAFTA regional value-content rule of origin. This section also includes definitions for terms used in determining the origin of goods under the Agreement.

Sec. 204 Customs User Fees

This section provides for the elimination of the merchandise processing fee for goods qualifying for preferential treatment under the Agreement beginning on the date the Agreement enters into force.

Sec. 205 Disclosure of Incorrect Information

This section provides that the United States may not impose a penalty on an importer who makes an invalid claim for preferential tariff treatment under the Agreement if, after discovering that the claim is invalid, the importer promptly and voluntarily corrects the claim and pays any duty owing within at least 1 year of making the invalid claim.

Sec. 206 Enforcement Relating to Trade in Textile and Apparel Goods

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

If the President is unable to verify within twelve months that the person producing or exporting the textile or apparel good is complying with applicable customs rules and regulations, or determines that the person producing or exporting the textile or apparel article is not complying with applicable customs rules and regulations, this section authorizes the President to deny preferential treatment and/or entry to textile or apparel goods produced by or exported by that person.

Additionally, if the President is unable to verify within twelve months that the textile or apparel good qualifies for preferential treatment, or determines that the textile or apparel good does not qualify for preferential treatment, this section authorizes the President to deny preferential treatment and/or entry to those goods

Sec. 207 Regulations

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

TITLE III – RELIEF FROM IMPORTS

Sec. 301 Definitions

This section contains definitions for this title.

**Subtitle A – Relief from Imports
Benefiting from the Agreement**

Sec. 311 Commencing of Action for Relief

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

Sec. 312 Commission Action on Petition

This section establishes deadlines for U.S. International Trade Commission (ITC) determinations following the initiation of a bilateral safeguard investigation. Section 312 also provides that, if the ITC makes an affirmative determination or a determination that the President may consider to be an affirmative determination, the ITC must find and recommend to the President the amount of import relief that is necessary to remedy or prevent the serious injury and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition.

Sec. 313 Provision of Relief

This section authorizes the President to provide relief under the bilateral safeguard provisions of the Act. The period of initial relief may not exceed 2 years. The total period of relief, including any extension of relief, may not exceed 4 years in the aggregate. This section also specifies the rules for determining the applicable rate of duty after such relief terminates.

Sec. 314 Termination of Relief Authority

This section terminates the President’s authority to take action under the bilateral safeguard provision after ten years from the date on which the Agreement enters into force or after the article subject to relief becomes duty free under the terms of the Agreement if that date is later than 10 years from the date on which the Agreement enters into force. The President may still take such action under the bilateral safeguard

provision after such 10 year period, but only to the extent the President determines that the Government of Australia consents to such action.

Sec. 315 Compensation Authority

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

Sec. 316 Confidential Business Information

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

Subtitle B – Textile and Apparel Safeguard Measures

Sec. 321 Commencement of Action for Relief

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

Sec. 322 Determination and Provision of Relief

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

Sec. 323 Period of Relief

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

Sec. 324 Articles Exempt from Relief

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

Sec. 325 Rate after Termination of Import Relief

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

Sec. 326 Termination of Relief Authority

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

Sec. 327 Compensation Authority

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

Sec. 328 Business Confidential Information

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

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

Sec. 331 Findings and Action on Goods from Australia

This section authorizes the President, in granting global import relief under Sections 201-204 of the Trade Act of 1974, to exercise the discretion to exclude imports from Australia from such global import relief when certain conditions are present.

TITLE IV – Procurement

Sec. 401 Eligible Products

This section of the Act amends Section 308(4)(A) of the Trade Agreements Act of 1979 (19 U.S.C. 2518(4)(A)) to implement the government procurement provisions of the Agreement.