Calendar No. 261

96TH CONGRESS
1st Session

SENATE

REPORT
No. 96-249

TRADE AGREEMENTS ACT OF 1979

REPORT

OF THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

ON

H.R. 4537

TO APPROVE AND IMPLEMENT THE TRADE AGREEMENTS NEGOTIATED UNDER THE TRADE ACT OF 1974, AND FOR OTHER PURPOSES

JULY 17 (legislative day, JULY 21), 1979.—Ordered to be printed

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

REPORT

[To accompany H.R. 4537]

The Committee on Finance, to which was referred the bill (H.R. 4537) to approve and implement the trade agreements negotiated under the Trade Act of 1974, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

I. BACKGROUND AND SUMMARY OF THE BILL

Background

Multilateral Trade Negotiations

Introduction.—H.R. 4537 will make necessary and appropriate changes in United States law to implement the results of the Tokyo Round of Multilateral Trade Negotiations (MTN). The Tokyo Round was the seventh round of trade negotiations held under the auspices of the General Agreement on Tariffs and Trade (GATT) since 1948. The first five rounds were concerned solely with tariff reductions. As average tariff rates in industrial countries became progressively lower, the effects on trade of national laws and policies other than tariffs, "non-tariff barriers" (NTB's), became more apparent. At the same time, direct and indirect government intervention in economic matters became more pervasive and, therefore, the number of NTB's increased.

Although the sixth round, the Kennedy Round (1964–1967), was primarily a tariff cutting exercise, specific NTB's were discussed: national antidumping laws and national customs valuation laws. An international antidumping code and agreements on customs valuation were negotiated. Congress did not implement the NTB agreements negotiated during the Kennedy Round.

The principle object of the Tokyo Round was the elimination, reduction, or "harmonization", *i.e.*, uniformity, of certain NTB's, although further tariff cutting was also contemplated. The trade distorting effects of most of the NTB's have been acknowledged for at least 30 years. The Tokyo Round, however, was the first negotiation in which national governments agreed to consider changing some important domestic policies affecting trade. The general reasons for this change in attitude were (1) the decline in importance of tariffs as the result of tariff cuts and flexible exchange rates, and (2) increased economic interdependence resulting in more frequent disputes among countries over economic issues.

The Contracting Parties to the GATT began to lay the groundwork for another round of major multilateral trade negotiations shortly after the end of the Kennedy Round in 1967. The 24th session of the GATT Contracting Parties in November 1967 established a work program under three main headings of tariffs, NTB's on industrial products, agriculture, and trade and development. This initial work program was conducted between early 1968 and mid-1973 prior to the opening of the MTN in September 1973. The work program resulted in inventories of NTB's and draft agreements containing international rules for certain NTB's, *e.g.*, product standards and customs valuation.

The MTN officially began upon the signing of the Tokyo Declaration by ministers of more than 100 countries in September 1973. The declaration required the negotiations to be comprehensive, covering tariffs, NTB's and other measures which impede or distort industrial or agricultural trade. It also required the negotiations to be "conducted on the basis of the principles of mutual advantage, mutual commitment and overall reciprocity."

The negotiations were conducted under the auspices of the GATT, a multilateral trade agreement which includes rules governing the conduct of international trade, procedures to settle trade disputes, and a framework for negotiations to reduce obstacles to international trade. Ninety-nine countries, both GATT members and nonmembers, participated in the negotiations. The most active participants were the major trading countries, including the United States, the European Communities (E.C.), Japan, Canada, Australia, and various developing countries, for example, Brazil, Argentina, and India.

Organization of the MTN.—International trade negotiations and other meetings under the GATT are held at its headquarters in Geneva, Switzerland. The normal business of the GATT consists of annual sessions of the Contracting Parties to establish overall objectives and guidelines for the GATT work program and periodic meetings of the Council to discuss and settle trade issues and disputes. The GATT Secretariat, consisting of about 200 personnel headed by a Director General, prepares documentation requested by the members.

A separate mechanism was established under the Tokyo Declaration to conduct the preparatory work for the MTN. The Trade Negotiations Committee (TNC) was the parent body set up specifically (1) to elaborate and put into effect detailed negotiating plans and procedures, and (2) to supervise the progress of the negotiations. An informal group of the principal seven developed and seven developing countries met periodically to discuss and resolve major differences and establish the agenda for TNC meetings.

The TNC established seven negotiating groups to deal with specific subjects:

1. *Tariffs Group.*

2. *Sectors Group.*—Intended to permit negotiation of all issues affecting specific industrial sectors.

3. *Agriculture Group.*—The European Communities insisted that all issues relating to agriculture be discussed in this group. The United States insisted that agricultural issues be discussed in the relevant substantive group, *e.g.*, agricultural tariffs in the Tariffs Group. This procedural controversy stalled the MTN for several years.

The solution was a non-specific request/offer procedure in which each country requested and offered specific tariff and NTB changes to every other country without reference to the agricultural and industrial nature of the product affected. Furthermore, multilateral "codes", proposed international rules on specific NTB practices, negotiated in other groups were referred to Group Agriculture for review.

In addition to the request/offer procedure, group agriculture had three subgroups dealing specifically with grains, meat, and dairy.

4. *Nontariff Measures Group.*—The group had five subgroups dealing with the following issues: (1) Government procurement policies; (2) "quantitative restrictions" (quotas) and import licenses; (3) customs valuation; (4) subsidies and countervailing duties; and (5) product standards, *i.e.*, any mandatory or voluntary criteria generally used by industry to insure that products are of a uniform quality, safe, environmentally acceptable, etc. In addition, NTB's not covered by one of these subgroups were individually negotiated on a request/offer basis.

5. *Safeguards Group.*—The group discussed international rules for domestic laws permitting temporary import restraints to prevent injury to a domestic industry caused by increased imports.

6. *Tropical Products.*—Intended to permit concessions to the developing countries from the developed countries before the end of the MTN.

7. *Framework Improvement.*—Intended to permit discussion of proposed changes in the GATT rules.

Schedule of the negotiations.—Although the MTN began formally in 1973, substantive negotiations did not begin until after enactment of the Trade Act of 1974 in January 1975. For over 2½ years after substantive negotiations began, relatively little forward movement in the negotiations occurred, despite efforts on the part of the United States delegation. This early phase of the negotation was marked by disputes concerning the approach which should be taken to various negotiating issues.

In July 1977, the United States and the European Communities were able to agree on a timetable to complete the preparatory phase of the MTN. By January 1978, the preparatory phase had been completed, and offers were tabled by the United States, the European Communities, and Japan. Commitments to table offers were received from other developed countries. At the same time, the target date of July 15, 1978, for completion of the negotiations was agreed to by the United States, the European Comunities, and Japan and in general endorsed by other MTN participants.

With the establishment of the target date, the intensive negotiating phase began. This phase was largely completed by April 12, 1979, when ministers from the developed countries and some developing countries met in Geneva to initial the results of the Multilateral Trade Negotiations. Since April 12, the MTN activities have involved technical corrections to the initialed agreements and negotiations on unresolved minor issues.

The Trade Act of 1974

Article I, section 8, clause 3 of the Constitution of the United States of America confers on the Congress the power to "regulate commerce with foreign Nations . . ." Since 1934, Congress has periodically delegated to the President authority to enter into trade negotiations. The Trade Act of 1974 authorized United States participation in the MTN. The Trade Act permits the President to enter into trade agreements with foreign countries for the purpose of establishing fairness and equity in international trading relations, including the reform of rules governing international trade; harmonizing, reducing, and eliminating tariff and nontariff barriers to, and other distortions of, international trade; and securing for the commerce of the United States, on a basis of reciprocity, equal competitive opportunities in foreign markets.

In particular, section 101 of the Trade Act authorizes the President to proclaim, subject to certain conditions and limitations, such modification or continuance of any existing duty, such continuance of existing duty-free or excise treatment, or such additional duties as he determines are required or appropriate to carry out trade agreements. The exercise of the section 101 authority does not require congressional action to become effective.

Section 102 of the Trade Act is unique in the history of congressional delegations of trade negotiating authority to the President. The section authorizes the President to negotiate trade agreements with foreign countries providing for the harmonization, reduction, and elimination of nontariff barriers and other distortions of international trade, subject to procedures for the approval and implementation of such agreements by the Congress. H.R. 4537 is a bill to implement agreements negotiated under section 102.

The special procedures for consideration of legislation necessary or appropriate to approve and implement trade agreements on nontariff barriers to trade negotiated by the President under the authority of section 102 of the Trade Act include:

(1) Congressional monitoring and advice during the course of the negotiations (section 161 of the Trade Act);

(2) consultations with the Committee on Finance and with other committees of the Senate which have jurisdiction over legislation involving matters which would be affected by the trade agreements being negotiated, including all matters related to the implementation of trade agreements such as the desirability and feasibility of the proposed implementation (section 102 of the Trade Act);

(3) a 90-calendar-day prior notice to the Congress before the agreements are entered into by the President (section 102 of the Trade Act); and

(4) submission of the agreements to the Congress with a draft of an implementing bill and a statement of any administrative action proposed to implement such agreements, an explanation of how the draft bill and proposed administrative action change or affect existing law, and a statement explaining how the agreements benefit U.S. commerce and why the bill and the administrative action is required or appropriate to carry out the agreements (section 102 of the Trade Act).

On January 4, 1979, the President notified the Congress of his intention to enter into the MTN trade agreements. The agreements were initialed in Geneva on April 12, 1979. On June 19, 1979, the President transmitted the implementing package [1] to Congress.

Special legislative procedures are established under sections 151 and 152 of the Trade Act of 1974 for consideration of the implementing package submitted under section 102. These procedures are set forth as part of the Rules of the Senate:

(1) Implementing bills pertaining to all trade agreements submitted under section 102 must contain a provision approving the agreements, a provision approving the statement of proposed administrative action, and provisions appealing or amending existing law or providing new statutory authority that are necessary or appropriate to implement the agreements;

(2) Implementing bills must be introduced (by request) by the Majority Leader and Minority Leader, or their designees, and referred to the appopriate committee or committees;

(3) Implementing bills will be automatically discharged from committees after 45 working days, if not reported prior to that time, and a vote of final passage must be taken on or before the 15th working day after such discharge or after the bill is reported by the committee;

(4) A motion to proceed to consideration of an implementing bill is highly privilege and not debatable; no motion to recommit the bill or to reconsider the vote by which the bill is agreed or disagreed to is in order; and

(5) Debate must be limited to 20 hours, equally divided between those favoring and those opposing the bill, and a motion to further limit debate is not debatable.

Implementation of Trade Act Procedures

The Trade Act procedures described above are a unique Constitutional experiment. They provide a structure for cooperation between the legislative and executive branches of the Government during a complex international negotiation. The Congress adopted the Trade Act procedures as a means to avoid conflicts between the Congress and the President such as the dispute which occurred after the Kennedy Round. The committee believes the Trade Act experiment in coordination is a success. It expects this coordination to continue.

The committee developed a consultative system in early 1975 to implement the Trade Act coordination procedures. Periodic briefings of Senators and committee staff by the Special Representative for Trade

[1] Agreements Negotiated under Section 102 of the Trade Act of 1974 in the Multilateral Trade Negotiations: Submitted on July 19, 1979, for Approval by Congress, Committee on Finance Committee Print 96-24 (July 1979); Trade Agreements Act of 1979: Statements of Administrative Action, House Document No. 96-153, Part II.

Negotiations (STR), his deputies or staff, access by the committee to position papers developed by the STR, and regular delivery to the committee on negotiating instructions, reports of negotiating developments, and GATT and MTN documents, were part of this system.

From the beginning of the substantive negotiations in the MTN and throughout the remainder of the MTN until January 1979, committee members and staff made periodic trips to Geneva and to various capitals to monitor the negotiations. In the view of the committee, these trips were critical to the committee's oversight responsibilities under the Trade Act. Senators and staff attended multilateral and bilateral negotiating sessions, met with officials of foreign delegations and officers of the GATT, and consulted with the head of the United States delegation and key members of his staff.

Section 102 of the Trade Act requires the President to notify the Congress of his intention to enter into trade agreements which must be approved by the Congress at least 90 days before entering into such agreements. This notification was made on January 4, 1979, thus beginning a period of formal consultations with congressional committees on the proposed agreements and on the domestic implementation of those agreements under sections 102 and 151 of the Trade Act.

In carrying out the consultations, the committee held hearings on implementation of the MTN on February 21 and 22, 1979. Following these hearings, committee meetings with appropriate representatives of the Administration were held on March 6, 7, 8, 15, and 26, 1979; April 4 and 5, 1979; and May 2 and 3, 1979. These meetings resulted in recommendations by the committee on the implementation of the MTN agreements (see Finance Committee Press Release No. 116, May 8, 1979). Similar meetings were held between the Administration and the Senate Committees on Agriculture, Commerce, and Governmental Affairs on matters within their respective jurisdictions, as well as between the Administration and committees of the House of Representatives.

On May 21, 22, and 23, 1979, the committee met with the Subcommittee on Trade of the House Ways and Means Committee to resolve the differences between their respective MTN implementing recommendations. Members of other relevant House and Senate committees also participated. On May 24, a joint Ways and Means Committee-Finance Committee press release was issued detailing the resolution of the House and Senate differences and announcing that the committees had completed consultations with the Administration on legislation to implement the MTN (Joint Press Release No. 1, May 24, 1979). The Subcommittee on International Trade of the Committee on Finance held hearings on the Trade Agreements Act of 1979 on July 10 and 11, 1979.

The committee emphasizes that virtually all of the provisions of H.R. 4537 reflect the decisions of the House and Senate committees, as coordinated in the joint meetings noted above. The implementing bill was drafted in the offices of the House and Senate Legislative Counsel with the participation of staff members of the committees of jurisdiction in both Houses and representatives from the Administration. The bill reflects the understandings achieved on all issues, as explained in this report.

Economic Assessment of the Multilateral Trade Negotiations

There are two distinct elements to the MTN which will have economic consequences for the U.S. economy over the next decade. The first is the tariff reductions; the second is the operation of the agreements dealing with various nontariff measures. To provide the committee with an economic assessment of both components of the MTN, the committee arranged for four reports to be prepared by consultants. (A fifth study was prepared on the legal implications of the various codes.) These studies were not officially reviewed or approved by the committee but were made available to the Congress and the public for information purposes.

In evaluating the likely effects of the MTN, the committee has noted that the tariff reduction exercise can be evaluated for its economic impact. Widely accepted methodologies have been developed and the committee has reviewed the results of these evaluations below. Generally, the studies of the tariff reductions in the MTN show small net benefits resulting for the U.S. economy. The limited impact of the tariff reductions as measured by employment or price changes is not surprising. Post-Kennedy Round duty rates of the major trading countries of the world are generally less than 10 percent. Thus even duty reductions significant in percentage terms on average do not result in large absolute changes in duty rates. Because most duty reductions are to be phased-in over an 8-year period, the annual average duty rate reduction will be only a fraction of 1 percent. The effects of such a minor reduction in duty rates can be expected to be overshadowed by the effects of exchange rate movements, economic growth, and technological change.

While the duty-rate changes can be expected to have a minimal impact on the U.S. economy, the committee believes that the other agreements negotiated in the MTN could have important economic consequences. But unlike the tariff reductions, there is no widely accepted methodology which can be applied to the problem of assessing the economic impact of the agreements, with one exception, the Agreement on Governcent Procurement. Most of the agreements are designed to address matters where determinations must be made on factual situations which may arise in the future and permit room for interpretation and the exercise of discretion. If the agreements are successfully implemented, existing impediments to, or distortions of, trade would be removed or reduced in their effect. Presumably, this would permit a more efficient allocation of the world's labor, capital, and materials. But such a result is highly contingent on many factors such as effective application of its rights by the United States and meaningful implementation of the agreements by other signatories.

To summarize, the committee believes the tariff reductions will have only a very minor, but generally favorable, impact on U.S. employment and prices. The committee believes the various agreements which address nontariff barriers could provide significant gains for the United States but only over a long-run period. The committee believes that the United States operates a very open economy with well-defined, identifiable institutional restraints. But the committee has noted the increasing tendency among our trading

partners to utilize nontariff restraints which sometimes operate in very arbitrary ways against U.S. trading interests. The committee believes that the MTN agreements offer the United States an opportunity to achieve more discipline over these foreign practices which in the past have effectively restrained U.S. exports. The committee believes that the potential economic gain for the United States from such a reduction of nontariff barriers could be significant, if the United States will vigorously pursue and enforce its rights and if the international community will honor the letter and intent of the agreements.

The reports prepared for the committee are summarized below. In addition to these reports, the U.S. International Trade Commission has prepared an evaluation of the MTN agreements for the committee, which will be published as an appendix to the hearing record of the Subcommittee on International Trade hearings on Juy 10 and 11, 1979, on the MTN. Further, Professor John Jackson of the University of Michigan School of Law, a consultant to the committee on the MTN, has prepared a report on the MTN and the Legal Institution of International Trade which has been published as a committee print (CP 96–14).

(1) *Multilateral Trade Negotiations: Results for U.S. Agriculture;* Environmental and Natural Resources Policy Division, Congressional Research Service.[1]

The CRS report reviews tariff and nontariff barrier trade concessions on 10 commodity groups: Almonds; beef; canned peaches and fruit cocktail; citrus; poultry; rice; soybeans and products; tobacco; vegetable protein concentrates and isolates; and wine. In 1976, total U.S. exports of these products were valued at $6,939 million, and the value of exports to countries from whom trade concessions were sought was $1,947 million. Total exports of these products in 1976 represented 30.2 percent of total U.S. agricultural exports of $22,996 million. Exports to countries from whom concessions were sought represented 8.5 percent of total agricultural exports.

CRS estimates that the annual increase in United States exports of these products resulting from the concessions received from other countries will be worth $407.9 million by 1987, the end of the transition period for the MTN. These concessions represent an increase of 20.9 percent over exports of the products of $1,947 million to the countries involved in 1976. The trade grains are unevenly distributed among the 10 commodity groups. Farm commodities account for 90.3 percent of the total trade gain: beef, 46.7 percent; tobacco, 19.3 percent; soybeans and products, 13.7 percent; and citrus, 10.6 percent. Trade gains in relation to the 1976 value of trade with countries from whom concessions were sought are estimated to be over 10 percent for several products: beef, 139 percent; poultry, 34 percent; citrus, 22 percent; and canned peaches and fruit cocktail, 14 percent.

Nearly 75 percent of the annual trade gains are achieved through liberalization of nontariff barriers, and only 25 percent were the result of tariff reductions. The nontariff barrier concessions were primarily increased beef quotas in Japan and the EC, together accounting for 61 percent of the total gains in trade covered by NTB's. Other items of significance in the NTB category were soybeans and products

[1] Committee Print 96–11 (June 1979).

(meat in Mexico), citrus and poultry. Of the tariff concessions, tobacco accounted for 75 percent, with almost all of it granted by the EC.

The CRS study identifies the cheese concession as the only agricultural concession of any significant value offered by the United States. CRS estimates that the U.S. agreement to increase the cheese import quota as resulting in somewhat larger cheese imports until the early 1980's; thereafter, it is estimated that imports are likely to be lower than if the current system remained in effect.

(2) *The Tokyo/Geneva Round: Its Relation to U.S. Agriculture;* Professor James P. Houck, University of Minnesota.[2]

The Houck report reviews the MTN results for U.S. agriculture focusing on the major packages with the EC, Japan, and Canada. Overall Houck estimates a net change in U.S. agricultural trade due to the MTN agreements of $356 million (1976 dollars) and a net increase in employment (agriculture and agribusiness) of about 26 thousand. With respect to agricultural trade with Japan, the EC, and Canada, Professor Houck estimates an annual increase in U.S. agricultural exports of $215 million, $168 million, and $56 million respectively.

Professor Houck notes that the United States efficiently produces a number of products which Japan does not grow extensively (soybeans, corn, cotton, wheat, tobacco). The United States supplies between 30–35 percent of Japan's agricultural imports; almost three times more than any other country. Conversely he notes, the United States imports relatively little of agricultural origin from Japan. There are three major components to the United States-Japan agricultural negotiations: tariff bindings on about 14 items imported by Japan (especially soybeans); duty reductions on a broad range of items; and increases in Japanese import quotas of a few tightly controlled items (high quality beef, oranges, orange juice, and grapefruit juice). The United States made no agricultural concessions on items of which Japan is a major supplier.

With respect to the EC, Houck notes, the United States has an enormous stake. In 1977, for example, he cites the fact that 30 percent of our farm exports went to the EC. The major items were feed grains, soybeans, and tobacco. Over the past decade and longer, the United States has exported $4 to $5 worth of farm products to the EC for each $1 of U.S. agricultural imports from the Community.

Unlike the settlement with Japan, Professor Houck notes that the agricultural agreement with the EC involves concessions by both parties. The EC concession covers $960 million worth of trade in 1976 with $867 million accounted for by tariff cuts and levy adjustments and most of the balance accounted for by the creation of a new tariff line for high-quality beef. The major U.S. concession to the EC is to enlarge the quota on imported cheese. Houck believes that this concession will cost U.S. dairy farmers very little. He estimates that the farm value of milk production will decline one-half of 1 percent (approximately $65 million).

The United States and Canada have very similar conditions in their domestic agriculture and their trading relations. Houck notes that

[2] Committee Print 96–12 (June 1979).

even if agricultural trade between the United States and Canada were completely unimpeded, it is unlikely that vast changes would occur in the trade patterns between the two nations. Canada's concessions to the United States are mainly the reduction and binding of existing tariffs. Measured by trade coverage figures, these concessions were on $422.5 million worth of 1976 agricultural trade. Nearly 95 percent of the total is accounted for by tariff reductions. Houck estimates a total of $56 million in new U.S. export trade will result.

(3) *The Impact of Multilateral Trade Liberalization on U.S. Labor*, J. David Richardson, University of Wisconsin.[3]

Professor Richardson's report, while not discussing the impact of the MTN as it was finally negotiated, deals with the broad implications of trade liberalization for U.S. labor. He notes that U.S. participation in the MTN has been viewed with great concern by U.S. organized labor. In his view, economic research lends qualitative support to some of labor's apprehensions but the quantitative support is not usually strong. In his report, he highlights some of the labor-market pressures that the Tokyo Round agreements will generate with focus on the tariff reductions.

Professor Richardson first studies the near term adjustment problems. In the short run, he notes, after multilateral trade liberalization, downward wage and price rigidity can cause additions to unemployment and excess capacity. The social cost of such temporary dislocation is the value of the output sacrificed from the involuntary unproductivity of displaced people and resources, discounted over however long the sacrifice persists. Professor Richardson notes it will not persist forever because wages and prices eventually achieve some flexibility, and because attrition and expansion of the exportables sector combine over time to shrink the pool of the unemployed. Although in principle this short-run "dislocation cost" of freer trade could dominate its familiar and indefinite gains, he cites three detailed studies of tariff reduction which show that this is highly unlikely in the United States.

But the real controversy according to Professor Richardson in modern trade policy is over equity, not efficiency. Most analysts agree that trade liberalization is likely to move an economy closer to overall efficiency. But he asks who within a society loses and who gains? And are the groups which gain and lose "deserving" or "undeserving" relative to income-distributional goals?

His report finds that wage-earners bear a disproportionate share of temporary unemployment compared to recipients of property-type income (roughly 7 times the income reduction). But he also notes that recipients of property-type income bear a disproportionate share (compared to wage-earners) of the permanent income losses resulting from trade liberalization.

Among U.S. labor groups, Professor Richardson finds that those who are estimated to be disproportionately displaced in the short run by multilateral trade liberalization work in industries that employ either relatively straight-forward, well-established, labor-intensive production techniques, or else sophisticated, but highly standardized, labor-intensive techniques. Those experiencing disproportionate tem-

[3] Committee Print 96–13 (June 1979).

porary displacement also appear to earn "middle-level" wages (*e.g.*, the skill groups described as "laborers" and "operatives"). (The quantitative size of these disparities in experience is, however, quite small, only very rarely representing numbers greater than 10,000 persons.)

Finally, Professor Richardson notes that it is often said that all Americans gain in the long run because multilateral trade liberalization reduces prices and the cost of living. Once again, he notes, that while this is true qualitatively, its quantitative impact is very small. He believes that proponents of trade liberalization make too much of its alleged "anti-inflationary" advantages. He notes that the largest likely impact of a 3 percentage point multilateral tariff cut is a reduction in the U.S. cost of living of 1/10 of 1 percent. The annual dollar value of an indefinite such decline to a person making an income of $20,000 a year is roughly $20. Professor Richardson notes that these estimates are smaller than is frequently heard because they correct for unwarranted assumptions underlying optimistic "back-of-the-envelope" calculations, *e.g.*, that all imports are dutiable, that all are consumables, or, if not, that imports nevertheless make up about 10 percent of intermediate purchases, and that no export prices rise as the result of the MTN.

(4) *An Economic Analysis of the Effects of the Tokyo Round of Multilateral Trade Negotiations on the United States and the Other Major Industrialized Countries*, Professor Alan V. Deardorff and Robert M. Stern, University of Michigan.[4]

The Deardorff and Stern report analyzes the industrial tariff reductions, the liberalization of agricultural tariff and nontariff barriers (NTB), and the liberalization of government procurement practices resulting from the MTN. Their analyses are based on the use of a large computer-based model of production, employment, and trade for 18 major industrialized countries. The model seeks to capture the economic interactions between the 18 countries as tariff and nontariff barriers are reduced multilaterally. The unique aspect to the Deardorff and Stern report is the fact that they examine the tariff and nontariff barrier changes both in isolation and in combination. Their results show that the economic benefits of the MTN to the United States are favorable but small.

Their major conclusions are:

(1) Employment will increase by a small amount in all countries except Japan and Switzerland. The increase for the United States is about 15 thousand workers. In percentage terms, these changes are no more than a few tenths of one per cent of the labor force in any country and still less in the United States.

(2) Exchange rates will change to a small extent. The U.S. dollar will depreciate very slightly (two tenths of one per cent), as will such currencies as the French franc and the British pound. The deutsche mark and the yen will appreciate very slightly.

(3) Imports and therefore consumer prices will fall to a limited extent in all countries. For the United States, the decline is less than one-tenth of 1 percent.

(4) Economic welfare will be increased in all countries except Switzerland. The welfare gain for the United States is estimated at

[4] Committee Print 96–15 (June 1979).

between $1 and $1.5 billion dollars, which is less than one-tenth of 1 percent of U.S. gross domestic product.

Deardorff and Stern note that all of these changes, small as they are, assume that the changes in tariffs and NTB's that have been negotiated are to be implemented all at once. In fact, they will be phased in over a number of years.

Table 1 summarizes their results for major MTN participants. They note that table 1 masks much industry detail. The increase in U.S. employment, for example, is not shared by all industries. However, the employment declines even at the industry level are never more than 1 percent of industry employment.

Professors Deardorff and Stern first applied their model to the tariff changes that were negotiated in the MTN. These changes, which were made available to them by the Office of the Special Representative for Trade Negotiations, show an average depth of cut of about 26 percent. Most of the countries participating in the MTN agreed to use some variant of the Swiss Formula as the starting point for negotiating. In the end, the tariff cuts offered by the United States show a depth of cut that is fairly close to what would have been obtained under the Swiss Formula. All other countries, however, offered noticeably smaller average cuts than they would have using the formula. As a result, they conclude that the negotiated tariff cuts are somewhat larger for the United States than for such important trading entities as the European Community and Japan.

SUMMARY OF EFFECTS OF REDUCTIONS IN TARIFFS AND CERTAIN NONTARIFF BARRIERS

Country	Change in employment (1,000)	Percent change in employment	Percent change in price index[1]	Change in economic welfare as percent of GDP
Australia	0.6	0.01	−0.1	[2]
Canada	2.2	.02	−.3	0.2
European Community	116.1	.12	−.4	.1
Japan	−11.6	−.02	−.1	[2]
Norway	1.5	.09	−.1	.1
Sweden	5.4	.13	−.3	.1
Switzerland	−9.8	−.35	−.4	.0
United States	15.0	.02	−.1	.1
All countries	133.7	.05	−.20	.1

[1] Refers to an index of imports and home prices.
[2] Less than 0.1 percent.

Deardorff and Stern also examine the liberalization of some nontariff barriers. Nontariff barriers are in general much more difficult to quantify than are tariffs. Based on complaints filed with STR, they constructed an inventory of the barriers faced by American exporters. This inventory identified product standards and customs valuation as two major areas of trouble.

They then used their model to analyze the effects of both the agricultural concessions and the government procurement liberalization. The results were mostly similar to those of the tariff changes, though even smaller in magnitude.

In summary, Professors Deardorff and Stern conclude for those aspects of the MTN they were able to quantify—including both tariff

changes and liberalization of certain NTB's—the net result appears to be beneficial for almost all of the countries involved, including the United States. Adjustment problems in labor markets, they feel, appear to be either nonexistent or negligible at the country level. And even at the more disaggregated industry level, where employment changes occasionally amount to several percent of an industry's labor force in some of the smaller countries, they believe the adjustment problems should be slight, given that the changes are to be phased in over a period of up to a decade.

Summary of the Bill

Section 2. Approval of Trade Agreements

Section 2 of the bill would approve (1) the trade agreements submitted to the Congress on June 19, 1979, and (2) the statement of proposed administrative action to implement such agreements. The texts of the agreements approved would be the texts submitted. However, changes in those texts of a technical or clerical nature and changes to the annexes to the agreements which maintain the balance of U.S. rights and obligations under the agreements would be permitted. The President would be permitted to accept each approved agreement for the United States unless, with certain exceptions, he determines that a major industrial country is not accepting the agreement. An agreement would apply between the United States and another country only when that country has accepted the agreement and the President determines it should not be denied the benefits of the agreement with respect to the United States because it has not accorded the United States adequate benefits.

Section 3. Relationship of Trade Agreements to the United States Law

Section 3 would provide that no provision of any trade agreement approved by the bill which is in conflict with any statute of the United States will be given effect under the laws of the United States. Any changes required in U.S. law in the future because of a requirement of, amendment to, or recommendation under such an agreement would have to be made by legislation considered under the provisions of the Trade Act of 1974 providing for rapid consideration of certain trade legislation.

Title I—Countervailing and Antidumping Duties

Countervailing Duties

General rule.—Subtitle A of Title VII of the Tariff Act of 1930, as added by section 101 of the bill, would apply a new countervailing duty law to imports from countries which have assumed the obligations (or substantially equivalent obligations) of the MTN agreement relating to subsidies and countervailing measures. Imports from seven developing countries could come under the new law under agreements in force on the day the bill was submitted to Congress,

June 19, 1979. The existing countervailing duty law would apply to all other imports.

Under the new law, countervailing duties would be imposed when the administering authority (now the Secretary of the Treasury) determines that a country or person is providing a subsidy with respect to a class or kind of merchandise imported into the United States, and the U.S. International Trade Commission (ITC) determines that an industry in the United States is materially injured, threatened with material injury, or that the establishment of an industry is materially retarded, by reason of imports of that merchandise. Material injury in the countervailing duty and antidumping statutes would be defined to be harm which is not inconsequential, immaterial or unimportant.

Procedures.—Countervailing duty investigations could be self-initiated by the administering authority or initiated by petition. Within 20 days after a petition is filed, the administering authority would determine whether the petition alleges the elements necessary for relief (material injury to a domestic industry by reason of subsidized imports) and includes information reasonably available to the petitioner supporting the allegations. If the determination is affirmative, an investigation to determine whether subsidization exists would begin. If the determination is negative, the proceedings would end.

Within 45 days after a petition is filed or an investigation is self-initiated, the ITC would determine whether there is reasonable indication that injury to a domestic industry by reason of subsidized imports exists. If the determination is negative, the proceedings would end.

Within 85 days after a petition is filed or an investigation is self-initiated, the authority would make a preliminary determination, based on the best evidence available at the time, whether there is a reasonable basis to believe or suspect that a subsidy exists. In extraordinarily complicated cases, this determination would be made within 150 days.

If the preliminary determination is positive, the administering authority would (a) require bonds or cash deposits to be imposed on allegedly subsidized imports in an amount equal to the estimated net subsidy, and (b) continue its investigation. ITC would initiate an investigation to determine whether injury exists. If the authority's preliminary determination is negative, the administering authority would continue its investigation.

Within 75 days after its preliminary determination, the administering authority would make a final determination whether a subsidy exists. If the determination is negative, the proceedings would end.

Within 120 days after the administering authority makes an affirmative preliminary determination, the ITC would make a final determination whether a domestic industry is being materially injured by reason of subsidized imports. In a case where the administering agency makes a preliminary determination that a subsidy does not exist, the ITC final determination on material injury would be made within 75 days after the administering authority's affirmative final determination on subsidy.

If the final determination of the ITC is affirmative, a countervailing duty order requiring imposition of countervailing duties would be issued within 7 days of the ITC determination.

Suspension of investigation.—An investigation could be suspended, prior to a final determination by the administering authority on the issue of subsidization, if (1) the government of the subsidizing country, or exporters accounting for substantially all of the imports of the merchandise under investigation, agree to eliminate the subsidy, to offset completely the net subsidy, or to cease exports of the merchandise to the United States, within 6 months after suspension of the investigation, or (2) extraordinary circumstances are present and the government or exporters described in (1) agree to take action which will completely eliminate the injurious effect of the imports of the merchandise under investigation.

The ITC, upon petition, may review an agreement to completely eliminate the injurious effect to determine if that result is accomplished. If the ITC determines that the injurious effect is not eliminated, then the investigation must be completed.

If the administering authority determines an agreement which resulted in suspension of an investigation is being violated, then the investigation would be resumed. Unliquidated imports of the merchandise covered by the agreement would be liable for countervailing duties retroactively if entered on or before the later of (1) 90 days before the date of the affirmative preliminary determination which is issued on the day the investigation is suspended, or (2) the date of the violation.

Miscellaneous.—Deposit of estimated countervailing duties on imports entered on or after the date a countervailing duty order is published would be required at the same time deposit of estimated normal duties is required, *i.e.*, within 30 days after release of the goods from Customs custody. Final settlement of accounts with Customs on imports subject to countervailing duties would be required within 12 months after the end of an exporter's or manufacturer's fiscal year within which the imports are entered, or withdrawn from warehouse, for consumption.

Countervailing duties would be imposed retroactively from the date of a final finding of—

(1) injury, or

(2) threat of injury which, but for suspension of liquidation, would have been injury,

to the date on which liquidation of entries of imports subject to investigation was suspended, usually the date of the preliminary determination. In "critical circumstances," countervailing duties would be imposed retroactively from the date of a final finding of injury to the date 90 days before the date on which liquidation was suspended. Critical circumstances would exist when the ITC determines there is injury which would be difficult to repair, caused by what the administering authority has determined to be massive imports over a relatively short period benefiting from export subsidies.

Antidumping Duties

General rule.—Subtitle B of title VII of the Tariff Act of 1930, as added by the bill, would repeal the Antidumping Act, 1921, and replace it with a comprehensive statute built upon the 1921 Act and consistent

with the MTN Antidumping Code. Under the new law, antidumping duties would be imposed when the administering authority (now the Secretary of the Treasury) determines that a class or kind of merchandise is being or is likely to be sold in the United States at less-than-fair-value and the U.S. International Trade Commission (ITC) determines that an industry in the United States is materially injured, threatened with material injury, or that the establishment of an industry is materially retarded, by reason of imports of that merchandise.

Procedures.—Antidumping investigations could be self-initiated by the administering authority or initiated by petition. Within 20 days after a petition is filed, the administering authority would determine whether the petition alleges the elements necessary for relief (material injury to a domestic industry by reason of dumped imports) and includes information reasonably available to the petitioner supporting the allegation. If the determination is affirmative, the authority would initiate an investigation to determine whether dumping exists. If the determination is negative, the proceedings would end.

Within 45 days after a petition is filed or an investigation is self-initiated, the ITC would determine whether there is a reasonable indication that injury to a domestic industry by reason of dumped imports exists. If the determination is negative, the proceedings would end.

Within 160 days after a petition is filed or an investigation is self-initiated, the authority would make a preliminary determination, based on the best evidence available at the time, whether there is a reasonable basis to believe or suspect that dumpting exists. In extraordinarily complicated cases, this determination would be made within 210 days.

If the preliminary determination is positive, the administering authority would (a) require bonds or cash deposits to be posted on allegedly dumped imports in an amount equal to the estimated margin of dumping, and (b) continue its investigation. The ITC would initiate an investigation to determine whether injury exists. If the authority's preliminary determination is negative, the administering authority would continue its investigation.

Within 75 days (or 135 days upon request of exporters or petitioners) after its preliminary determination, the administering authority would make a final determination whether dumping exists. If the determination is negative, the proceedings would end.

Within 120 days after the administering authority makes an affirmative preliminary determination, the ITC would make a final determination whether a domestic industry is being materially injured by reason of dumped imports. In a case where the administering authority makes a preliminary determination that dumping does not exist, the ITC final determination on material injury would be made within 75 days after the administering authority's final affirmative determination on dumping. If the final determination of the ITC is affirmative, an antidumping duty order requiring imposition of antidumping duties would be issued within 7 days of the ITC determination.

Suspension of investigations.—An investigation could be suspended prior to a final determination by the administering authority on the issue of dumping if (1) exporters accounting for substantially all of

the imports of the merchandise under investigation agree to eliminate the dumping, or to cease exports of the merchandise to the United States within 6 months after suspension of the investigation; or (2) extraordinary circumstances are present and the exporters described in (1) agree to revise prices so as to completely eliminate the injurious effect of the imports of the merchandise under investigation.

The ITC, upon petition, may review an agreement to completely eliminate the injurious effect to determine if that result is accomplished. If the ITC determines that the injurious effect is not eliminated, then the investigation must be completed.

If the administering authority determines an agreement which resulted in a suspension of an investigation is being violated, then the investigation would be resumed and unliquidated imports of the merchandise covered by the agreement would be liable for antidumping duties retroactively if entered on or after the later of (1) 90 days before the date of the affirmative preliminary determination, or (2) the date of the violation.

Miscellaneous.—Deposit of estimated antidumping duties on imports entered on or after the date of an antidumping duty order would be required at the same time deposit of estimated normal duties is required, *i.e.*, within 30 days after release of the goods from Customs custody. Final settlement of accounts with Customs on imports subject to antidumping duties would be required for most entries within 12 months after the end of an exporter's or manufacturer's fiscal year within which the imports are entered, or withdrawn from warehouse, for consumption.

Antidumping duties could be imposed retroactively from the date of a final finding of—

(1) injury, or

(2) threat of injury which, but for suspension of liquidation, would have been injury,

to the date on which liquidation of entries of imports subject to investigation was suspended, usually the date of the preliminary determination. In "critical circumstances", antidumping duties would be imposed retroactively from the date of a final finding of injury to the date 90 days before the date on which liquidation was suspended. Critical circumstances would exist when the authority determines that (1) (A) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise under investigation, or (B) the importer of the merchandise knew or should have known that dumping was occurring, and (2) that there have been massive imports of the merchandise in a relatively short period, and the ITC determines that the material injury is by reason of the massive imports to an extent that, in order to prevent such material injury from recurring, it is necessary to retroactively impose an antidumping duty.

Review of Determinations

At least once during each 12-month period beginning on the anniversary of the date of publication of a countervailing duty or antidumping duty order, or a notice of the suspension of an investigation, the administering authority would review and determine the amount of

any net subsidy, review and determine the amount of any antidumping duty, and review the current status of, and compliance with, any agreement by reason of which an investigation was suspended.

Whenever, in both antidumping and countervailing duty cases, the administering authority or the ITC receives information concerning, or a request for the review of, an agreement which has resulted in suspension of an investigation or a final determination, which shows changed circumstances sufficient to warrant a review of the suspension or determination, it would conduct such a review. Absent good cause shown, such reviews will not be made before 24 months has elapsed since the notice of the determination or suspension was made.

All reviews, whether by petition or self-initiated, must include a hearing. Following review, the administering authority could revoke, in whole or in part, a countervailing or antidumping duty order or terminate the suspension of an investigation.

Definitions; Special Rules

The following are some key definitions applicable to antidumping or countervailing cases, or both:

(1) *Injury.*—The injury criteria in the countervailing duty and antidumping statutes would be material injury to, threat of material injury to, or material retardation of the establishment of, a domestic injury. "Material injury" would be defined as harm which is not inconsequential, immaterial, or unimportant.

In determining whether injury exists, the ITC would consider (1) the volume of, and relative or absolute increases in the volume of, subsidized or dumped imports and their effect in the undercutting, suppressing, or depressing of prices; and (2) the consequent impact of dumped or subsidized imports on domestic producers.

With respect to impact, the ITC would evaluate all relevant factors, including: Actual and potential decline in output, sales, market share, profits, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; and actual and potential negative effects on cash flow, inventories, employment, wages, growth, and ability to raise capital or investment.

With regard to the volume, effect on prices, and impact of dumped imports, no one or several of the factors listed would necessarily give decisive guidance.

(2) *Industry.*—For purposes of determining material injury in antidumping and countervailing duty cases, the term "industry" would include (a) domestic producers as a whole of a product like the imported articles under investigation, or (b) those domestic producers whose collective output constitutes a major proportion of total domestic production. Producers related to exporters or importers of the dumped product, or which import it, could be excluded. An injury finding could be based on effects in a geographical market if (1) producers in a market sell all or almost all their production there, (2) demand in that market is not to any substantial degree supplied by producers located elsewhere, (3) imports are concentrated in the market, and (4) producers of all, or almost all, of the product in the market are injured.

(3) *Like product.*—"Like product" would be defined as a product which is like, or in the absence of like, most similar in characteristics and uses with, the imported article.

(4) *Subsidy.*—For purposes of the new countervailing duty law, the term "subsidy" would mean the same as "bounty or grant" under existing law, and would include, but not be limited to:

(a) The export subsidies listed in Annex A to the agreement relating to subsidies and countervailing measures; and

(b) The domestic subsidies set forth below when provided or mandated by governmental action to a specific enterprise or industry or group of enterprises or industries, whether publicly or privately owned, and whether paid or bestowed directly or indirectly on the manufacture, production, or export of any class or kind of merchandise:

(i) The provision of capital, loans or loan guarantees on terms inconsistent with commercial considerations;

(ii) The provision of goods or services at preferential rates;

(iii) The grant of funds or forgivement of debt to cover operating losses sustained by a specific industry; and

(iv) The assumption of any costs or expenses of manufacture, production, or distribution.

(5) *Net subsidy.*—The amount of a countervailing duty would be equal to the net subsidy received by the producer, manufacturer, or exporter of the merchandise. The "net subsidy" received would be computed by subtracting from the gross subsidy the following:

(a) Application fees, deposits, and similar payments paid in order to qualify for, or receive, the benefit of the subsidy;

(b) The loss in the value of a subsidy resulting from its deferred receipt, if such deferral is mandated by Government order; or

(c) Export taxes, duties, or other charges levied on the export of the merchandise to the United States specifically intended to offset the subsidy received.

Miscellaneous

Hearings.—The administering authority and the ITC would be required to hold hearings during a countervailing duty or antidumping duty investigation. The hearings would not be subject to the "Administrative Procedures Act" (5 U.S.C. 554, 555, 556, 557, and 702); however, a hearing record would be required.

Verification of information.—Verification of all information relied on by the administering authority in connection with a final determination in a countervailing or antidumping duty investigation would be required. If information submitted could not be verified, then decisions would be made on the basis of the best information available, which may include the information in the petition.

Access to information.—The administering authority and the ITC would keep parties to antidumping and countervailing duty investigations, informed of the progress of the investigation. A record would be maintained by the agencies of ex parte meetings held during the course of an investigation between interested parties or other persons providing factual information and the person in the respective

agency charged with making the determination in the investigation or any person charged with making a final recommendation to that person in the investigation.

Information properly designated as confidential would be maintained in confidence during an investigation, except that the administering authority and the ITC could disclose confidential information received in a proceeding if it is disclosed in a form so that the information cannot be associated with, or otherwise be used to identify, the operation of a particular person. Certain confidential information submitted to the administering authority or the ITC could also be disclosed under an administrative protective order or pursuant to a court order.

Transitional rules for countervailing duty orders.—With respect to countervailing duty orders, in effect on the effective date of the new law and involving countries signing the Subsidies Agreement under which countervailing duties have been waived under section 303(d) of the Tariff Act of 1930, the ITC would determine whether material injury exists within 180 days after being notified by the administering authority of such a case. The waiver in that case would continue until the determination by the ITC. If that determination is negative, the proceeding would terminate. If it is affirmative, countervailing duties would be imposed.

Title II—Customs Valuation

Methods of Valuation

The bill would revise section 402 of the Tariff Act of 1930, which specifies the methods for determining the value of an import for purposes of applying ad valorem duties, to make it consistent with the Customs Valuation Agreement negotiated in the MTN. It would also repeal the Final List and American Selling Price methods of customs valuation.

The amended version of section 402 would contain five methods—one primary method and four secondary methods—for determining customs value. The five methods would be arranged in a hierarchical fashion, with an order of priority governing the application of each method. The first, or primary, method, i.e., the transaction value of the merchandise, is to be used whenever possible. In cases where it may not be used, the second method is to be used. If customs value cannot be found using the second method, the third method is to be used, and so on. The second, third, fourth, and fifth methods of valuation are, respectively: the transaction value of identical merchandise; the transaction value of similar merchandise; the deductive value; and the computed value. If a value can still not be determined, a residual method of valuation would provide for the value to be determined on a basis derived from one of the first five methods, with reasonable adjustments.

Transaction value.—The primary method of valuation under new section 402 would be the transaction value of the imported merchandise, *i.e.*, the price actually paid or payable for the merchandise when sold for exportation to the United States with specified adjustments.

The price actually paid would be increased by the amounts attributable to various factors, including "assists", royalties and license fees the buyer is required to pay as a condition of the sale of the merchandise to him, and the proceeds of a subsequent resale, disposal, or use of the imported merchandise accruing to the seller, if those amounts are not otherwise included in the price actually paid or payable. Assists would be defined as items or services supplied directly or indirectly by the buyer of the imported merchandise free of charge or at reduced cost for use in connection with the production or the sale for export to the United States of the imported merchandise.

Transaction value could be used in related-party transactions in appropriate cases. Two alternative tests would be provided for determining whether the transaction value could be used in a related-party transaction. If an examination of the circumstances of sale of the merchandise indicates that the relationship did not influence the price, then the transaction value could be accepted. The second test would compare the transaction value with a set of "test values" to see if the transaction value closely approximates one of the test values.

Transaction value of identical merchandise and similar merchandise.—If the primary valuation method, *i.e.*, the transaction value of the merchandise being appraised, could not be accepted by the Customs Service, then customs value would be determined by sequentially applying alternative methods. The first alternative would be the previously accepted and adjusted transaction value of identical merchandise sold for export to the United States and exported at or about the same time as the goods being valued. The second alternative would be the previously accepted and adjusted transaction value of similar merchandise sold for export to the United States and exported at or about the same time as the goods being valued.

Deductive value.—If the three previously mentioned value standards could not be accepted, the customs value would be determined on the basis of deductive value or computed value, in that order, unless the importer chooses to reverse the order of application of the two standards. The deductive value of imported goods would be determined by subtracting from their resale price in the United States specific elements of value that have been added to the goods, *e.g.*, customs duties, selling expenses, etc., to arrive at a value comparable to the transaction value.

Computed value.—The computed value of imported merchandise would be the sum of—

(1) The cost or value of the materials and the fabrication and other processing employed in the production of the imported merchandise;

(2) An amount for profit and general expenses equal to that usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by producers in the country of exportation for export to the United States;

(3) Any assist, if not included in (1) or (2) above; and

(4) The packing costs.

Value if other values cannot be determined or used.—The final method of appraisement, to be used only when a value cannot be accepted under any of the previous valuation methods, would be based

on a value that is derived from one of the previous methods, with reasonable adjustments to the extent necessary to arrive at a value.

Presidential Report

Section 203 of the bill would direct the President to submit a report to Congress, as soon as practicable after the close of the 2-year period beginning on the date on which the amendments made by title II of the bill take effect, containing an evaluation of the operation of the Customs Valuation Agreement, both domestically and internationally.

Final list and American Selling Price Rate Conversions

The current U.S. valuation system is composed of two separate customs valuation laws, sections 402 and 402a of the Tariff Act of 1930. The standards in section 402a are the valuation standards established in the original Tariff Act of 1930. The Customs Simplification Act of 1956 added a new section 402 to the Tariff Act of 1930 containing additional standards. The original standards are used to appraise only those articles for which dutiable value during fiscal year 1954 would have been 5 percent less under the section 402 standards added in 1956 as compared to under section 402a standards. These articles were determined by the Secretary of the Treasury and are listed in regulations. They are known as the "Final List" articles.

The American Selling Price (ASP) method of customs valuation exists under both sections 402a and 402, and is virtually identical under both sections. The value of the import is based on the selling price of a U.S. manufactured article which is like or similar to the imported article. ASP is used only if required specifically by law. It must be used to value benzenoid chemicals, certain plastic- or rubber-soled footwear, canned clams, and certain gloves.

Sections 222 and 223 of the bill would convert the rate of duty applicable to each article in the Tariff Schedules of the United States which is on the Final List or valued on an ASP basis to a rate providing duty receipts equal to those received under the Final List or ASP. ASP and Final List would be repealed.

Title III—Government Procurement

Title III would implement the Agreement on Government Procurement. The President would be permitted to waive certain "Buy American" restrictions in U.S. law or practice which discriminate against particular products of designated countries. Designated countries would be countries which are parties to the Agreement or which provide reciprocal procurement benefits to the United States. The President would be permitted to prohibit Federal government procurement of products from non-designated countries. Furthermore, the President would be permitted to withdraw or to limit waivers granted, and, after consultation with the Congress and private sector, to grant new waivers.

The waiver authority would enable the President to waive those portions of U.S. law, most notably the Buy American Act (41 U.S.C. 10a *et seq.*), which discriminate against purchases of foreign goods by

Federal government agencies. A waiver could only apply to goods which are the products of designated countries. Least developed (poorest) countries could be designated without condition. All other countries would be required to provide reciprocal benefits for the United States in their government procurement, and major industrial countries would be required to become parties to the Agreement in order to be designated.

The annex to the Agreement, while not yet finally concluded, indicates those U.S. agencies whose procurement could be subject to waiver of discrimination against foreign goods. Procurement by those agencies accounts for about 15 percent of Federal government procurement. Contracts of under $190,000 are expected from the Agreement and from the President's waiver authority.

The President would be required to bar Federal procurement of products subject to a waiver from any country which is not "designated." However, he could delay this bar with respect to countries (other than major industrial countries) for up to two years; agency heads could waive the bar on a case-by-case basis; and procurement could continue with a country which is a party to a reciprocal procurement agreement with the Department of Defense.

The President would be permitted to reduce or expand the coverage of waivers. However, an expansion of the coverage of a waiver to additional government procurement by an agency not listed in Annex I of the Agreement on the date of enactment of the bill would require prior consultations with the Congress and the private sector.

Title III would impose substantial monitoring and reporting requirements with respect to both United States and foreign government procurement practices, and encourage negotiations to expand the Agreement to cover more foreign government procurement.

Title IV—Technical Barriers to Trade (Standards)

Title IV of the bill would provide the statutory framework for United States' implementation of its obligations under the Agreement on Technical Barriers to Trade. Many of the practices covered by the Agreement, such as notification of proposed standards-related activities and the provision of an opportunity for public comment, are already widely followed in the United States. However, certain of the Agreement's provisions, while they are not a departure from current U.S. practice, require implementation through legislation.

Obligations of the United States.—The legislation would not prohibit standards-related activities which do not create unnecessary obstacles to the international trade of the United States. No standards-related activity would be deemed to constitute an unnecessary obstacle to the international trade of the United States if the demonstrable purpose of the standards-related activity is to achieve a legitimate domestic objective, including, but not limited to, the protection of health or safety, essential security, environmental, or consumer interests, and if such activity does not operate to exclude imported products which fully meet the objectives of such activity. United States implementation of the Agreement would not weaken the right of Federal agencies, State agencies, or private persons to engage in standards-related

activities which are deemed appropriate and necessary for reasons which are established in U.S. law.

Functions of Federal Agencies.—The legislation would attempt to avoid the establishment of new government offices by specifying, wherever possible, the use of existing offices and procedures. Current operations of the Departments of Commerce and Agriculture would be used to implement aspects of the Agreement within their expertise. The Office of the Special Representative for Trade Negotiations (STR) would be given increased responsibilities on coordinating the standards-related activities of Federal agencies which affect international trade. STR, U.S. embassies, and, where appropriate, the Departments of Commerce and Agriculture would also monitor foreign implementation of the Agreement. Finally, STR and the Departments of Commerce and Agriculture would be responsible for coordinating Federal government encouragement of State agencies and private persons to observe practices consistent with the obligations in the Agreement.

Federal agencies would be permitted to provide technical standards assistance to interested parties. It would also require those agencies to solicit technical and policy advice from the private sector advisory committees established under section 135 of the Trade Act of 1974.

Administrative and Judicial Proceedings Regarding Standards-Related Activities.—Section 421 of the bill would provide that, except as otherwise provided in Title IV of the bill, the provisions of the subtitle would not create any right of action under the laws of the United States with respect to allegations that any standards-related activity engaged in within the United States violates the obligations of this country under the Agreement. The STR would process representations alleging U.S. violations of the Agreement and participate, as necessary, in the settlement of disputes between the United States and other Parties to the Agreement (Parties).

Only Parties or countries providing similar rights and privileges to U.S. interests could make representations to the STR alleging violations of U.S. obligations under the Agreement. Federal agency proceedings on allegations against standards-related activities covered by the Agreement would be permitted only if the STR makes a finding of reciprocity or finds that the Agreement dispute-settlement procedures are inadequate.

Definitions and Miscellaneous Provisions.—Definitions of such key terms as "international standards organizations" and "standards" would be contained in Title IV. Miscellaneous provisions would specify persons or intra-agency activities not subject to the subtitle; a provisional effective date for Title IV of January 1, 1980; and the required future evaluation of the operation of the Agreement by the STR.

Title V—Implementation of Certain Tariff Negotiations

Title V of the bill would provide for the implementation of certain tariff concessions negotiated in the MTN. Many of the tariff changes implemented under this title would involve reductions or increases in rates of duty which exceed the limitations on the President's authority to proclaim a reduction or increase in a rate of duty under sections 101 and 109 or the Trade Act of 1974. In other cases, changes in non-

MFN duties or in headnotes, nomenclature, and classification affecting non-MFN duties would be made. Non-MFN duties can only be changed by statute.

TITLE VI—CIVIL AIRCRAFT AGREEMENT

Title VI of the bill would implement tariff changes required under the Agreement on Trade in Civil Aircraft. The President would be permitted to eliminate duties on articles covered by the Agreement, *e.g.*, airplanes and parts certified for use in civil aircraft. The 50 percent duty on repairs on U.S. civil aircraft performed in foreign countries would also be eliminated.

TITLE VII—CERTAIN AGRICULTURAL MEASURES

Title VII would implement concessions to foreign countries under bilateral agreements relating to cheese, chocolate crumb (a mixture of chocolate and milk solids), and meat. The title would: (1) increase the amount of cheese imports permitted under U.S. quotas; (2) establish procedures, in lieu of the countervailing duty law, to prevent subsidized cheese imports under quota from undercutting domestic cheese prices; (3) increase the existing U.S. quotas on chocolate crumb; and (4) establish a 1.2 billion pound floor on meat import quotas under the meat import law.

Cheese.—Section 701 of the bill would permit the President to proclaim import quotas, at an annual level up to 111,000 metric tons, on certain cheeses under the authority of section 22 of the Agricultural Adjustment Act, without following the procedures of section 22. The cheese import quotas could be increased above 111,000 metric tons only in accordance with the provisions and procedures of section 22, except that the President could not take emergency action under section 22, *i.e.*, without a prior investigation and report by the ITC, unless the Secretary of Agriculture finds that "extraordinary circumstances" exist.

About 85 percent of cheeses now imported would be subject to quotas. Certain specialty cheeses and soft-ripened cheeses (Brie, Camembert, etc.) would not be under quota, but imports of other cheeses would be limited, regardless of their price. Current quotas do not limit imports of several types of cheese, if they are priced above $1.23 per pound. The new quota of 111,000 tons would permit importation of about 15,000 more tons of cheese than was imported in 1978.

Section 702 would provide for imposition of additional import fees or quotas on cheese subject to quotas to the extent necessary to prevent imports from undercutting, through use of subsidies, the wholesale price of comparable domestic cheeses. Action against price undercutting would be required within a maximum of 68 days after a complaint.

Chocolate Crumb.—Section 703 of the bill would provide for an increase of about 4,400,000 pounds over the current 21,680,000 pound quota on chocolate crumb. This would accommodate quota allotments to Australia (2,000 metric tons) and New Zealand (2 kilograms) negotiated in the MTN. The nominal allocation to New Zealand would permit that country to export to the United States the amount of quota unused by other countries having significant quota allocations.

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Meat.—Section 704 of the bill would amend the meat import law to provide that no quota may be imposed under that law at a level less than 1.2 billion pounds. This would implement MTN commitments to Australia and New Zealand. Under current law, which sets import quotas at a level in direct proportion to domestic production, domestic production would need to decline below 1978 levels before a quota below 1.2 billion pounds could be established.

As a result of an agreement with Canada, the meat import law would also be amended to make certain high quality portion-controlled cuts of beef subject to the restrictions under that law. The total amount of meat imports permitted under the meat import law would not be increased thereby.

Title VIII—Treatment of Distilled Spirits

Title VIII would implement an important concession to major trading partners by eliminating the current "wine-gallon" method of taxing and levying duties on foreign distilled spirits. The tax and duties would be assessed in proportion to alcoholic content (*i.e.*, a lower tax on 86 proof than on 100 proof). This title would also increase the duty on distilled spirits of countries not providing adequate reciprocal concessions to the United States and would permit reductions in import duties on distilled spirits from countries providing reciprocal concessions. In the latter case, duties could subsequently be increased to the level of protection prevailing under the tax and duty system in effect on January 1, 1979, if the President finds that trading partners are not implementing their concessions. Finally, title VIII would establish an "all-in-bond" administrative system for collecting excise taxes on domestic distilled spirits and would defer for an additional 15 days, phased in over three years, the period for collection of the excise taxes from domestic producers.

Tax treatment.—Title VIII would repeal the wine-gallon method for determining the $10.50 per gallon tax on distilled spirits. As a result, both domestic and imported distilled spirits will be taxed uniformly under the proof-gallon method, which is based upon alcohol content. Title VIII would also provide a one-half month extension in the time period for payment of excise taxes on domestically bottled distilled spirits, to be phased in over a 3-year period.

Other amendments would establish the "all-in-bond" system for controlling the production of distilled spirits and collecting the excise taxes. This would simplify the tax collection process and reduce the number of government employees currently required to collect liquor excise taxes, as well as reducing ancillary capital investment by domestic producers necessary to comply with the current administrative system.

Tariff treatment.—Title VIII would repeal the wine-gallon method of duty assessment and make imported distilled spirits dutiable on the basis of proof gallon, *i.e.*, actual alcoholic content. Tariff rates on distilled spirits would be converted to rates which would yield the same revenues as are now provided by the wine-gallon method of duty assessment and taxation. For example, the rate of duty on bottled whiskey is currently 51 cents per wine-gallon. This rate would rise to $2.30 per

proof-gallon. Of the increase, about $1.70 would reflect conversion to the proof-gallon method of taxation and about 8 cents would reflect the conversion to the proof-gallon of duty assessment.

The new tariff rates would apply to products of countries which fail to provide to United States reciprocal benefits for the wine-gallon repeal. For those countries affording reciprocal MTN benefits, the President would be permitted to reduce the new duty on a proof-gallon basis to the rate now prevailing on a wine-gallon basis, *e.g.*, the rate on bottled whiskey could drop from $2.30 to 51 cents per proof-gallon. Until January 3, 1980, the President would also be permitted to reduce the wine-gallon rate by up to an additional 60 percent, *e.g.*, from 51 cents to 20.2 cents per proof-gallon, under section 101 of the Trade Act of 1974.

The President would be permitted to raise the duty back to the full measure of protection, *e.g.*, $2.30 per proof-gallon on bottled whiskey, if a beneficiary country does not implement concessions granted to the United States. Furthermore, the President would be required to withdraw, suspend, or modify equivalent concessions (but not necessarily the wine-gallon concession) if a foreign country fails to implement concessions benefitting U.S. export interests in distilled spirits.

Title IX—Enforcement of U.S. Rights

Title IX of the bill would revise section 301 of the Trade Act of 1974 to permit enforcement of U.S. rights under the MTN agreements and to provide a procedure for private parties to request government action to remedy foreign violations of the agreements.

Section 301 of the Trade Act of 1974 permits private parties to complain of foreign violations of international trade rules. It permits the President to impose import restrictions as retaliatory action, if necessary, to enforce United States rights against "unjustifiable" or "unreasonable" foreign trade practices which burden, restrict, or discriminate against United States commerce.

Title IX would impose time limits on investigations and recommendations by the Special Representative for Trade Negotiations and on Presidential action under section 301. The revision of section 301 would continue the ability of the United States to take "all appropriate and feasible action" within the President's power to obtain the elimination of any acts, policies, or practices which are unjustifiable, unreasonable, or discriminatory and which burden or restrict U.S. commerce. This mandate would cover those actions which may not be specifically covered by international trade agreements or the GATT but which, in fact, burden or restrict U.S. commerce.

Title X—Judicial Review

Title X of the bill would revise current law to provide increased opportunities for appeal of certain interlocutory and all final rulings by the administering authority, or the U.S. International Trade Commission in antidumping and in countervailing duty cases. Title X would also expand opportunities for judicial review of determinations by the Customs Service of the appraised value, classification, or rate of duty of imported goods. Furthermore, Title X would

provide for judicial review of Customs Service decisions regarding the certification of the "country of origin" of products covered by the Government Procurement Code.

Title X would amend the Tariff Act of 1930 by adding a new section 516A, which would provide the specific judicial review procedures for countervailing duty and antidumping proceedings. Existing section 516 would be amended to delete those provisions dealing with antidumping and countervailing duty determinations, and would solely include procedures for a domestic interested party's contest of appraised value, classification, or the rate of duty of imported merchandise.

Section 516A would establish the standards of review for those countervailing duty and antidumping duty determinations which are appealable. In general, the standard for interlocutory determinations would be whether they are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. The standard for other determinations would be whether they are supported by substantial evidence on the record or are otherwise not in accordance with law. The bill would permit the Customs Court to enjoin, during the period of judicial review, liquidation of some or all entries of merchandise covered by a determination of the administering authority or the ITC during a countervailing or antidumping investigation.

The record before the court, unless otherwise stipulated by all interested parties participating, would consist of all information presented to, or obtained by, the administering authority or the ITC during the course of a countervailing or antidumping proceeding and all government memoranda pertaining to the case on which the authority relied in making determinations. The record would also include a copy of the determinations sought to be reviewed, all transcripts or records of conferences or hearings, and all notices published in the Federal Register.

Title XI—Miscellaneous Provisions

Extension of Nontariff Barrier Negotiating Authority. (Section 1101).—The President's authority under section 102 of the Trade Act of 1974 to enter into trade agreements to eliminate non-tariff barriers and other distortions to trade adversely affecting U.S. commerce would be extended until January 3, 1988. Any agreement would be effective only after Congressional consultation and enactment of an implementing bill under the legislative procedures in the Trade Act of 1974.

Auctioning of Import Licenses (Section 1102).—The President would be permitted to auction licenses used to administer quantitative restrictions under the following laws:

(1) Sections 125, 203, 301, and 406 of the Trade Act of 1974;

(2) Trading With the Enemy Act;

(3) Section 204 of the Agricultural Act of 1956 (except relating to meat or meat products);

(4) The International Emergency Economic Powers Act;

(5) Authority under the headnotes of the U.S. Tariff Schedules (except for restrictions imposed under section 22 of the Agricultural Adjustment Act of 1933); and

(6) Any legislation implementing an international agreement, including commodity agreements (except agreements relating to cheese or dairy products).

The auction authority would apply only to quantitative restrictions imposed or modified after the date of enactment.

Private Advisory Committees (Section 1103).—Private advisory committees established under section 135 of the Trade Act of 1974 would be continued for the purposes of (1) advising on trade negotiations and insuring effective implementation of the MTN codes, (2) evaluating and refining those codes, (3) managing problems in key trading sectors, and (4) advising on overall trade policy objectives and priorities. The mandate of advisory committees would be broadened to include support of implementation of trade agreements and other trade policy activities. The President would be given discretion to establish advisory committees on an appropriate basis when trade policy activities of the U.S. Government warrant them, including committees on services.

The bill would repeal the requirement that existing advisory committees write summary reports of trade agreements entered into under the Trade Act of 1974 after January 3, 1980. The bill would continue exemptions of the advisory committees from provisions of the Federal Advisory Committee Act and would, in addition, exempt agriculture committees from the requirements of Title XVIII of the Food and Agriculture Act of 1977.

Study of Possible Agreements With North American Countries (Section 1104).—A study by the Executive Branch of the desirability of entering into trade agreements to promote the mutual economic growth of the United States, Canada, Mexico, and other appropriate countries in the northern portion of the Western Hemisphere would be required. The study would examine the agricultural, energy, and other sectors, and would be submitted to the Committee on Ways and Means of the House and the Committee on Finance of the Senate within 2 years after enactment of the bill.

Section 337 of the Tariff Act of 1930 (Section 1105).—A civil penalty would be provided for a violation of a cease and desist order issued by the U.S. International Trade Commission under section 337 of the Tariff Act of 1930. Section 337 permits the ITC to issue a cease and desist order with respect to unfair trade practices in the importation of a product. The penalty would be a maximum of the higher of either $10,000 or the market value of the goods in question for each day in which an importation or sale of goods occurs in violation of the order. The penalty would be recovered in a civil action brought by the ITC.

Section 337 would be further amended to make clear that the statute does not cover actions within the purview of the countervailing duty law or the antidumping law. The ITC could suspend that part of an investigation under section 337 which related to such actions.

Reporting Statistics on a Cost-Insurance-Freight (CIF) Basis (Section 1108).—Import and balance-of-trade statistics would be required to be reported on a CIF basis. Such statistics would be required to be released 48 hours before other import or balance-of-trade statistics. Also, there would be required publication of all tariff rates showing

the rates which would be in effect if customs valuation were on a CIF rather than the current basis.

Reorganizing and Restructuring of International Trade Functions of the U.S. Government (Section 1109).—The President would be required to submit proposed legislation restructuring the foreign trade policymaking and regulatory functions of the Federal Government by July 10, 1979. In order to ensure that the 96th Congress takes final action on a comprehensive reorganization of trade functions as soon as possible, the appropriate committee of each House of Congress would give the legislation proposed by the President immediate consideration and would make its best efforts to take final action on a bill to reorganize and restructure the international trade functions of the Government by November 10, 1979.

Study of Export Trade Policy (Section 1110).—On or before July 15, 1980, the President would submit to the Congress a study of the factors bearing on the competitive posture of U.S. producers in world markets and the policies and programs required to strengthen the relative competitive position of the United States in world markets. This study would also include recommendations on the promotion of U.S. exports generally, and exports by small business particularly, and on the disincentives to exports created by the programs and activities of regulatory agencies.

Generalized System of Preferences (Section 1111).—The Generalized System of Preferences (GSP) under Title V of the Trade Act of 1974 would be modified as follows:

(1) The President would be permitted to continue GSP treatment for eligible articles, and to designate new eligible articles, from beneficiary developing countries which exceed the competitive need limitation, *i.e.*, no more than 50 percent of total annual U.S. imports of an article eligible for GSP may come from one country, if total imports of the article are less than $1 million (adjusted annually to reflect changes in the GNP).

(2) The customs union rule which permits such entities to be considered a single country for GSP, would be changed:

(a) To permit associations of countries contributing to comprehensive regional economic integration among their members to be designated as a single beneficiary developing country;

(b) to permit application of the competitive need ceilings on GSP treatment (total annual imports of an eligible article from any one country may not exceed (1) about $37 million, or (2) 50 percent of total U.S. imports of the article) for a specific article from an association of countries described above to the individual member countries of such an association rather than to the association as a whole; and

(c) to reduce the minimum value-added requirement for GSP articles from such an association from 50 percent to 35 percent, the requirement applicable to individual countries.

(3) The exclusion of OPEC member countries from GSP would be modified to allow extension of GSP treatment to eligible articles from OPEC countries otherwise qualifying as beneficiary developing countries if they:

(a) conclude bilateral product-specific trade agreements with the United States in the MTN, and

(b) continue to supply petroleum to the United States.

Concession-Related Revenue Losses to U.S. Possessions (Section 1112).—If a concession is granted in the MTN with respect to a product upon which excise taxes are levied which produced in 1978 a major share (10 percent or greater) of the revenues for the government of a U.S. possession, then the Secretary of Commerce, with respect to fiscal year 1980 and the next 4 fiscal years, would determine within 3 months after the close of the fiscal year whether the concession contributed importantly to a loss of such revenues to the possession in the fiscal year concerned as a result of displaced sales of the product. In making this determination, the Secretary would examine the extent to which any other factors are contributing to a loss of such revenues.

If the Secretary determines a reduction in revenue exists, then the President could add to the budget amounts to be appropriated to the possessions concerned to offset in whole or in part the excise tax losses.

II. GENERAL EXPLANATION

Title and Purpose (Section 1 of the Bill)

Section 1 of the bill states that this act may be cited as the "Trade Agreements Act of 1979"; contains a table of contents to the bill; and lists the purposes of the act. The purposes are (1) to approve and implement trade agreements negotiated under the Trade Act of 1974, (2) to foster the growth and maintenance of an open world trading system, (3) to expand opportunities for U.S. commerce in international trade, and (4) to improve the rules of international trade and to provide for the enforcement of such rules, and for other purposes.

Approval of Trade Agreements (Section 2 of the Bill)

Present law.—Article I, section 8, clause 3 of the Constitution of the United States of America confers upon the Congress the power to "regulate commerce with foreign Nations . . ." Section 102 of the Trade Act of 1974 (19 U.S.C. 2112) provides that a trade agreement entered into by the President under that section enters into force with respect to the United States only if certain conditions are met. Under section 102(e)(2), the President must transmit to Congress (1) copies of the agreements entered into under section 102, (2) a draft bill implementing the agreements, (3) a statement of proposed administrative action to implement the agreements, and (4) a statement as to how the agreements serve the best interests of the United States. Section 151(b) of the Trade Act (19 U.S.C. 2191) requires the implementing bill submitted by the President to contain (1) a provision approving the trade agreements submitted under section 102, (2) a provision approving the statement of administrative action submitted with those agreements, and (3) changes in existing law or new statutory authority necessary or appropriate to implement the trade agreements. No trade agreement entered into under section 102 of the Trade Act enters into force with respect to the United States unless the im-

plementing bill is enacted into law under the procedures in section 151 of the Trade Act.

On June 19, 1979, the President fulfilled the requirements of section 102(e) of the Trade Act by submitting trade agreements negotiated during the Tokyo Round of Multilateral Trade Negotiations, together with the other required documents, to Congress. This message is available in House Document No. 96–153, Parts I and II.

The bill.—Section 2 of the bill would approve (1) the trade agreements, and (2) the statements of proposed administrative action, submitted to the Congress on June 19, 1979. The trade agreements approved would be listed in section 2(c).

Section 2(b) would specify the precise texts of the trade agreements which would be considered, under United States law, the texts of the agreements approved under section 2(a). Section 2(b) would also permit the President to accept for the United States the trade agreements approved under section 2(a), subject to several conditions.

Section 2(b)(1) would permit two types of modifications in the texts of the agreements submitted to the Congress on June 19, 1979. First, minor technical or clerical changes, which do not affect the substance or meaning of the texts as submitted on June 19, could be made before the final legal instruments or texts are adopted internationally. The changes could arise out of the international "rectification", *i.e.*, formal legal drafting, process now underway in Geneva. Second, the annexes to the agreements on government procurement and civil aircraft could be modified so long as the President determines that such modification preserves the balance of concessions reflected in the texts as submitted on June 19. The President would be required to submit copies of the final legal texts or instruments to the Congress.

Paragraphs (2) and (3) of subsection (b) would establish conditions on U.S. acceptance of agreements approved under subsection (a). Paragraph (2) would provide that the President may not apply any agreement to a country unless he determines that such country has assumed the obligations of the agreement toward the United States and, in the case of any major industrial country (Canada, Japan, the European Communities, its member states, and such other countries as the President may designate), the United States should not deny the benefits of the agreement to such country because that country has not provided competitive opportunities for U.S. commerce substantially equivalent to those provided by the United States for that country's commerce in the overall agreements resulting from the MTN.

Paragraph 3 of subsection (b) would establish a general rule that the President may not accept for the United States any agreement approved under subsection (a) unless each major industrial country also accepts such agreement. The intent of this provision is to assure that the United States does not commit itself to new international rules which could only be effective and beneficial to the United States if accepted by all major western industrial countries.

There would be two exceptions to this general rule. First, certain agreements would not be subject to this requirement at all, chiefly because they are either bilateral or involve specific products rather than general international trade rules. These agreements are listed separately in the discussion below of subsection (c).

Second, the President would be permitted to accept any agreement if all but one of the major industrial countries accept the agreement and the President determines that certain other conditions are met. Those conditions are that the nonaccepting country is not essential to operation of the agreement and, (1) that country is not a major factor in trade in the products affected by the agreement, (2) that country is being denied the benefits of the agreement, or (3) it is in the national interest to accept the agreement and a significant portion of U.S. trade will benefit, notwithstanding the nonacceptance by that country. The European Communities, for purposes of paragraph (3), would be considered to accept an agreement if either all its member states or the European Communities accept the agreement.

Reasons for the provision.—Section 2 accomplishes two basic objectives: First, in accordance with sections 102 and 151 of the Trade Act of 1974, subsection (a) approves certain trade agreements, described in subsection (c), which were negotiated in the Multilateral Trade Negotiations (MTN) and submitted to the Congress June 19, 1979, along with the proposed statement of administrative action by the Erecutive Branch. Second, subsection (b) of this section sets conditions for U.S. acceptance of the obligations of the agreements and for the U.S. application of an agreement to another country.

The bill constitutes an implementing revenue bill within the meaning of section 151 of the Trade Act of 1974. As such, it must contain provisions approving both the trade agreements and the statements of proposed administrative action by the Executive Branch with respect to those trade agreements. The agreements approved under subsection (a) and described in subsection (c) all fall within the negotiating mandate of section 102 of the Trade Act of 1974.

The condition on entry into force of a trade agreement under section 102(e)(2)(A) of the Trade Act that a proposed statement of administrative action be reported to and approved by the Congress resulted from congressional concern, arising from events which occurred after the Kennedy Round of Multilateral Trade Negotiations, that the Executive Branch might otherwise attempt to implement the new trade agreement in ways unknown to and not contemplated by the Congress in approving the agreements and enacting this bill. The statements of proposed administration action are not part of the bill and will not become part of U.S. statutes upon enactment of the bill. They will not provide any new, independent legal authority for executive action.

In recommending approval of the statements of proposed administrative action, the committee indicates its conclusion that the statements of proposed action are consistent with the trade agreements as implemented by the bill. The committee does not necessarily approve or disapprove any particular element of the statements, except as noted in this report. Finally, regulations implementing this bill must, of course, be promulgated under the "Administrative Procedures Act" provisions of title 5 of the United States Code.

Section 2(b)(1) of the bill would permit any substantive change in the body of the text of any of the trade agreements approved under section 2(a). The committee understands that the authority to modify annexes will in fact, be used only to conclude negotiations with one

or two countries on the Government Procurement Agreement. No provision or interpretation of the bill will be affected by any technical correction or modification of a text permitted in this section.

The language of paragraph (b)(2) is chosen carefully to permit application of an agreement as implemented under the bill to a "country," if that country meets the requirements of the paragraph with respect to the United States. This could include a country which does not become a party to the MTN agreement. Thus, for example, an agreement might be applied in our trade relations with Taiwan (or the people of Taiwan), although Taiwan can not adhere to the formal MTN agreement.

The intent of section 2(b)(2)(B) is similar to that manifested in section 126(c) of the Trade Act of 1974. However, unlike section 126, this provision in the bill will not require further legislative action before the President may decide not to apply any agreement to a major industrial country. Section 126 of the Trade Act will remain law, and the President must still determine under section 126 (b) whether each major industrial country has granted reciprocal competitive opportunities for U.S. commerce in the MTN agreements. However, the committee is aware that the provisions of section (2)(b)(2)(B) of the bill may serve as a sufficient basis for rectifying an imbalance with respect to another country without necessitating further recommendations by the President for legislative change pursuant to section 126(c).

The Executive Branch negotiators have indicated that they expect all major industrial countries to accept each agreement. The President should make every effort to achieve this expectation and, indeed, should encourage maximum participation by all countries. However, the authority to make an exception for one major industrial country may be a useful precaution where nonacceptance by one such country can be tolerated within the requirements of section 2.

The agreements approved by this bill are as follows:

(1) The Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (relating to customs valuation).

(2) The Agreement on Government Procurement.

(3) The Agreement on Import Licensing Procedures.

(4) The Agreement on Technical Barriers to Trade (relating to product standards).

(5) The Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (relating to subsidies and countervailing measures).

(6) The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (relating to antidumping measures).

(7) The International Dairy Agreement.

(8) Certain bilateral agreements on cheese, other dairy products, and meat.

(A) Agreement with the European Communities,

(B) Agreement with Switzerland,

(C) Agreement with New Zealand,

(D) Agreement with Austria,

(E) Agreement with Finland,

(F) Agreement with Argentina,
(G) Agreement with Australia,
(H) Agreement with Israel,
(I) Agreement with Iceland,
(J) Agreement with Portugal, and
(K) Agreement with Canada.

(9) The Arrangement Regarding Bovine Meat.

(10) The Agreement on Trade in Civil Aircraft.

(11) Texts Concerning a Framework for the Conduct of World Trade.

(12) Certain Bilateral Agreements to Eliminate the Wine Gallon Method of Tax and Duty Assessment.

(13) Certain other agreements to be reflected in Schedule XX of the United States to the General Agreement on Tariffs and Trade:

(A) To Modify United States Watch Making Requirements, and to Modify United States Tariff Nomenclature and Rates of Duty for Watches.

(B) To Provide Duty-Free Treatment for Agricultural and Horticultural Machinery, Equipment, Implements, and Parts Thereof, and

(C) To Modify United States Tariff Nomenclature and Rates of Duty for Ceramic Tableware.

(14) The Agreement with the Hungarian People's Republic.

Relationship of Trade Agreements to United States Law (Section 3 of the Bill)

Present law.—No statutory law.

The bill.—Section 3 of the bill would establish the relationship between agreements approved under section 2 and U.S. law; provide for consideration under the procedures of section 151 in the Trade Act of 1974 of any new legislation necessary or appropriate as a result of future amendments to, or requirements or recommendations arising under, these agreements, and provide that the Special Representative for Trade Negotiations must keep Congressional advisers to the trade agreements program continually informed as to the operation of the trade agreements, including any requirements, amendments, or recommendations contemplated. Section 3(a) would affirm that no provision of any trade agreement approved under section 2, which is inconsistent with any U.S. statute, nor the application of any such provision to any person or set of facts, shall be given effect under U.S. law.

Subsection (b) of section 3 would provide that regulations pertaining to an agreement and contemplated in the statements of proposed administrative action must be issued within 1 year after the entry into force of such agreement for the United States.

Subsections (c) and (d) of section 3 would provide that generally the same procedures applicable to a trade agreement entered into under section 102 of the Trade Act will apply whenever a legislative change is necessary or appropriate as a result of an amendment to, requirement of, or recommendation under a trade agreement approved under section 2. The President would be required to consult with the Finance Committee and the House Ways and Means Com-

mittee at least 30 days before submitting a bill to accomplish the necessary or appropriate legislative changes. The President would be required to submit to the Congress the text of the amendment, requirement, or recommendation, a statement of proposed administrative action, and a full explanation of the need for and benefits of the proposed legislative change. The provisions of section 151 of the Trade Act of 1974, requiring congressional action without amendment within 90 days, would apply to a bill conforming to the requirements.

Subsection (e) would amend section 161(b)(1) of the Trade Act of 1974 to make clear that the Special Representative for Trade Negotiations must continue to consult with and inform congressional advisers for the trade agreements program regarding the operation of the agreements, including amendments, requirements, or recommendations which may develop in international discussions under the agreements.

Subsection (f) would provide that no private right of action or remedy is created by this act, or by the entry into force of any agreement approved under the act, except as specifically provided in the act or other laws of the United States.

Reasons for the provision.—The relationship between the trade agreements and United States law is among the most sensitive issues in the bill. As stated in the statement of proposed administrative action, the trade agreements are not self-executing. Implementation of obligations for the United States under the agreements can only be achieved as is provided in the Trade Act of 1974.

The committee specifically intends section 3 to preclude any attempt to introduce into U.S. law new meanings which are inconsistent with this or other relevant U.S. legislation and which were never intended by the Congress. This bill has been developed by the committee, other committees, and the President, to implement under United States law the obligations assumed by the United States in the MTN trade agreements. If, in the future, amendments to, or interpretations of, any MTN agreement should be adopted internationally which are inconsistent with U.S. legislation, the President may, upon approval by Congress under section 3(c) of the bill, accept such amendments or interpretations. No such amendment or interpretation shall be given effect under U.S. law until it is approved and the necessary or appropriate changes to U.S. legislation have been enacted.

The committee is aware that some major trading partners are concerned that particular elements of this bill do not repeat the precise language of the agreements. This bill is drafted with the intent to permit U.S. practice to be consistent with the obligations of the agreements, as the United States understands those obligations. The bill implements the United States understanding of those obligations.

Our trade laws are, and long have been, subject to administrative and judicial review processes. These processes both lead to and require greater precision in our law than the often vague terms of the agreements or implementing regulations of other countries. Furthermore, unfamiliar terms in the agreements, or terms which may have a different meaning in United States law than in international practice or another country's laws, need to be rendered into United States law in a way which ensures maximum predictability and fairness.

Subsection (e) assures that the Special Trade Representative will continue to provide information to, and consult with Congress concerning the negotiations and international application of the trade agreements. The committee and particularly the Congressional advisers, believe that the information, including telegrams and other documents, and continuing consultations have been extremely useful throughout the MTN, and should be no less helpful in the vital process of applying the agreements. The continuation of close consultation under section 161 of the Trade Act, as amended by the bill, is critical to the future success of United States international trade policy.

TITLE I—COUNTERVAILING AND ANTIDUMPING DUTIES

Introduction and Summary of the Agreements and Existing Law

General Introduction

Title I of the bill implements two of the most important agreements negotiated in the MTN: the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (relating to Subsidies and Countervailing Measures) and The Agreement on Implementation of article VI of the General Agreement on Tariffs and Trade (relating to Antidumping Measures). This title substantially revises longstanding U.S. laws pertaining to countervailing duties (section 303 of the Tariff Act of 1930; 19 U.S.C. 1303) and antidumping duties (the Antidumping Act, 1921; 19 U.S.C. 160 *et seq.*). In addition to making necessary changes in or additions to current law to implement United States obligations under the two agreements, this title makes many appropriate changes in current law to provide for more expeditious decisions, and more effective provisional and financial relief, when a domestic industry is damaged by subsidized or dumped imports.

Subsidies and dumping are two of the most pernicious practices which distort international trade to the disadvantage of United States commerce. Subsidies are bounties or grants bestowed (usually by governments) on the production, manufacture, or export of products, often with the effect of providing some competitive advantage in relation to products of another country. Subsidized competition may harm U.S. producers in our own domestic market or in foreign markets for U.S. exports. Countervailing duties are special duties imposed to offset the amount of the foreign subsidy.

Dumping is the general term for selling in another country's market at prices less than "fair value." Fair value is usually determined by the exporter's comparable home market price, though the exporter's price in a third country market, or the constructed value of his merchandise, may be used to determine fair value in appropriate circumstances. Antidumping duties are special duties imposed to offset the amount of the difference between the fair value of the merchandise and the price for which it is sold in the United States, *i.e.*, the dumping margin.

Under the rules of the General Agreement on Tariffs and Trade (GATT), neither antidumping nor countervailing duties may be

imposed unless subsidization or dumping of the imported product causes or threatens to cause material injury to a domestic industry, or materially retards establishment of a domestic injury. Current U.S. law requires a showing of injury to a domestic industry by reason of dumped imports before antidumping duties may be imposed. No such showing is required to impose countervailing duties under current U.S. law, unless the imported product is otherwise duty-free and international obligations of the United States require a showing of injury. Because the United States countervailing duty law, other than the provision applying countervailing duties to duty-free imports, predates the GATT, the Protocol of Provisional Application of that agreement exempts the countervailing duty law from the rules regarding injury.

The most conspicuous change in current law required by the agreements and adopted in this title is the introduction of a material injury test before any countervailing duty may be imposed on products of countries which assume the obligations of the agreement relating to subsidies and countervailing measures. The "material injury" term will also be used in the antidumping law.

Other significant changes in existing law adopted in this title included acceleration of the period for decision on dumping or subsidy complaints, greater transparency of investigations, and earlier and more effective application of provisional measures to imports during an investigation. Related provisions of title X of the bill provide for judicial review of several important decisions by the administrator of the law. The revisions are all consistent with the agreements and, in the view of the committee, should greatly improve the effectiveness of our laws.

By way of general introduction, the committee emphasizes the potentially important international rules on the use of subsidies incorporated in the agreement relating to subsidies and countervailing measures. That agreement extends the current GATT rule prohibiting export subsidies on industrial products to primary mineral products and expands the existing GATT illustrative list of specific export subsidy practices. Further, the agreement acknowledges the potential trade-distortive effects of domestic subsidies and provides an illustrative list of such domestic subsidies. Finally, the agreement provides a more certain standard for determining when a foreign export subsidy on agricultural products is unfairly damaging our export interests.

These rules could be important in reducing the number of foreign subsidy practices, and thus the need for countervailing duties. Furthermore, if vigorously enforced by the United States and fairly carried out by all parties, these provisions should expand the competitive opportunities for U.S. exporters who currently face subsidized competition in foreign markets.

Summary of Existing International Rules

Both the Agreement relating to Subsidies and Countervailing Measures and the Agreement relating to Antidumping Measures elaborate and supplement a substantial body of rules embodied in or developed under the GATT. The Congress has never approved or disapproved

the GATT or the particular existing rules, nor will it do so by enacting this bill.

Current International Rules.—The basic GATT rules concerning imposition of both countervailing and antidumping duties are contained in Article VI of the GATT. These rules are that countervailing or antidumping duties may not be imposed in an amount in excess of the amount of subsidization (in the case of countervailing duties) or the "margin of dumping" (in the case of antidumping duties). Furthermore, neither countervailing nor antidumping duties may be imposed at all unless the dumping or subsidization causes or threatens to cause material injury to a domestic industry or to retard materially the establishment of a domestic industry (hereinafter collectively referred to as "injury"). As noted above, because the U.S. countervailing duty law generally predates the adoption of the GATT in 1947. Therefore, the United States is not obligated to adopt an injury test. The countervailing duty law was amended in 1975 to apply for the first time to duty-free imports. The United States does require an injury test with respect to duty-free imports of products of GATT members to the extent required by Article VI.

"Subsidy" is not defined in the GATT, though a partial list of export subsidies has been developed over time by some parties to the GATT. "Dumping" is defined as the introduction of a product into another country at less than its "normal value," *i.e.*, less than the comparable home market price in the ordinary course of trade or, if such price is not available, less than the price offered in a third country, which may be the highest such price or a representative price, or the cost of production plus general expenses and reasonable profits, "Normal value" is similar to "fair value" in the Antidumping Act, 1921 and in this bill.

There are additional special rules in Article VI prohibiting the levy of simultaneous countervailing and antidumping duties for the same practice and prohibiting imposition of such duties solely for the nonexcessive remission of consumption taxes, *e.g.*, for border tax adjustments such as those employed in value-added tax systems. There is a presumption against an injury finding in the case of a price-support scheme for a primary product which does not unduly encourage exports and which results in export prices for such products which at times are higher and at times are lower than domestic prices.

Article XVI of the GATT establishes limited rules concerning the use of subsidies. A party granting a subsidy which operates, directly or indirectly, to increase its exports or to reduce its imports must notify other parties of the nature and estimated effect of the subsidy. Where a subsidy causes or threatens "serious prejudice" to the interests of another party, the party granting the subsidy must consult with affected parties upon request and discuss "the possibility of limiting the subsidization." This rule, in practice, has proved as toothless as might be surmised from its terms.

Article XVI provides certain additional rules applicable to export subsidies. Domestic subsidies are not subject to the additional rules. The parties recognize that export subsidies may harm trade interests of other parties. Article XVI prohibits application of export subsidies on any primary product in a manner which results in the subsidizing

country having more than "an equitable share of world trade in that product." The major industrial countries have accepted in Article XVI an additional obligation not to grant export subsidies on any nonprimary, *e.g.*, industrial, product *if* that subsidy results in exports sales at prices below those charged in the home market.

Articles XXII and XXIII contain the basic dispute settlement mechanism. Parties are required to consult with one another in the event of a dispute or question concerning operation of the GATT. If consultations do not lead to a solution, and if a party considers that benefits accruing to it directly or indirectly under the GATT are nullified or impaired by action of another party, then the dispute may be referred to the Contracting Parties to the GATT. The parties then investigate the matter (in practice by forming a panel of "experts") and may make recommendations or, ultimately, authorize retailiatory action by the complaining party. There are no time limits for dispute settlement under Articles XXII and XXIII.

In addition to these basic GATT provisions, there is an International Antidumping Code to which the United States and other industrial countries are signatories. This code elaborates and supplements the basic GATT rules concerning investigation of dumping complaints and application of antidumping duties. The Congress has never approved the code, and indeed has specifically provided in section 201 of Public Law 90–634, that (1) any conflict between the code and the Antidumping Act, 1921, as applied, must be resolved in favor of the Act, (2) the code may be given effect only to the extent consistent with U.S. law, and (3) the code may not restrict the discretion of the Tariff, now International Trade, Commission. The Congress enacted these provisions in response to Executive Branch proposals to interpret the existing U.S. law to conform to the code. The Congress was concerned that this might result in limiting or distorting the interpretation of the Antidumping Act, 1921.

Summary of the Subsidy and Antidumping Agreements

The Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (relating to Subsidies and Countervailing Measures) ("The Subsidies Agreement") and the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (relating to Antidumping Measures) ("The Antidumping Agreement") contain similar obligations with respect to investigation of complaints and application of measures against imports. The agreements are therefore summarized together, though important differences are noted, and there is a separate summary of the rules in the Subsidies Agreement pertaining to use of subsidies.

The United States has long sought greater discipline over the use of subsidies by our trading partners. Existing GATT rules, including both substantive rules and dispute settlement procedures, have not served as an effective deterrent to the range of domestic and export subsidies granted by these countries. Our trading partners, on the other hand, have long urged the United States to adopt the GATT material injury test in our countervailing duty law. These

objectives were the principal motivation for the negotiation of the Subsidies Agreement.

Based largely on the 1967 Antidumping Code and experience thereunder, the United States negotiators sought to establish or elaborate rules for investigation of dumped and subsidized imports, injury to domestic industries, imposition of provisional and final countermeasures, and settlement of international disputes. These elements were first negotiated in the Subsidies Agreement and then proposed, with modifications based chiefly on the differences between dumping and subsidization, as a revised version of the Antidumping Code.

Principal Elements of the Agreements.—The major common elements of the two agreements are:

1. A requirement that the investigation of practices and imposition of countervailing or antidumping duties be in accordance with both Article VI of the GATT and the pertinent agreement (Article I of both agreements).

2. A provision that investigations may be initiated (normally at the request of an industry, but also on the motion of the government) only if there is "sufficient evidence" and allegation of (a) subsidization or dumping, (b) material injury, and (c) a "causal link" between the subsidization or dumping and the injury (Article 2 of the Subsidies Agreement; Article 5 of the Antidumping Agreement).

3. Provisions for "transparency" in all phases of a countervailing duty or dumping case, including publication of laws and regulations, investigations, and decisions, and access to information on which decisions are based, subject to protection of legitimately confidential information.

4. A provision permitting provisional measures during an investigation after preliminary findings of the elements necessary for imposition of countervailing or antidumping duties (or retroactively in defined "critical circumstances"). Provisional measures may not normally exceed 120 days, except in critical circumstances (Article 5 of the Subsidies Agreement; Articles 10 and 11 of the Antidumping Agreement).

5. Elaboration of factors to be evaluated in determining injury (Article 6 of the Subsidies Agreement; Article 3 of the Antidumping Agreement).

6. A provision permitting suspension or termination of cases by agreements eliminating the injurious effect of the alleged subsidization or dumping (Article 5 of the Subsidies Agreement; Article 7 of the Antidumping Agreement).

7. Definition of certain other important terms, *e.g.*, industry.

Special Provisions in the Subsidies Agreement.—As noted above, the major objective of the United States in the negotiations for a subsidies agreement was to strengthen international disciplines on the use of subsidies (comparable international discipline on dumping would be far more difficult, as dumping is normally a function of pricing practices of individual business or agricultural entities). As compared with existing GATT rules, the Subsidies Agreement has the following principal features:

1. A prohibition of export subsidies on primary mineral products, as well as all nonprimary products, regardless of whether the export subsidy results in lower export prices than domestic prices.

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2. A more precise limitation on export subsidies for agriculture. Parties may not grant export subsidies on agricultural products in a manner which results in either displacement of the exports of another party to the Subsidies Agreement, "bearing in mind developments in world markets", or prices for the subsidized export materially below those of other suppliers to a particular market.

3. An updated illustrative list of export subsidies. The committee understands that the adoption of this list and approval of the MTN subsidies and countervailing measures agreement does not prejudice or affect in any manner the dispute concerning the U.S. Domestic International Sales Corporation (DISC) and other countries' foreign tax practices under XXIII of the GATT.

4. With respect to domestic subsidies, explicit recognition of the potential harmful effects of such subsidies on domestic and export industries of other parties, requirement that parties weigh such potential adverse effects and seek to avoid them in devising domestic subsidy programs, and explicit recognition that domestic subsidies may seriously prejudice the interests of another party, nullify or impair GATT benefits, or cause or threaten to cause injury to the domestic industry of another party. If such effects occur, parties could retaliate upon the approval of the Committee of Signatories to the agreement.

5. An illustrative list of domestic subsidies.

6. A provision that, if a country refuses to notify a subsidy practice on request, another party may notify the subsidy practice to the Committee of Signatories, the organizational body under the agreement.

7. A dispute settlement procedure incorporating time limits intended generally to provide final results within 7 months in the case of an export subsidy dispute or 8 months in the case of any other dispute under the agreement.

8. In the case of developing countries which become parties to the agreement, less stringent rules concerning export subsidies, but provision for phaseout of those subsidies over time and in light of their stage of development.

The committee believes these features of the Subsidies Agreement are a positive step in the effort to achieve discipline over subsidy practices, but much will depend on vigorous enforcement and willingness of the parties to observe their letter and spirit. Ambiguities and opportunities to justify circumvention remain in the new rules. If the United States does not press hard for enforcement, or if the international community, particularly the dispute settlement body, chooses to read the basic rules narrowly and the qualifications and exceptions broadly, then U.S. commerce will gain little.

The administration has promised to seek vigorous enforcement, and the provisions of Title IX, as well as Title I, of the bill are intended to help assure such enforcement when affected private citizens complain of foreign violations. The committee intends to monitor these rules, and their international application, very closely.

Structure of Title I

Title I of the bill amends the Tariff Act of 1930 by adding a new title VII concerning countervailing and antidumping duties. The new

title in turn is divided into subtitles A, B, C, and D. Subtitle A deals with countervailing duty cases, including procedures and standards for instituting investigations, applying provisional relief measures, terminating or suspending cases, and imposing final countervailing duties. Subtitle B establishes comparable provisions with respect to antidumping cases. Subtitle C sets common administrative review provisions for antidumping and countervailing duty cases. Subtitle D provides definitions and certain additional rules, most of which are applicable to both antidumping and countervailing duty cases under this title.

The remainder of title I consists of amendments and repeals of existing law and certain special transition rules. The provisions of new Title VII of the Tariff Act of 1930, as added by section 101 of the bill, are discussed below.

TITLE VII OF THE TARIFF ACT OF 1930

SUBTITLE A—IMPOSITION OF COUNTERVAILING DUTIES

Countervailing Duties Imposed (Section 701 of the Tariff Act of 1930)

Present law.—Section 303 of the Tariff Act of 1930 (19 U.S.C. 1303) imposes a countervailing duty on any imported article or merchandise if—

(1) any country, colony, province or other subdivision of government where the product is manufactured or produced, or

(2) any person, partnership, association, cartel, or corporation pays or bestows, directly or indirectly, any bounty or grant upon the manufacture, production, or export of that product. The duty is imposed whether (1) the product is imported directly from the country or through third countries, and (2) the product is in the same condition as when it was exported from the country of production or otherwise.

Section 303 generally does not require that imports benefiting from a bounty or grant injure a domestic industry before a countervailing duty is imposed. However, if the international obligations of the United States[1] require that duty-free articles from a particular country injure a domestic industry before a countervailing duty may be imposed, then section 303(a)(2) requires a determination whether a domestic industry is being or is likely to be injured, or is prevented from being established, by reason of the importation of the article or merchandise benefiting from the bounty or grant.

The amount of the countervailing duty imposed on an imported article is equal to the "net amount" of the bounty or grant. That duty is in addition to other duties imposed on the imported article.

The terms "country", "industry", "bounty or grant", "net amount" of a bounty or grant, and "injury" are not defined in section 303.

The bill.—The bill would leave section 303(a) (1) and (2) of the Tariff Act in effect. Section 303 would apply to all imports other than

[1] See, e.g., Article VI of the General Agreement on Tariffs and Trade.

those to which new section 701 of the Tariff Act of 1930, as added by section 101 of the bill, applies (see the explanation of section 103 of the bill below).

Under section 701 of the Tariff Act, as added by section 101 of the bill, a countervailing duty would be imposed on a class or kind of merchandise imported into the United States if—

(1) a country to which the United States accords the benefits of the Agreement on Subsidies and Countervailing Measures, or

(2) a person, who is a citizen or national of such a country, or an organization organized in such a country,

is providing, directly or indirectly, a subsidy with respect to the manufacture, production, or exportation of that merchandise. No countervailing duty could be imposed under section 701 unless a domestic industry is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of the class or kind of merchandise with respect to which a subsidy is being provided. The amount of the countervailing duty imposed would be in addition to any other duties and would equal the amount of the net subsidy.

Countries to which the United States accords the benefit of the agreement and, therefore, to the merchandise of which section 701 would apply, would include only—

(1) countries to which the United States applies the agreement as determined under section 2(b) (2) and (3) of the bill,

(2) countries which assume obligations benefiting the United States which are substantially equivalent to the obligations of the agreement, and

(3) countries between the United States and which there is an agreement in effect that requires unconditional most-favored-nation treatment of imports into the United States and meets the other requirements of section 701(b)(3) of the Tariff Act, as determined by the President.

The terms "country", "industry", "subsidy", "net subsidy", "material injury", and "Agreement" are defined in section 771 of the Tariff Act, as added by section 101 of the bill. The explanation of these terms is contained in the explanation of section 771 below.

The application of countervailing duties under current law to merchandise (1) whether it is imported directly from the country providing the subsidy or from third countries, and (2) whether it is imported in the same condition as when exported from the subsidizing country or otherwise, would continue under sections 701 and section 771 (12) of the Tariff Act of 1930. as added by section 101 of the bill.

Reason for the provision.—Section 701 would establish the conditions for imposition of countervailing duties consistent with the agreement. A domestic industry must be materially injured by reason of subsidized imports before a countervailing duty could be imposed.

Section 701 would apply only to the extent (1) required by the agreement, as determined under section 2(b) of the bill, and (2) provided under section 701(b) (2) and (3). In all other cases, section 303 of the Tariff Act of 1930, as amended under section 103 of the bill, would continue to apply. Section 303 would continue to require injury as a condition for imposition of countervailing duties only on duty-free

imports and only if the international obligations of the United States so require.

Selective application of section 701 is intended to encourage countries to assume the obligations of the agreement, or substantially equivalent obligations, with respect to the United States. This application is consistent with the agreement and the GATT, including the Protocol of Provisional Application of the General Agreement on Tariffs and Trade.

The committee understands that the only country which currently is committed to assume substantially equivalent obligations with respect to the United States, within the meaning of section 701(b)(2), is Taiwan. The committee also understands that the only agreements which could potentially meet the requirements of section 701(b)(3) are agreements with Venezuela, Honduras, Nepal, North Yemen, El Salvador, Paraguay, and Liberia. No other countries have equivalent rights under agreements with the United States which could meet the requirements of section 707(b)(3).

Section 701 would deviate from current section 303 of the Tariff Act in referring to a "class or kind of merchandise" rather than an "article or merchandise." This difference merely enacts current practice under section 303 and is analogous to the statutory requirement in section 201(a) of the Antidumping Act, 1921 (19 U.S.C. 160). The change clarifies that domestic petitioners and the administrators of the law have reasonable discretion to identify the most appropriate group of products for purposes of both the subsidy and injury investigations.

Procedures for Initiating a Countervailing Duty Investigation (Section 702 of the Tariff Act of 1930)

Present law.—Under section 303(a)(3) of the Tariff Act of 1930, an investigation to determine whether a bounty or grant is being paid or bestowed must be initiated by the Secretary of the Treasury (1) upon the filing by any person of a petition setting forth his belief that a bounty or grant is being paid or bestowed together with the reasons for that belief, or (2) if the Secretary believes an investigation is warranted in light of information presented to the Commissioner of Customs (*see* 19 C.F.R. 159.47). Under current practice, Treasury may refuse to accept a petition for filing if the information it contains does not adequately identify specific subsidy practices. There is no time limit on the period during which Treasury reviews a petition before accepting it for filing. The International Trade Commission (ITC) is not informed about petitions at the time they are filed with Treasury.

The bill.—Under section 702 of the Tariff Act, as added by section 101 of the bill, a countervailing duty investigation to determine whether the elements necessary for imposition of a countervailing duty under section 701 exist would have to be commenced if the administering authority determines, in light of any information available to it, that the investigation is warranted. Upon the filing by a domestic interested party, on behalf of an industry, of a petition alleging the elements necessary for imposition of a countervailing duty

under section 701,[1] a countervailing duty proceeding must be commenced. The petition would be filed with the authority and the ITC. The petition would have to be accompanied by information reasonably available to the petitioner supporting the allegations. It may be amended as the authority and ITC permit.

Within 20 calendar days after the day on which a petition is filed, the authority would have to determine whether the petition alleges the elements necessary for relief supported by information reasonably available to the petitioner. If the determination is positive, the authority would initiate a countervailing duty investigation. If it is negative, the authority's proceeding, and the ITC's inquiry under section 703, would be terminated. In either case, notice of the determination would be published in the Federal Register by the authority.

The term "administering authority" would be defined in section 771(1) of the Tariff Act to be the Secretary of the Treasury or the officer of the United States to whom responsibility for administering Title VII of the Tariff Act is transferred by law. A domestic interested party would be defined under section 771(9) of the Tariff Act to be (1) a manufacturer, producer, or wholesaler in the United States of a like product, (2) a certified or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a like product, or (3) a trade or business association, a majority of whose members manufacture, produce, or wholesale a like product in the United States. The term "like product" is defined under section 771(10) of the Tariff Act to be a product which is like, or in the absence of like, most similar in characteristics and uses with, the imported merchandise subject to an investigation or proceeding initiated under section 702. (See the explanation of section 771 for the explanation of these terms.)

The procedures described above and the other procedures under subtitle A of Title VII of the Tariff Act of 1930, as added by section 101 of the bill, would be generally applicable to section 303 of the Tariff Act, as amended by section 103 of the bill, under regulations prescribed by the administering authority. (See the explanation of section 103 of the bill below.)

Reason for the provision.—Section 702 would establish the criteria for initiating a countervailing duty proceeding and investigation. The term "investigation" applies to that activity which begins when the authority makes an affirmative determination under section 702(a) or 702(c) and ends upon a final disposition of the issue under section 703, 704, or 705, as the case may be. The term "proceeding" applies to that activity which begins when a petition is filed under section 702(b) and ends upon the final disposition of the case, up to revocation of a countervailing duty order, if any, under section 702, 703, 704, 705, or 751, as the case may be.

The major differences between current law and practice and section 702 are (1) a petition must be accepted for filing, (2) the authority must determine whether to initiate an investigation within 20 calendar days after filing, and (3) a person wishing to file a petition

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[1] Material injury or threat of material injury to a domestic industry, or material retardation of establishment of a domestic industry, by reason of imports of a class or kind of merchandise with respect to the manufacture, production, or exportation of which a subsidy is being provided.

must meet standing requirements. Section 702 prohibits refusal of acceptance of a petition for filing. The committee expects the authority to advise and to assist private parties, as appropriate, before they file a petition.

The committee intends section 702(c)(1) to result in investigations being initiated unless the authority is convinced that the petition and supporting information fail to state a claim upon which relief can be granted under section 701 or the petitioner does not provide information supporting the allegations which is reasonably available to him. Under this standard, it may be proper to refuse to commence a proceeding if the specific practice alleged has been determined not to be a subsidy, as a matter of law, in a prior investigation. However, the authority could not refuse to commence a proceeding merely because of conjecture that the practice is not a subsidy.

The committee expects the 20-day time limit, and all other time limits under title VII of the Tariff Act, to be met in all cases. If the last day for a determination falls on a Saturday, Sunday, or legal holiday, then the determination must be made on the next working day. Preferably, determinations will be made before the last day permitted by law.

The committee intends the determination as to the information "reasonably available" to a petitioner to be made in light of the circumstances of each petitioner. Information may be reasonably available to one petitioner but not to another because of differing resources or other characteristics.

The standing requirements in section 702(b)(1) for filing a petition implement the requirements of Article 2(1) of the agreement. The committee intends that they be administered to provide an opportunity for relief for an adversely affected industry and to prohibit petitions filed by persons with no stake in the result of the investigation.

Preliminary Determinations (Section 703 of the Tariff Act of 1930)

Present law.—Under section 303(a)(4) of the Tariff Act of 1930, the Secretary must, within 6 months after the date on which a petition is filed, or notice of an investigation initiated by the Secretary on his own motion is published, make a preliminary determination whether a bounty or grant is being paid or bestowed. The 6-month period cannot be extended. The International Trade Commission (ITC) makes no preliminary determination on injury under current law.

Liquidation of entries of merchandise subject to a countervailing duty investigation cannot be suspended under current law until there is a final affirmative determination that a bounty or grant exists under section 303(a)(4). While liquidation is suspended, Treasury usually requires the importer to deposit estimated duties covering the amount of the estimated countervailing duty under section 505 of the Tariff Act of 1930 (19 U.S.C. 1505). Countervailing duties can be imposed retroactively on entries of duty-free articles made on or after the date of an affirmative final determination under section 303(a)(4) and before the date of an affirmative injury determination by the ITC under section 303(b)(1)(A) (see section 303(c) of the Tariff Act).

The bill.—Under section 703(a) of the Tariff Act, as added by section 101 of the bill, the ITC would be required to make a determination, based upon the best information available to it at the time, whether there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury, or the establishment of an industry in the United States is being materially retarded, by reason of imports of the merchandise which is the subject of an investigation commenced or initiated by the authority under section 702(a) or 702(c). This determination would have to be made within 45 calendar days after (1) the date on which the ITC receives notice from the authority that it is commencing an investigation under section 702(a), or (2) the date on which a petition is filed with the ITC under section 702(b)(2).

If the ITC's determination is affirmative, then the authority's investigation as to the existence of a subsidy would continue. If the determination is negative, then the countervailing duty proceeding would terminate.

Under sections 703(b), (c), and (d) of the Tariff Act, the authority would be required to determine, based upon the best information available to it at the time, whether there is a reasonable basis to "believe or suspect" that a subsidy is being provided with respect to the class or kind of merchandise under investigation. This determination would have to be made within 85 calendar days after the date on which an investigation is commenced under section 702(a) or a petition is filed under section 702(b)(1). The authority's preliminary determination could be made up to 150 days after the investigation is commenced or the petition is filed, as the case may be, if (1) the petitioner makes a timely request for an extension, or (2) the authority concludes that the parties to the investigation are cooperating and that additional time is necessary before a preliminary determination because the case is extraordinarily complicated, within the meaning of section 703(c)(1)(B)(i).

Upon making an affirmative or negative preliminary determination, the authority would continue its investigation as to the existence of a subsidy and publish notice of its preliminary determination in the Federal Register. If the authority's preliminary determination is affirmative, then the ITC would begin its investigation with respect to material injury under section 705(b) and liquidation of entries of merchandise subject to the determination would be suspended. This suspension would apply to entries made on or after the date on which notice of the authority's preliminary determination is published in the Federal Register. Importers of merchandise liquidation of which is suspended would be required to post security, at the time of entry, equal to the estimated amount of the net subsidy. The amount of this security could be subsequently adjusted if the amount of the estimated net subsidy changes.

Under section 703(e), if the petitioner alleges critical circumstances. the authority would be required to determine promptly, on the basis of the best information available to it at the time, whether there is a reasonable basis to believe or suspect that critical circmustances exist. The allegation could be in the original petition or in an amendment to the petition made at any time before the 20th day before the day on which

the authority would be required to make a final determination in the investigation under section 705. For purposes of section 703(e), the term "critical circumstances" means that (1) a subsidy under investigation is inconsistent with the Agreement, and (2) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

If the authority's critical circumstances determination under section 703(e) and its preliminary determination under section 703(b) are affirmative, then the suspension of liquidation required under section 703(d) would apply to all entries of the merchandise subject to the investigation which are unliquidated on the date of the critical circumstances determination and were entered on or after the date which is 90 days before the date on which suspension of liquidation is ordered under section 703(d). Final countervailing duties would be imposed under sections 706(b)(1) and 701(a) on merchandise liquidation of which is suspended by reason of section 703(e) only if the authority and the ITC make final affirmative findings as to the existence of critical circumstances under section 705(a)(2) and 705(b)(4)(A), respectively.

Reason for the provision.—Section 703 would establish the time limits and standards for preliminary determinations, including preliminary critical circumstances determinations, by the authority and the ITC during a countervailing duty investigation. It would also prescribe the consequences of preliminary determinations.

The major differences between current law and practice and section 703 are (1) the requirement that the ITC make a reasonable indication determination with respect to injury, (2) the time period for the authority to make a preliminary determination, and (3) the requirement that liquidation be suspended upon an affirmative preliminary determination by the authority. Before a countervailing duty investigation is initiated, Article 2(4) of the Agreement requires consideration whether both a subsidy and injury exist. The petition determination by the authority under section 702(c) and the determination by the ITC under section 703(a) will implement that requirement for the United States. While the committee recognizes that the ITC cannot conduct a full-scale investigation in 45 days, it expects the Commission to make every effort to conduct a thorough inquiry during that period. The nature of the inquiry may vary from case to case depending on the nature of the information available and the complexity of the issues.

The committee intends the "reasonable indication" standard to be applied in essentially the same manner as the "reasonable indication" standard under section 201(c)(2) of the Antidumping Act, 1921 has been applied. The burden of proof under section 703(a) would be on the petitioner.

A major objective of this revision of the countervailing duty law is to reduce the length of an investigation. Long investigations serve no purpose. They delay relief for domestic industries. They prolong the period of uncertainty, inherent during an investigation, making business decisions by importers difficult if not impossible. Finally, the committee does not believe that long investigations necessarily yield more accurate results than expeditious investigations.

The committee believes the 12- and 15-month investigation periods under current law are too long. The 6-month period before a pre-

liminary determination under current law is also too long. The 85-day period provided under section 703(b) for the authority's preliminary determination is adequate for almost all cases. For these rare, extraordinarily complicated cases where 85 days are not enough, up to 150 days may be used. In light of the importance of expeditious investigations, the authority's discretion to extend the time period under section 703(c)(1)(B) is narrowly circumscribed. The committee intends that very few extensions be made under that provision.

The committee expects the authority to allocate adequate resources to countervailing duty investigations. The committee intends that the authority arrange its staffing and internal procedures so that information will be developed quickly. This will permit foreign parties time to provide information and also provide the petitioner time to respond to the information acquired by the authority. If the petitioner does not have sufficient time to respond, he can request an extension under section 703(c)(1)(A).

The standard for the authority's determination under section 703(b), *i.e.*, "whether there is a reasonable basis to believe or suspect", is not stringent and is intended to be lower than the Treasury's standard for preliminary determinations under current practice. In essence, there should be an affirmative preliminary determination under section 703(b) if the best information available at the time is sufficient on its face to establish that a subsidy is being provided.

The requirement that liquidation be suspended upon an affirmative preliminary determination is intended to preserve the status quo during the remainder of the investigation. If the final determination of either the authority or ITC is negative, then the security required under section 703(d)(2) will be returned under section 705(c)(3)(B). If the final determinations are affirmative and a countervailing duty order is issued, then countervailing duties will be imposed in almost all cases under section 706(b)(1) on merchandise, liquidation of which is suspended, subject to the order.

The critical circumstances provision is consistent with article 5(9) of the agreement. Because the majority of entries are liquidated within 6 weeks after the date of entry, the committee intends that determinations made under section 703(e) be made quickly so that retroactive suspension of liquidation can provide meaningful relief. If critical circumstances are alleged at least 20 days before the authority makes a preliminary determination under section 703(b), then that determination must include the critical circumstances determination. If critical circumstances are alleged after the authority's preliminary determination, then the critical circumstances determination should be made generally within 20 days after the day the allegation is made. In determining whether a subsidy is "inconsistent" with the agreement, the authority should consider both the letter and the spirit of the agreement.

Termination or Suspension of Investigation (Section 704 of the Tariff Act of 1930)

Present law.—Under current practice, countervailing duty investigations may be terminated by the Treasury upon the withdrawal of a petition by the petitioner. Section 303 of the Tariff Act does not

authorize agreements with foreign exporters or governments to take remedial action, nor does it permit suspension of investigations.

Section 303(d)(2) does permit the Secretary to waive the imposition of countervailing duties after an investigation is concluded. The authority to grant waivers will terminate on the date of enactment of the bill, as provided in section 303(d)(4)(A)(ii). One condition on the waiver authority is that "adequate steps" be taken to reduce substantially or eliminate the adverse effect of the bounty or grant. This condition has been met by agreements with foreign governments in a number of cases.

The bill.—Section 704(a) of the Tariff Act of 1930, as added by section 101 of the bill, would permit the authority or ITC to terminate a countervailing duty investigation upon withdrawal of the petition by the petitioner. During the period which begins on the day a petition is filed under section 702(b)(1) and ends on the day of the authority's determination under section 703(b), only the authority could terminate an investigation under section 704(a). If the authority terminates an investigation during that period, the ITC would terminate its inquiry under section 703(a).

Sections 704 (b), (c), (d), (e), (f), (h), and (i) would permit suspension of a countervailing duty investigation at any time before the authority makes a final determination under section 705(a), under carefully specified conditions, upon acceptance by the authority of an agreement by foreign exporters or governments to take remedial actions with respect to the mechandise under investigation. An investigation could be suspended only if the agreement is in the public interest, can be effectively monitored by the United States, and meets specific criteria.

Normally, the government of the country in which the subsidy practice is alleged to occur, or exporters accounting for substantially all of the imported merchandise under investigation, would be required to agree, with respect to the merchandise under investigation, to eliminate the subsidy, to offset completely the net subsidy amount, or to cease exports, within 6 months after the date on which the investigation is suspended. The quantity of merchandise imported into the United States under the agreement during the period before complete elimination, offset, or cessation could not be more than the quantity imported during a recent representative period.

In extraordinary circumstances, the foreign government or exporters could agree to take measures to eliminate completely the injurious effect of the merchandise under investigation on the relevant industry in the United States. The criteria of "extraordinary circumstances" would be that suspension of the investigation will benefit the domestic industry more than its continuation and the case is complex, *i.e.*, there are a large number of complicated subsidy practices, a large number of exporters, or novel issues.

An agreement to take measures to eliminate injurious effect would have to offset at least 85 percent of the net subsidy amount and prevent suppression or undercutting of price levels of domestic products like the imported merchandise. The 85 percent and suppression or undercutting requirements would not apply to an agreement to limit the quantity of the merchandise imported into the United States. Such an agreement could only be made with a foreign government.

Beginning at least 30 calendar days before it could accept an agreement and, therefore, suspend an investigation, the authority would be required to provide information about the proposed agreement to, and to consult with, the petitioner and to notify other parties to the investigation. Upon accepting an agreement, the authority would publish notice in the Federal Register of the suspension together with notice of an affirmative preliminary determination, unless such a determination has already been made during the investigation. If a negative preliminary determination has already been made under section 703 (b), it would be revoked and an affirmative determination made.

The suspension of liquidation required under section 703(d)(1) by reason of the authority's affirmative preliminary determination would either not occur or terminate, as the case may be, upon suspension of an investigation because of an agreement to eliminate the subsidy, offset completely the net subsidy amount, or cease exports. However, suspension of liquidation would continue, or begin on the day on which notices of the suspension of the investigation and the affirmative preliminary determination required under section 704(f)(1)(A) are published and continue, as the case may be, for 20 calendar days after the day on which notice is published of the suspension of an investigation upon acceptance of an agreement, in extraordinary circumstances, to remove the injurious effect of the imported merchandise. If, during this 20-day period, a domestic interested party who is a party to the investigation files a petition with the ITC requesting a review of the effect of the agreement upon which the suspension of the investigation is based, then the suspension of liquidation would continue until the later of the date on which (1) an affirmative determination under section 704(h) is made by the ITC after that review, (2) a final negative determination is made under section 705, or (3) countervailing duties are imposed under section 706(b) and 701(a). The amount of the security required under section 703(d)(2) could be adjusted to reflect the effect of the agreement.

If a domestic interested party files a petition with the ITC within 20 days after an investigation is suspended upon acceptance of an agreement to remove injurious effect, then the Commission would determine whether, in fact, the injurious effect of merchandise covered by the agreement is eliminated completely by the agreement. The ITC determination must be made within 75 calendar days after the date on which the petition is filed. If the determination is affirmative, then the suspension of the investigation would continue for so long as the agreement upon which it is based continues in effect, is not violated, and meets the requirements of section 704. If the determination is negative, then the agreement would be void, the suspension of the investigation would be terminated, and the investigations by the authority and the ITC under section 705 would begin on the day notice of the ITC's negative determination under section 704(h) is published in the Federal Register.

If the authority determines that the terms of an agreement have been violated, or that the agreement no longer meets the requirements of section 704, other than the elimination of injurious effect, then the suspension of the investigation would be terminated and the investi-

gations by the authority and the ITC under section 705 would begin on the day of publication of notice of the authority's determination under setcion 704(i). In making its determination under section 705, the ITC would consider all merchandise subject to the investigation without regard to the effect of the agreement.

The issue of whether an agreement continues to eliminate injurious effect would be reviewable under section 751 of the Tariff Act, as added by the bill. Under section 751(b)(1), the ITC would be required to review an affirmative determination under section 704(h)(2) that an agreement completely eliminates injurious effect if it receives information, or a request, indicating changed circumstances.

If an investigation has been completed because of a request under section 704(g), notwithstanding acceptance of an agreement under section 704(b) or (c), and the authority determines that agreement has terminated, been violated, or no longer meets the requirements of section 704, then a countervailing duty order would be issued immediately if the final determinations under section 705 were affirmative. Countervailing duties imposed under such an order, or under an order issued after final affirmative determinations in an investigation which is resumed because an agreement terminates, is violated, or does not meet the requirements of section 704, would apply to unliquidated entries of merchandise made after the later of—

(1) the date merchandise, which is sold or exported (A) in violation of the agreement, or (B) after the agreement terminates or no longer meets the requirements of section 704, first enters the United States, or

(2) the date 90 calendar days before notice of the suspension of liquidation required under section 704(i)(1)(A) is published.

Intentional violation of an agreement accepted under section 704 would be punishable by a civil penalty under the procedures in section 592 of the Tariff Act of 1930 (19 U.S.C. 1592) in the same manner as a fraudulent violation of that section. The maximum penalty would be an amount equal to the domestic (retail) value of the merchandise intentionally entered in violation of the agreement. This penalty would be subject to mitigation under section 618 of the Tariff Act (19 U.S.C. 1618) and judicial review in the same manner as any other penalty for a violation of section 592.

Notwithstanding acceptance of an agreement under section 704(b) or (c), the investigation would be required to continue under section 704(g) if (1) the government of the country in which the subsidy practice is alleged to occur, or (2) a domestic interested party who is a party to the investigation, so requests. The request must be made within 20 calendar days after notice of suspension of the investigation is published in the Federal Register.

The authority and the ITC would begin their investigation under section 705 on the day they receive a request for continuation. In making its final determination in a continued investigation, the ITC would consider all merchandise subject to the investigation without regard to the effect of the agreement. Suspension of liquidation during a continued investigation would be determined under sections 704(f)(2), (h)(3), and (i)(1), as appropriate.

If the final determination by the ITC or the authority under section 705 in a continued investigation is negative, then the agreement would be void and the investigation terminated as of the date on which notice of that final determination is published in the Federal Register. If the final determination is affirmative, then the agreement would remain in effect and no countervailing duty order would be issued under section 706(a) unless the agreement terminated, is violated, or otherwise fails to meet the requirements of section 704.

Reason for the provision.—Section 704(a) would enact current practice on the termination of investigations. The committee intends that an investigation be terminated under section 704(a) only if the authority or the ITC, as the case may be, determines that termination will serve the public interest. The committee expects the authority and the ITC to establish procedures for consultation with each other prior to either agency terminating an investigation.

Section 704 would also establish criteria and procedures for suspending an investigation upon acceptance of an agreement by a foreign government or exporters to take remedial action. The suspension provisions would implement Article 4 (5) and (6) of the Agreement for the United States.

The suspension provision is intended to permit rapid and pragmatic resolutions of countervailing duty cases. However, suspension is an unusual action which should not become the normal means of disposing of cases. The committee intends that investigations be suspended only when that action serves the interests of the public and the domestic industry affected. For this reason, the authority to suspend investigations is narrowly circumscribed. In particular, agreements which provide for any action less than elimination of the subsidy, complete offset of the net subsidy amount, or cessation of exports can be accepted only in extraordinary circumstances. That is to say, very rarely. Furthermore, the requirement that the petitioners be consulted will not be met by pro forma communications. Complete disclosure and discussion is required.

The committee intends that no agreement be accepted unless it can be effectively monitored by the United States. This will require establishment of procedures under which entries of merchandise covered by an agreement can be reviewed by the authority and by interested parties. Adequate staff and resources must be allocated for monitoring to insure that relief under the agreement occurs.

For purposes of section 704 (b) and (c), the committee intends the term "substantially all of the imports" to mean no less than 85 percent of the imports by volume of the merchandise subject to investigation during a recent representative period. This requirement must be met throughout the duration of the agreement. In every case, agreements with exporters must be between the U.S. Government and those exporters. Section 704 is not intended to permit agreements among exporters or between exporters and United States persons.

The standard for the injurious effect determination by the ITC under section 704(h)(2) is lower than the material injury standard defined in section 771(7). Complete elimination of the injurious effect requires that there be no discernable injurious effect by reason of any net subsidy amount remaining under the agreement.

Final Determinations (Section 705 of the Tariff Act of 1930)

Present law.—Under section 303(a)(4) of the Tariff Act, the Secretary must make a final determination within 12 months after the day on which a petition is filed or notice of an investigation initiated by the Secretary on his own motion is published, whether a bounty or grant is being paid or bestowed. If the Secretary's final determination is affirmative and is an injury determination is required with respect to duty-free articles under section 303(a)(2), then the ITC must make a final determination under section 303(b), within 3 months after being advised by the Secretary of his affirmative final determination, whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of importation of the article or merchandise with respect to which a bounty or grant is being paid or bestowed. The ITC does not begin its investigation until the Secretary makes an affirmative final determination.

Under current law, suspension of liquidation is ordered when the Secretary makes an affirmative final determination and an ITC determination is required. Regardless of whether an injury determination is required, suspension of liquidation is ordered if the exact amount of the net bounty or grant is not known at the time a countervailing duty order is issued. If an ITC determination is required, and that determination is affirmative, countervailing duties may be imposed retroactively on merchandise entered during the ITC investigation.

The bill.—A countervailing duty order would be issued if the authority and the ITC make affirmative final determinations under section 705 of the Tariff Act, as added by section 101 of the bill. If the determination by either the authority or the ITC under section 705 is negative, then the investigation would be terminated, suspension of liquidation, if any, would be terminated, and any security required under section 703(d)(2) would be returned. Section 705(a) would require the authority to make a final determination, within 75 calendar days after the date of its preliminary determination, whether a subsidy is being provided. This means the final determination could be made up to 160 calendar days after an investigation is commenced or a petition is filed, as the case may be. In an extaordinarily complicated case, the period could be as long as 225 calendar days.

Section 705(b) would require the ITC to make a final determination, within 120 calendar days after the date of an affirmative preliminary determination by the authority, whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is being materially retarded, by reason of imports of the merchandise with respect to which the authority has made an affirmative final determination. This means the ITC determination could be made up to 205 calendar days after an investigation is commenced or a petition is filed, as the case may be. In an extraordinarily complicated case, the period could be as long as 270 calendar days. In no event would the ITC be required to make a final determination before the 45th calendar day after the day on which the authority makes its final affirmative determination. The ITC would not make a final determination if the authority's final determination is negative.

The investigations by the authority and the ITC under section 705 would begin simultaneously on the day on which the authority makes an affirmative preliminary determination under section 703(b). If that determination is negative, the ITC would not begin an investigation under section 705 until the authority makes an affirmative final determination. In such a case, liquidation of entries of merchandise covered by the authority's final determination would be suspended on, and the ITC would make its final determination within 75 calendar days after, the date of the authority's final determination. This could result in an investigation lasting up to 235 calendar days, or, in an extraordinarily complicated case, 300 calendar days, the maximum period for a countervailing duty investigation under the new law.

If the petitioner alleges critical circumstances in a timely manner under section 703(e), then the authority and ITC would be required to include additional findings in their final determinations under section 705 if those determinations are affirmative. The authority would be required to find whether (1) the subsidy under investigation is inconsistent with the Agreement, and (2) there have been massive imports over a relatively short period of the class or kind of merchandise which is the subject of the investigation.

If the final determination of the authority is affirmative with respect to both the existence of a subsidy and critical circumstances, then the ITC would be required to find whether there is material injury, which will be difficult to repair, by reason of the massive imports described above. Upon affirmative final determinations by the authority and the ITC which include affirmative findings as to critical circumstances, final countervailing duties would be imposed under sections 706(b)(1) and 701(a) on merchandise liquidation of which is suspended by reason of sections 703(e) and 703(d)(1), *i.e.*, all unliquidated merchandise entered on or after the ninetieth calendar day before the day on which liquidation was first ordered suspended during the investigation.

The ITC would also be required to include an additional finding in its final determination if that determination is that there is only a threat of material injury. In such a case, the Commission would include a finding whether material injury would have existed in the case but for the suspension of liquidation, if any, during the investigation of entries of merchandise subject to the investigation. If that final ITC determination is affirmative but the finding as to threat is negative, then countervailing duties cannot be imposed under section 706(b) and 701(a) on merchandise subject to the investigation which was entered, or withdrawn from warehouse, for consumption before the date on which notice of the ITC's affirmative final determination is published in the Federal Register.

Reason for the provision.—Section 705 would establish the time limits and standards for final determinations, including final critical circumstances determinations, by the authority and the ITC during a countervailing duty investigation. It would also prescribe the consequences of final determinations.

The major differences between current law and section 705 are (1) the requirement that no countervailing duty may be imposed without a determination that material injury exists, (2) the requirement

that the authority and ITC carry on simultaneous investigations, (3) the time periods for those investigations, and (4) the additional findings relating to critical circumstances and threat of injury. After an affirmative preliminary determination in a countervailing duty investigation, Article 2(4) of the Agreement requires simultaneous consideration of whether a subsidy and injury exist. Section 705 would implement this requirement for the United States.

Article 1 of the Agreement requires countervailing duties to be imposed on the products of any country signing the Agreement "in accordance with the provisions of Article VI" of the GATT and the provisions of the Agreement. Article VI of the GATT prohibits the imposition of a countervailing duty on the product of any country which is a party to the GATT unless "the effect of the . . . subsidization . . . is such as to cause or threaten material injury to an established domestic industry, or is such as to retard materially the establishment of a domestic industry." Section 705 implements the requirements of Article 1 of the Agreement for the United States.

Because the terms "subsidy", "net subsidy", and "industry", are defined under section 771 of the Tariff Act, the explanation of those terms as they relate to the standards for determinations under section 705 are in the explanation of section 771. The explanations of the factors to be considered in determining whether injury exists and the amount of injury necessary for that injury to be material are also in the explanation of section 771 as it relates to the term "material injury."

Section 705(b) contains the same causation term as is in current law, *i.e.*, an industry must be materially injured "by reason of" the subsidized imports. The current practice of the ITC with respect to causation will continue under section 705.

In determining whether injury is "by reason of" subsidized imports, the ITC now looks at the effects of such imports on the domestic industry. The ITC investigates the conditions of trade and competition and the general condition and structure of the relevant industry. It also considers, among other factors, the quantity, nature, and rate of importation of the imports subject to the investigation, and how the effects of the net bounty or grant relate to the injury, if any, to the domestic industry. Current ITC practice with respect to which imports will be considered in determining the impact on the U.S. industry is continued under the bill.

Current law does not, nor will section 705, contemplate that the effects from the subsidized imports be weighed against the effects associated with other factors (*e.g.*, the volume and prices of nonsubsidized imports, contraction in demand or changes in patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology, and the export performance and productivity of the domestic industry) which may be contributing to overall injury to an industry. Nor is the issue whether subsidized imports are the principal, a substantial, or a significant cause of material injury. Any such requirement has the undesirable result of making relief more difficult to obtain for industries facing difficulties from a variety of sources; such industries are often the most vulnerable to subsidized imports.

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Of course, in examining the overall injury to a domestic industry, the ITC will consider information which indicates that harm is caused by factors other than the subsidized imports. However, the petitioner will not be required to bear the burden of proving the negative, that is, that material injury is not caused by such other factors. Nor will the Commission be required to make any precise, mathematical calculations as to the harm associated with such factors and the harm attributable to subsidized imports.

While injury caused by unfair competition, such as subsidization, does not require as strong a causation link to imports as would be required in determining the existence of injury under fair trade import relief laws, the Commission must satisfy itself that, in light of all the information presented, there is a sufficient causal link between the subsidization and the requisite injury. The determination of the ITC with respect to causation is, under current law, and will be, under section 705, complex and difficult, and is a matter for the judgment of the ITC.

As noted in the explanation of section 703, above, a major objective of this revision of the countervailing duty law is to reduce the length of an investigation. The committee believes that the 12 and 15 month time limits under current law are too long. The committee intends the usual investigation under the new law to be no more than 205 calendar days.

Assessment of Duty (Section 706 of the Tariff Act of 1930)

Present law.—Under current law and practice, the Secretary issues a countervailing duty order upon making his final determination or upon the ITC final affirmative determination, if one is required (*see* 19 C.F.R. 159.47(d)). Countervailing duties are collected under section 303(c) of the Tariff Act on merchandise entered, or withdrawn from warehouse, for consumption on or after the date on which notice of the Secretary's final determination is published in the Federal Register.

Pending liquidation of entries subject to a countervailing duty order, Treasury usually requires the importer to deposit estimated duties, in an amount equal to the amount of the estimated countervailing duty, under section 505 of the Tariff Act (19 U.S.C. 1505).

There are no time limits on the assessment of countervailing duties under current law. However, under section 504 of the Tariff Act (19 U.S.C. 1504) liquidation of entries must generally occur within 1 year after the date of entry, with administrative extensions in certain circumstances for up to 3 years.

The bill.—Section 706 would require the authority to publish a countervailing duty order within 7 calendar days after being notified of an affirmative decision by the ITC under section 705. Duties would have to be assessed no later than 12 months after the end of the annual accounting period of the manufacturer or exporter within which the merchandise is entered. Estimated duty deposits equal to the amount of the estimated countervailing duty would be required to be deposited at the same time as estimated normal customs duty deposits must be made with respect to the merchandise under section 505(a) of the Tariff Act of 1930 (19 U.S.C. 1505).

If the final determination of the ITC is that there is material injury or threat of material injury which, but for the suspension of liquidation during the investigation, would have been material injury, then section 706 would impose countervailing duties under section 701(a) on all merchandise liquidation of which has been suspended during the investigation or will be suspended under the order issued under section 703(d)(1). However, if the final ITC determination is that there is (1) only threat of injury which would not have been injury absent the suspension of liquidation, or (2) material retardation of the establishment of an industry, then countervailing duties would be imposed only on merchandise which is entered, or withdrawn from warehouse, for consumption on or after the day on which notice of that ITC determination is published in the Federal Register.

Reason for the provision.—Section 706 would establish time limits on the assessment of countervailing duties, require cash deposits of estimated duties upon entry, and prescribe the entries to which countervailing duties will be applied. In establishing time limits on assessment, section 706 creates an affirmative obligation on the Customs Service. Although the requirement that estimated countervailing duty deposits be made as security pending liquidation should reduce the damage which delayed assessment may cause a domestic industry, the committee intends that countervailing duties be collected expeditiously. This will reduce the uncertainty which prevails during suspension of liquidation for both the importer and the domestic industry.

Articles 5 (6) and (7) of the Agreement prohibit collection of countervailing duties on merchandise entered during an investigation unless the final determination is that there is material injury or threat of material injury which, but for provisional measures, *e.g.*, suspension of liquidation, during the investigation, would have been material injury. Section 706(b) implements this provision for the United States.

Treatment of Difference Between Deposit of Estimated Countervailing Duty and Final Assessed Duty Under Countervailing Duty Order (Section 706 of the Tariff Act of 1930)

Present law.—Under current practice, if the security posted to cover the estimated liability for countervailing duties is different from the actual duty imposed, the difference is refunded or collected, as the case may be, without interest.

The bill.—Under section 707 of the Tariff Act of 1930, as added by the bill, the difference between the security posted under 703(d)(2) on an entry during an investigation and the countervailing duty imposed under section 701(a) would be (1) disregarded, if the security is less, or (2) refunded, if the security is more. No interest would accrue in either case.

After a countervailing duty order is issued under section 706, the difference between estimated duty deposits required under section 706(a)(3) and countervailing duties imposed under section 701(a) would be collected or refunded, as the case may be. In either case, interest would be payable as required under section 778 of the Tariff Act, as added by the bill.

Reason for the provision.—Article 5(6) of the agreement prohibits collection of the difference between any security posted during the investigation and the final countervailing duty if the latter exceeds the former. Section 707(a) implements this provision for the United States.

SUBTITLE B OF TITLE VII OF THE TARIFF ACT OF 1930—IMPOSITION OF ANTIDUMPING DUTIES

Antidumping Duties Imposed (Section 731 of the Tariff Act of 1930)

Present law.—Section 202(a) of the Antidumping Act, 1921 (19 U.S.C. 161) imposes a special dumping duty on all imported merchandise of a class or kind subject to a dumping finding if the purchase price or the exporter's sales price of that merchandise is less than the foreign market value, or, in the absence of foreign market value, the constructed value, of that merchandise. A dumping finding is issued if a class or kind of foreign merchandise is being, or is likely to be, sold in the United States or elsewhere at less than its fair value and an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of that merchandise into the United States.

The amount of the special dumping duty imposed on imported merchandise is equal to the difference, if any, between the foreign market value, or, in the absence of foreign market value, the constructed value, of that merchandise and its purchase price or exporter's sales price. The special duty is in addition to other duties imposed on the imported article.

The terms "purchase price", "exporter's sales price", "foreign market value", "constructed value", and "United States" are defined in the Antidumping Act, 1921. The terms "industry" and "injury" are not defined in that act.

The Antidumping Act, 1921, including the requirement that an industry in the United States be injured by reason of dumped imports, applies to imported merchandise from all sources. During the Kennedy Round of Multilateral Trade Negotiations, an Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, known as the International Antidumping Code of 1967, was negotiated. Congressional consideration of the Antidumping Code resulted in the enactment of title II of Public Law 90–634, an Act to extend and amend the Renegotiation Act of 1951, and for other purposes. That law provides that the Antidumping Code shall not be "construed to restrict the discretion of the U.S. Tariff Commission in performing its duties and functions under the Antidumping Act, 1921 . . ." It also requires that any conflict between the Code and the Act be resolved "in favor of the Act as applied by the agency administering the Act . . ."

The bill.—Section 106 of the bill would repeal the Antidumping Act, 1921, although the substance of many of its provisions would be reenacted by section 101 of the bill. Section 731 of the Tariff Act, as added by section 101 of the bill, would impose an antidumping

duty on a class or kind of foreign merchandise which is being, or is likely to be, sold in the United States at less than its fair value if an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of that merchandise. The amount of the antidumping duty would be equal to the amount by which the foreign market value of the merchandise exceeds the United States price for that merchandise. That duty would be in addition to any other duties imposed.

The terms "country", "foreign market value", "United States price", "industry", and "material injury" are defined in section 771 of the Tariff Act of 1930, as added by the bill. The explanation of these terms is contained in the explanation of section 771 below.

Reason for the provision.—Section 731 would establish the conditions for imposition of antidumping duties consistent with the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (relating to antidumping measures) negotiated during the Tokyo Round of Multilateral Trade Negotiations and approved under section 2(a) of the bill. Section 731 would apply to imports of merchandise from all sources whether or not the government of the country in which that merchandise is produced is a party to the Agreement. As is noted in the explanation of section 106 of the bill, section 731 is intended to re-enact the basic standard for imposition of antidumping duties, with minor changes explained below, as it now exists in sections 202 and 201 of the Antidumping Act. In general, section 731, and the other provisions of subtitle B and subtitle D of Title VII of the Tariff Act, revises the terminology of the Antidumping Act as it relates to substantive rules solely to modernize and to clarify those rules. The wording of the basic standard of the imposition of antidumping duties is modified by the addition of the term "material injury" which is explained in the explanation of section 771 of the Tariff Act.

Procedures for Initiation of Antidumping Duty Investigation (Section 732 of the Tariff Act of 1930)

Present law.—Under section 201(c)(1) of the Antidumping Act (19 U.S.C. 160), the Secretary of the Treasury must determine, within 30 days after receiving information alleging that a class or kind of foreign merchandise is being or is likely to be sold at less than fair value, whether to initiate an investigation. The information may come from (1) a customs officer (19 C.F.R. 153.25), or (2) any person "on behalf of any industry in the United States" (19 C.F.R. 153.26).

The Commissioner of Customs, to whom the Secretary has delegated his authority under section 201(c)(1), may refuse to accept a petition from "any person" if the information it contains is not "sufficient to form the basis" for initiation of an investigation (19 C.F.R. 153.28). Within 30 days after a dumping petition is filed, the Commissioner determines whether the information it contains is sufficient to allege dumping. If that determination is affirmative, the Secretary will initiate an investigation. If that determination is negative, the inquiry is closed. The International Trade Commission (ITC) is not informed about petitions at the time they are filed with Treasury.

The bill.—Under section 732 of the Tariff Act, as added by section 101 of the bill, an antidumping duty investigation to determine whether the elements necessary for the imposition of an antidumping duty under section 731 exist would have to be commenced if the administering authority determines, in light of any information available to it, that the investigation is warranted. Upon the filing by a domestic interested party, on behalf of an industry, of a petition alleging the elements necessary for imposition of an antidumping duty under section 731,[1] an antidumping duty proceeding must be commenced. The petition would be filed with the authority and the ITC. The petition would have to be accompanied by information reasonably available to the petitioner supporting the allegations. It may be amended as the authority and ITC permit.

Within 20 calendar days after the day on which a petition is filed, the authority would have to determine whether the petition alleges the elements necessary for relief supported by information reasonably available to the petitioner. If the determination is positive, the authority would commence an antidumping duty investigation. If it is negative, the authority's proceeding, and the ITC's inquiry under section 733, would be terminated. In either case notice of the determination would be published in the Federal Register by the authority.

The term "administering authority" would be defined in section 771(1) of the Tariff Act to be the Secretary of the Treasury or the officer of the United States to whom responsibility for administering Title VII of the Tariff Act is transferred by law. A domestic interested party would be defined under section 771(9) of the Tariff Act to be (1) a manufacturer, producer, or wholesaler in the United States of a like product, (2) a certified or recognized union or group of workers which is representative of an industry engaged in the manufacture, production or wholesale in the United States of a like product, or (3) a trade or business association a majority of whose members manufacture, produce or wholesale a like product in the United States. The term "like product" would be defined under section 771(10) of the Tariff Act to be a product which is like, or in the absence of like, most similar in characteristics and uses with, the imported merchandise subject to an investigation or proceeding initiated under section 732. (See the explanation of section 771 for the explanation of these terms.)

Reason for the provision.—Section 732 would establish the criteria for initiating an antidumping duty proceeding or investigation. The term "investigation" applies to that activity which begins when the authority makes an affirmative determination under section 732(a) or 732(c) and ends upon a final disposition of the issue under section 733, 734, or 735, as the case may be. The term "proceeding" applies to that activity which begins when a petition is filed under section 732 (b) and ends upon the final disposition of the case, up to revocation of an antidumping duty order, if any, under section 732, 733, 734, 735, or 751, as the case may be.

The major differences between current law and practice and section 732 are (1) a petition must be accepted for filing, (2) the authority

[1] Material injury or threat of material injury to a domestic industry, or material retardation of establishment of a domestic industry, by reason of imports of a class or kind of foreign merchandise which is being, or is likely to be sold in the United States at less than its fair value.

must determine whether to initiate an investigation within 20 calendar days after filing rather than 30 calendar days, and (3) a person wishing to file a petition must meet standing requirements. Section 732 prohibits refusal of acceptance of a petition for filing. The committee expects the authority to advise and to assist private parties, as appropriate, before they file a petition.

The committee intends section 732(c)(1) to result in investigations being commenced unless the authority is convinced that the petition and supporting information fail to state a claim upon which relief can be granted under section 731 or the petitioner does not provide information supporting the allegations which is reasonably available to him. The committee expects the 20-day time limit, and all other time limits under Title VII of the Tariff Act, to be met in all cases. If the last day for a determination falls on a Saturday, Sunday, or a legal holiday, then the determination must be made on the next working day. Preferably, determinations will be made before the last day permitted by law.

The committee intends the determination as to the information "reasonably available" to a petitioner to be made in light of the circumstances of each petitioner. Information may be reasonably available to one petitioner but not to another because of differing resources or other characteristics.

The standing requirements in section 732(b)(1) for filing a petition implement the requirements of Article 5(a) of the Agreement. The committee intends that the standing requirements be administered to provide an opportunity for relief for an adversely affected industry and to prohibit petitions filed by persons with no stake in the result of the investigation.

Preliminary Determinations (Section 733 of the Tariff Act of 1930)

Present law.—Under section 201(c)(2) of the Antidumping Act (19 U.S.C. 160), if the Secretary concludes, at the time he makes his 30 day determination under section 201(c)(1), that there is substantial doubt whether an industry is being or is likely to be injured, or is prevented from being established, by reason of the importation of merchandise which is being, or is likely to be sold at less than its fair value, then the ITC must determine within 30 days whether there is no reasonable indication that the industry is being injured or is likely to be injured, or is prevented from being established. If the ITC's determination is affirmative, then the Treasury investigation is terminated.

Under section 201(b)(1) of the Antidumping Act, the Secretary must, within 6 months after the date on which notice of initiation of an investigation is published, make a preliminary determination whether there is reason to believe or suspect that the purchase price of a class or kind of imported merchandise is less, or that the exporter's sales price of that merchandise is less, or likely to be less, than the foreign market value, or, in the absence of foreign market value, the constructed value, of that merchandise. The 6-month period can be extended up to 9 months if the Secretary determines that he cannot reasonably make the preliminary determination within 6 months.

If the Secretary's preliminary determination is negative, the investigation continues. If that determination is affirmative, then appraisement of merchandise subject to the investigation must be withheld effective with respect to entries made on or after the date on which notice of the affirmative preliminary determination is published in the Federal Register. Appraisement may be withheld with respect to entries made not more than 120 days before the date on which that notice is published.

While appraisement is withheld, Treasury usually requires the importer to post a security covering the amount of the estimated special dumping duty under section 623 of the Tariff Act of 1930 (19 U.S.C. 1623). The security required is usually a general or term bond. Special dumping duties may be imposed retroactively on entries appraisement of which is withheld during the investigation.

The bill.—Under section 733(a) of the Tariff Act, as added by section 101 of the bill, the ITC would be required to make a determination, based upon the best information available to it at the time, whether there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury, or the establishment of an industry in the United States is being materially retarded, by reason of imports of the merchandise which is the subject of an investigation commenced by the authority under section 732(a) or 732(c). This determination would have to be made within 45 calendar days after (1) the date on which the ITC receives notice from the authority that it is commencing an investigation under section 732(a), or (2) the date on which a petition is filed with the ITC under section 732(b)(2).

If the ITC's determination is affirmative, then the authority's investigation as to the existence of sales at less than fair value would continue. If the determination is negative, then the antidumping duty proceeding would terminate.

Under section 733 (b), (c), and (d) of the Tariff Act, the authority would be required to determine, based upon the best information available to it at the time, whether there is a reasonable basis to believe or suspect that the merchandise is being sold, or is likely to be sold, at less than fair value. Generally, this determination would have to be made within 160 calendar days after the date on which an investigation is commenced under section 732(a) or a petition is filed under section 732(b)(1).

The authority's preliminary determination could be made within 90 calendar days after a petition is filed under 732(b)(1) under the following conditions. In every investigation, an official of the administering authority would be required to review the information developed or received during the first 60 calendar days after the date on which the petition is filed. If he determines that there is sufficient information upon which to base a preliminary determination, then that official would disclose that information to the petitioner and, upon request, to any interested party who is a party to the proceedings, in accordance with section 777 of the Tariff Act, as added by the bill. If, within 3 calendar days after the date on which such disclosure is made, the petitioner and each domestic interested party to whom disclosure was made provide to the authority an irrevocable written waiver of verifi-

cation under section 776 of the information developed or received by the authority and an agreement to have the preliminary determination made on the basis of the record made during the first 60 days of the proceeding, then the preliminary determination would be made within 90 calendar days after the date on which the petition was filed.

The authority's preliminary determination could be made up to 210 days after the investigation is commenced or the petition is filed, as the case may be, if (1) the petitioner makes a timely request for an extension, or (2) the authority concludes that the parties to the investigation are cooperating and that additional time is necessary before the preliminary determination because the case is extraordinarily complicated, within the meaning of section 733(c)(1)(B)(i).

Upon making an affirmative or negative preliminary determination, the authority would continue its investigation as to the existence of sales at less than fair value and publish notice of its preliminary determination in the Federal Register. If the authority's preliminary determination is affirmative, then the ITC would begin its investigation with respect to material injury under section 735(b) and liquidation of entries of merchandise subject to the determination would be suspended. This suspension would apply to entries made on or after the date on which notice of the authority's preliminary determination is published in the Federal Register. Importers of merchandise liquidation of which is suspended would be required to post security, at the time of entry, equal to the estimated average amount by which the foreign market value exceeds the U.S. price. The amount of this security could subsequently be adjusted if that estimated average changes.

Under section 733(e), if the petitioner alleges critical circumstances, the authority would be required to determine promptly, on the basis of the best information available to it at the time, whether there is a reasonable basis to believe or suspect that critical circumstances exist. The allegation could be made in the original petition or in an amendment to the petition made at any time before the twentieth day before the day on which the authority would be required to make a final determination in the investigation under section 735. For purposes of section 733(e), the term "critical circumstances" means that (1)(A) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or (B) the person by whom or for whose account the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and (2) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

If the authority's critical circumstances determination under section 733(e) and its preliminary determination under section 733(b) are both affirmative, then the suspension of liquidation required under section 733(d) would apply to all entries of the merchandise subject to the investigation which are unliquidated on the date of the critical circumstances determination and were entered on or after the date which is 90 days before the date on which suspension of liquidation is ordered under section 733(d). Final antidumping duties would be imposed under section 736(b) and 731(a) on merchandise liquidation

of which is suspended by reason of section 733(e) only if the authority and ITC make final affirmative findings as to the existence of critical circumstances under sections 735(a)(3) and 735(b)(4)(A), respectively.

Reason for the provision.—Section 733 would establish the time limits and standards for preliminary determinations, including preliminary critical circumstances determinations, by the authority and the ITC during an antidumping duty investigation. It would also prescribe the consequences of preliminary determinations.

The major differences between current law and practice in section 733 are (1) the requirement that ITC make a reasonable indication determination with respect to injury in every case, (2) the time period for the authority and the ITC to make preliminary determinations, and (3) the requirement that liquidation be suspended only with respect to entries made on or after the date on which notice of an affirmative preliminary determination by the authority is published except in critical circumstances. Before an antidumping duty investigation is initiated, Article 5(b) of the Agreement requires consideration whether both sales at less than fair value and injury exist. The petition determination by the authority under section 732(c) and the determination by the ITC under section 733(a) will implement that requirement for the United States. While the committee recognizes that the ITC cannot conduct a full-scale investigation in 45 days, it expects the Commission to make every effort to conduct a thorough inquiry during that period. The nature of the inquiry may vary from case to case depending on the nature of the information available and the complexity of the issues.

The committee intends the "reasonable indication" standard to be applied in essentially the same manner as the "reasonable indication" standard under section 201(c)(2) of the Antidumping Act has been applied. The burden of proof under section 733(a) would be on the petitioner.

A major objective of this revision of the antidumping duty law is to reduce the length of an investigation. As noted in the explanation of section 703 of the Tariff Act, above, the committee believes long investigations serve no purpose. The committee believes that the 13 or 16-month investigation periods under current law are too long. The 7 or 10-month period before a preliminary determination under current law is also too long. The 90- or 160-day periods provided under section 733(b) for the authority's preliminary determination is adequate for almost all cases. For those rare, extraordinarily complicated cases where 160 days are not enough, up to 210 days may be used. In light of the importance of expeditious investigations, the authority's discretion to extend the time period under section 733(c)(1)(B) is narrowly circumscribed. The committee intends that few extensions be made under that provision.

The committee expects the authority to allocate adequate resources to enforcement of the antidumping law. The committee intends that the authoritiy arrange its staffing and internal procedures so that information will be developed quickly. Given the complexity of antidumping duty investigations, the time limits under the newantidumping law will require the authority to review its management of anti-

dmping investigations. Revised procedures will be needed to permit foreign parties time to provide information and also to provide the petitioner time to respond to the information acquired by the authority. If the petitioner does not have sufficient time to respond, he can request an extension under section 733(c)(1)(A).

The standard for the authority's determination under section 733 (b). *i.e.*, "whether there is a reasonable basis to believe or suspect", is the same terminology as is in the current statute. This standard should be applied so that there will be affirmative determinations under section 733(b) if the best information available at the time is sufficient on its face to establish that sales at less than fair value exist or are likely to exist.

Article 10 of the Agreement prohibits the suspension of liquidation of entries made before an affirmative preliminary determination of sales at less than fair value. Section 733(d)(1) will implement this provision for the United States. If the final determinations are affirmative and an antidumping duty order is issued, then antidumping duties will be imposed in almost all cases under section 736(b)(1) on merchandise, liquidation of which is suspended, subject to the order.

The critical circumstances provision is consistent with Article 11 of the Agreement. Because the majority of entries are liquidated within 6 weeks after the date of entry, the committee intends that determinations made under 733(e) be made quickly so that retroactive suspension of liquidation can provide meaningful relief. If critical circumstances are alleged at least 20 days before the authority makes a preliminary determination under section 733(b), then that determination must include the critical circumstances determination. If critical circumstances are alleged after the authority's preliminary determination, then the critical circumstances determination should be made generally within 20 days after the day the allegation is made.

Termination or Suspension of Investigation (Section 734 of the Tariff Act of 1930)

Present law.—Under current practice, antidumping duties investigations may be terminated by the Treasury upon the withdrawal of a petition by the petitioner. Price undertakings are not specifically permitted under the Antidumping Act but in practice are accepted by the Treasury and result in the discontinuance of an antidumping duty investigation. Under current practice, if the Treasury determines that the margins of dumping are minimal, *i.e.*, generally 1 percent or less, the investigation is discontinued if price revisions are made to eliminate the margin and assurances are provided of no future sales at less than fair value.

The bill.—Section 734(a) of the Tariff Act of 1930, as added by section 101 of the bill, would permit the authority or the ITC to terminate an antidumping duty investigation upon withdrawal of the petition by the petitioner. During the period which begins on the day a petition is filed under section 732(b)(1) and ends on the day of the authority's determination under section 733(b), only the authority could terminate an investigation under section 734(a). If the author-

ity terminates an investigation during that period, the ITC would terminate its inquiry under section 733(a).

Section 734 (b), (c), (d), (e), (f), (h), and (i) would permit suspension of an antidumping duty investigation at any time before the authority makes a final determination under section 735(a), under certain conditions, upon acceptance by the authority of an agreement by foreign exporters to take remedial action with respect to the merchandise under investigation. An investigation could be suspended only if the agreement is in the public interest, can be effectively monitored by the United States, and meets specific criteria.

Normally, exporters accounting for substantially all of the imported merchandise under investigation would be required to agree, with respect to the merchandise under investigation, to revise their prices to eliminate completely any amount by which the foreign market value of the merchandise subject to the agreement exceeds the U.S. price of that merchandise, or to cease exports of the merchandise to the United States within 6 months after the date on which the investigation is suspended. The quantity of merchandise imported into the United States under an agreement providing for the cessation of exports of that merchandise could not, during the period before complete cessation, exceed the quantity imported during a recent representative period.

In extraordinary circumstances, the exporters could agree to take measures to eliminate completely the injurious effect of the merchandise under investigation on the relevant industry in the United States. The criteria of "extraordinary circumstances" would be that suspension of the investigation will benefit the domestic industry more than its continuation and the case is complex, *i.e.*, there are a large number of transactions or adjustments, a large number of firms, or novel issues.

Under an agreement to take measures to eliminate injurious effect, the amount by which the estimated foreign market value of each entry covered by the agreement exceeds the U.S. price may not exceed 15 percent of the weighted average amount by which the estimated foreign market value exceeded the U.S. price for all less than fair value entries, examined during the investigation, of the exporter whose merchandise is being entered. Merchandise entered under an agreement to take measures to eliminate injurious effect could not suppress or undercut price levels of domestic products like the imported merchandise. Section 734 would not permit acceptance of any agreement to limit the quantity of merchandise entering the United States.

Beginning at least 30 calendar days before it could accept an agreement and, therefore, suspend an investigation, the authority would be required to provide information about the proposed agreement to, and to consult with, the petitioner and to notify other parties to the investigation. Upon accepting an agreement, the authority would publish notice in the Federal Register of the suspension together with notice of an affirmative preliminary determination, unless such a determination has already been made during an investigation. If a negative preliminary determination has already been made under section 733(b), it would be revoked and an affirmative preliminary determination made.

The suspension of liquidation requirement under 733(d)(1) by reason of the authority's affirmative preliminary determination would either not occur or terminate, as the case may be, upon suspension of an investigation because of an agreement to eliminate completely sales at less than fair value or to cease exports to the United States. However, suspension of liquidation would continue, or begin on the day on which notices of the suspension of the investigation and the affirmative preliminary determination required under section 734(f)(1)(A) are published and continue, as the case may be, for 20 calendar days after the day on which notice is published of the suspension of an investigation upon acceptance of an agreement, in extraordinary circumstances, to remove completely the injurious effect of the imported merchandise. If, during this 20-day period, a domestic interested party who is a party to the investigation files a petition with the ITC requesting a review of the effect of the agreement upon which the suspension of the investigation is based, then the suspension of liquidation would continue until the latter of the date on which (1) an affirmative determination under section 734(h) is made by the ITC after that review, (2) a final negative determination is made under 735, or (3) antidumping duties are imposed under section 736(b) and 731(a). The amount of the security under section 733(d)(2) could be adjusted to reflect the effect of the agreement.

If a domestic interested party files a petition with the ITC within 20 days after an investigation is suspended upon acceptance of an agreement to remove injurious effect, then the Commission would determine whether, in fact, the injurious effect of merchandise subject to the investigation is eliminated completely by the agreement. The ITC determination must be made within 75 calendar days after the date on which the petition is filed. If the determination is affirmative, then the suspension of the investigation would continue for so long as the agreement upon which it is based continues in effect, is not violated, and meets the requirements of section 734. If the determination is negative, then the agreement would be void, the suspension of the investigation would be terminated, and the investigations by the authority and the ITC under section 735 would begin on the day notice of the ITC's negative determination under 734(h) is published in the Federal Register.

If the authority determines that the terms of an agreement have been violated, or that the agreement no longer meets the requirements of section 734, other than the elimination of injurious effect, then the suspension of the investigation would be terminated and the investigation by the authority and the ITC under section 735 would begin on the day of publication of notice of the authority's determination under section 734(i). In making its determination under section 735. the ITC would consider all merchandise subject to the investigation without regard to the effect of the agreement.

The issue of whether an agreement continues to eliminate injurious effect would be reviewable under section 751 of the Tariff Act, as added by the bill. Under section 751(b)(1), the ITC would be required to review an affirmative determination under section 734(h)(2) that an agreement completely eliminates injurious effect if it receives information, or a request, indicating changed circumstances.

If an investigation has been completed because of a request under section 734(g), notwithstanding acceptance of an agreement under section 734 (b) or (c), and the authority determines that the agreement has terminated, been violated, or no longer meets the requirements of section 734, then an antidumping duty order would be issued immediately if the final determinations under section 735 were affirmative. Antidumping duties imposed under such an order, or under an order issued after final affirmative determinations in an investigation which is resumed because an agreement terminates, is violated, or does not meet the requirements of section 734, would apply to unliquidated entries of merchandise made after the later of—

(1) the date merchandise, which is sold or exported (A) in violation of the agreement, or (B) after the agreement terminates or no longer meets the requirements of section 734, first enters the United States, or

(2) the date 90 calendar days before notice of the suspension of liquidation required under section 734(i)(1)(A) is published.

Intentional violation of an agreement accepted under section 734 would be punishable by civil penalty under the procedures in section 592 of the Tariff Act of 1930 (19 U.S.C. 1592) in the same manner as a fraudulent violation of that section. The maximum penalty would be an amount equal to the domestic (retail) value of the merchandise intentionally entered in violation of the agreement. This penalty would be subject to mitigation under section 618 of the Tariff Act (19 U.S.C. 1618) and judicial review in the same manner as any other penalty for a violation of section 592.

Notwithstanding acceptance of an agreement under section 734 (b) or (c), the investigation would be required to continue under section 734(g) if either (1) the exporter or exporters accounting for a significant proportion of exports to the United States of the merchandise which is the subject of the investigation, or (2) a domestic interested party who is a party to the investigation, so request. The request must be made within 20 calendar days after notice of suspension of the investigation is published in the Federal Register.

The authority and the ITC would begin their investigation under section 735 on the day they receive a request for continuation. In making its final determination in a continued investigation, the ITC would consider all merchandise subject to the investigation without regard to the effect of the agreement. Suspension of liquidation during a continued investigation would be determined under sections 734 (f)(2), (h)(3), and (i)(1) as appropriate.

If the final determination by the ITC or the authority under section 735 in a continued investigation is negative, then the agreement would be void and the investigation terminated as of the date on which notice of that final determination is published in the Federal Register. If the final determination is affirmative, then the agreement would remain in effect and no antidumping duty order would be issued under section 736(a) unless the agreement is terminated, is violated, or otherwise fails to meet the requirements of section 734.

Reason for the provision.—Section 734(a) would enact current practice on termination of investigations. The committee intends that an investigation be terminated under section 734(a) only if the authority

or the ITC, as the case may be, determines that termination will serve the public interest. The committee expects the authority and the ITC to establish procedures for consultation with each other prior to either agency terminating an investigation.

Section 734 would also establish criteria and procedures for suspending an investigation upon acceptance of an agreement by foreign exporters to take remedial action. The suspension provision would implement Article 7 (a), (b), and (c) of the Agreement for the United States.

The suspension provision is intended to permit rapid and pragmatic resolutions of antidumping duty cases. However, suspension is an unusual action which should not become the normal means for disposing of cases. The committee intends that investigations be suspended only when that action serves the interest of the public and the domestic industry affected. For this reason, the authority to suspend investigations is narrowly circumscribed. In particular, agreements which provide for any action less than complete elimination of the margin of dumping or cessation of exports can be accepted only in extraordinary circumstances. That is to say, rarely. Furthermore, the requirement that the petitioner be consulted will not be met by pro forma communications. Complete disclosure and discussion is required.

The committee intends that no agreement be accepted unless it can be effectively monitored by the United States. This will require establishment of procedures under which entries of merchandise covered by an agreement can be reviewed by the authority and by interested parties. Adequate staff and resources must be allocated for monitoring to insure that relief under the agreement occurs.

For purposes of section 734 (b) and (c), the committee intends the term "substantially all of the imports" to mean no less than 85 percent by volume of the imports of the merchandise subject to the investigation during a recent representative period. This requirement must be met throughout the duration of the agreement. In every case, agreements with exporters must be between the U.S. Government and those exporters. Section 734 is not intended to permit agreements among exporters or between exporters and U.S. persons.

The standard for the injurious effect determination by the ITC under section 734(h)(2) is lower than the material injury standard defined in section 771(7). Complete elimination of the injurious effect requires that there be no discernible injurious effect by reason of any amount by which the foreign market value exceeds the United States price under the agreement.

Final Determinations (Section 735 of the Tariff Act of 1930)

Present law.—Under section 201(b)(3) of the Antidumping Act (19 U.S.C. 160), the Secretary must make a final determination, within 3 months after the day on which notice of his preliminary determination is published, whether foreign merchandise is being or is likely to be sold in the United States at less than its fair value. This 3-month period may not be extended.

If the Secretary's final determination is affirmative, then the ITC must make a final determination under section 201(a), within 3

months after being advised by the Secretary of his affirmative final determination, whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importance of merchandise which is sold at less than fair value. The ITC does not begin its investigation until the Secretary makes an affirmative final determination.

If the final determination of the ITC is affirmative, then a special dumping duty finding is issued. Special dumping duties are imposed on merchandise, which has not been appraised described in the finding.

The bill.—An antidumping duty order would be issued if the authority and the ITC make final affirmative determinations under section 735 of the Tariff Act, as added by section 101 of the bill. If the determination by either the authority or the ITC under section 735 is negative, then the investigation would be terminated, suspension of liquidation, if any, would be terminated, and any security required under section 735(d)(2) would be returned. Section 735(a) would require the authority to make a final determination, within 75 calendar days after the date of its preliminary determination, whether merchandise which is the subject of the investigation is being, or is likely to be, sold in the United States at less its fair value. This means the final determination could be made up to 235 calendar days after an investigation is commenced under section 731(a) or a petition is filed, as the case may be, in a normal investigation. If the period before a preliminary determination is extended in an extraordinary complicated case, the period before a final determination could be as long as 285 calendar days.

Upon the request of exporters who account for a significant proportion of exports of the merchandise which is subject to the investigation, or upon the request of the petitioner, the authority may extend the period before its final determination from 75 calendar days up to 135 calendar days. Exporters could make such a request only if the preliminary determination by the authority was affirmative. Petitioners could make such a request only if that preliminary determination was negative. If the period before the final determination by the authority is extended, then the period before the authority's final determination could be as long as 295 days or, in an extraordinarily complicated case, 345 days.

Section 735(b) would require the ITC to make a final determination, within 120 calendar days after the date of an affirmative preliminary determination by the authority, whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is being materially retarded, by reason of imports of the merchandise with respect to which the authority has made an affirmative final determination. This means the ITC final determination could be made up to 280 calendar days after an investigation is commenced by the authority under section 731(a) or a petition is filed, as the case may be. In an extraordinarily complicated case, the period could be as long as 330 calendar days. In no event would the ITC be required to make a final determination before the forty-fifth calendar day after the day on which the authority makes its final affirmative determination. The

ITC would not make a final determination if the authority's final determination is negative.

The investigations by the authority and the ITC under section 735 would begin simultaneously on the day on which the authority makes an affirmative preliminary determination under 733(b). If that determination is negative, the ITC would not begin an investigation under section 735 until the authority makes an affirmative final determination. In such a case, liquidation of entries of merchandise covered by the authority's final determination would be suspended on, and the ITC would make its final determination within 75 calendar days after, the date of the authority's final determination. This could result in an investigation lasting up to 310 calendar days, or, in an extraordinarily complicated case, 360 calendar days. If the authority extends the period before its final determination upon a request from exporters or the petitioner, then the investigation could last up to 370 calendar days, or, in an extraordinarily complicated case, 420 calendar days, the maximum period for an antidumping duty investigation under the new law.

If the petitioner alleges critical circumstances in a timely manner under section 733(e), then the authority and ITC would be required to include additional findings in their final determinations under section 735 if those determinations are affirmative. The authority would be required to find whether (1)(A) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or (B) the person by whom or for whose account the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and (2) there have been massive imports over a relatively short period of the merchandise which is the subject of the investigation.

If the final determination of the authority is affirmative with respect to both the existence of sales at less than fair value and critical circumstances, then the ITC would be required to find whether there is material injury by reason of such massive imports to an extent that, in order to prevent such injury from recurring, it is necessary to impose antidumping duties retroactively. Upon affirmative final determinations by the authority and the ITC which include affirmative findings as to critical circumstances, final antidumping duties would be imposed under section 736(b) and 731(a) on merchandise liquidation of which is suspended by reason of sections 733(e) and 733(d)(1), *i.e.*, all unliquidated merchandise entered on or after the 90th calendar day before the day on which liquidation was first ordered suspended during the investigation.

The ITC would also be required to include an additional finding in its final determination if the determination is that there is only a threat of material injury. In such a case, the Commission would include a finding whether material injury would have existed in the case but for the suspension of liquidation, if any, during the investigation of entries of merchandise subject to the investigation. If that final ITC determination is affirmative but the finding as to threat is negative, then antidumping duties cannot be imposed under sections 736(b) and 731(a) on merchandise subject to the investigation which was entered, or withdrawn from warehouse, for consumption before the date

on which notice of the ITC's affirmative final determination is published in the Federal Register.

Reason for the provision.—Section 735 would establish the time limits and the standards for final determinations, including final critical circumstances determinations, by the authority and the ITC during an antidumping duty investigation. It would also prescribe the consequences of final determinations.

The major differences between current law and section 735 are (1) the requirement that the authority and ITC carry on simultaneous investigations, (2) the time periods for those investigations, and (3) the additional findings relating to critical circumstances and threat of injury. After an affirmative preliminary determination in an antidumping duty investigation, Article 5(b) of the Agreement requires simultaneous consideration of whether sales at less than fair value and injury exist. Section 735 would implement this requirement for the United States.

The term "fair value", which appears in the current law, is continued under the new antidumping law as a standard for determinations during the investigation. "Fair value" is not defined in current law or in the bill. The committee intends the concept to be applied essentially as an estimate of what foreign market value will be so as to provide the administering authority with greater flexibility during its investigation. The explanation of the term "industry" appears in the explanation of section 771 of the Tariff Act. The explanations of the factors to be considered in determining whether injury exists and the amount of injury necessary for that injury to be material are also in the explanation of section 771 as it relates to the term "material injury."

Section 735(b) contains the same causation term as is in current law, *i.e.*, an industry must be materially injured "by reason of" less-than-fair-value imports. The current practice by the ITC with respect to causation will continue under section 735.

In determining whether injury is "by reason of" less-than-fair-value imports, the ITC now looks at the effects of such imports on the domestic industry. The ITC investigates the conditions of trade and competition and the general condition and structure of the relevant industry. It also considers, among other factors, the quantity, nature, and rate of importation of the imports subject to the investigation, and how the effects of the margin of dumping relate to the injury, if any, to the domestic industry. Current ITC practice with respect to which imports will be considered in determining the impact on the U.S. industry is continued under the bill.

Current law does not, nor will section 735, contemplate that the effects from less-than-fair-value the imports be weighed against the effects associated with other factors (*e.g.*, the volume and prices of imports sold at fair value, contraction in demand or changes in patterns of consumption, trade, restrictive practices of and competition between the foreign and domestic producers, developments in technology, and the export performance and productivity of the domestic industry) which may be contributing to overall injury to an industry. Nor is the issue whether less-than-fair-value imports are the principal, a substantial, or a significant cause of material injury. Any such requirement

has the undesirable result of making relief more difficult to obtain for industries facing difficulties from a variety of sources; industries that are often the most vulnerable to less-than-fair-value imports.

Of course, in examining the overall injury to a domestic industry, the ITC will consider information which indicates that harm is caused by factors other than the less-than-fair-value imports. However, the petitioner will not be required to bear the burden of proving the negative. That is, that material injury is not caused by such other factors. Nor will the Commission be required to make any precise, mathematical calculations as to the harm associated with such factors and the harm attributable to less-than-fair-value imports.

While injury caused by unfair competition, such as less-than-fair-value imports, does not require as strong a causation link to imports as would be required in determining the existence of injury under fair trade import relief laws, the Commission must satisfy itself that, in light of all the information presented, there is a sufficient causal link between the less-than-fair-value imports and the requisite injury. The determination of the ITC with respect to causation is, under current law, and will be, under section 735, complex and difficult, and is a matter for the judgment of the ITC.

As noted in the explanation of section 733 above, a major objective of this revision of the antidumping duty law is to reduce the length of an investigation. The committee believes that the 13- or 16-month time limits under current law are too long. The committee intends the usual investigation under the new law to be no more than 280 calendar days.

Assessment of Duty (Section 736 of the Tariff Act of 1930)

Present law.—Under section 201(a) of the Antidumping Act (19 U.S.C. 160), the Secretary issues a dumping finding upon an affirmative final finding by the ITC. Special dumping duties are imposed under section 202 of the Antidumping Act on merchandise which has not been appraised before notice of the finding is published. Pending liquidation of entries subject to a dumping finding. Treasury usually requires the importer to post a security covering the amount of the estimated special dumping duty under section 623 of the Tariff Act of 1930 (19 U.S.C. 1623). The security required is usually a general or term bond.

Theer are no time limits on assessments of special dumping duties under current law. However, under section 504 of the Tariff Act (19 U.S.C. 1504), liquidation of entries must generally occur within 1 year after the date of entry, with administrative extensions in certain circumstances for up to 3 years.

The bill.—Section 736 would require the authority to publish an antidumping duty order within 7 calendar days after being notified of an affirmative decision by the ITC under section 735. Duties would have to be assessed within 6 months after the date on which the authority receives satisfactory information upon which the assesment may be based, but in no event later than (1) 12 months after the end of the annual accounting period of the manufacturer or exporter within which the merchandise is entered, or (2) in the case of merchandise not sold prior to its importation into the United States, 12 months after the end of the annual accounting period of the maufacturer or exporter

within which it is sold in the United States to a person who is not the exporter of that merchandise.

Generally, estimated duty deposits equal to the amount of the estimated antidumping duty would be required to be deposited at the same time as estimated normal customs duty deposits must be made with respect to the merchandise under section 505(a) of the Tariff Act of 1930 (19 U.S.C. 1505). However, the administering authority could permit the importer to post a bond or other security in lieu of estimated antidumping duty deposits for not more than 90 calendar days after the date on which the antidumping duty order is published under certain conditions. The manufacturer, producer, or exporter of the merchandise would be required to supply the authority sufficient information relating to entries of the merchandise made after the date of the preliminary determination by the authority and before the date of the final determination by the ITC to enable the authority to determine the amount of antidumpting duties on that merchandise under section 751(a) of the Tariff Act. If the authority permits the posting of bonds or other security in lieu of estimated duty deposits and makes a determination under section 751, then that determination would be the basis for the assessment of antidumping duties imposed on entries made before the date of the affirmative determination of the ITC. That determination would also be the basis for the deposit of estimated antidumping duties on entries of merchandise by the manufacturer, producer, or exporter who supplies the information, made on or after the earlier of the date on which the determination is made under section 751(a) or the 90th day after the date on which the antidumping duty order is published.

If the final determination of the ITC is that there is material injury or threat of material injury which, but for the suspension of liquidation during the investigation, would have been material injury, then section 736 would impose antidumping duties under section 731(a) on all merchandise liquidation of which has been suspended during the investigation or will be suspended under the order issued under section 733(d)(1). However, if the final ITC determination is that there is (1) only threat of injury which would not have been injury without the suspension of liquidation, or (2) material retardation of the establishment of an industry, then antidumping duties would be composed only on merchandise which is entered, or withdrawn from warehouse, for consumption on or after the day on which notice of the ITC determination is published in the Federal Register.

Reason for the provision.—Section 736 would establish time limits on the assessment of antidumping duties, require cash deposits of estimated duties upon entry, and prescribe the entries to which antidumping duties may be applied. In establishing time limits on assessment, section 736 creates an affirmative obligation on the Customs Service. Although the requirement that estimated antidumping duty deposits be made as security pending liquidation should reduce the damage which delayed assessment may cause a domestic industry, the committee intends that antidumping duties be collected expeditiously. This will reduce the uncertainty which prevails during suspension of liquidation for both the importer and the domestic industry. In light of the dismal performance of the Department of the Treasury in assess-

ing special dumping duties in the recent past, the committee considers this time limit on assessment to be an extremely important addition to the law.

Article 11 of the Agreement prohibits collection of antidumping duties on merchandise entered during the investigation unless the final determination is that there is a material injury or threat of material injury which, but for provisional measures; *e.g.*, suspension of liquidation during the investigation, would have been material injury. Section 736(b) implements this provision for the United States.

Treatment of Difference Between Deposit of Estimated Antidumping Duty and Final Assessed Duty Under Antidumping Duty Order (Section 737 of the Tariff Act of 1930)

Present law.—Under current practice, if the security posted to cover the estimated liability for special dumping duties is different from the actual duty imposed, the difference is refunded or collected, as the case may be, without interest.

The bill.—Under section 737 of the Tariff Act of 1930, as added by section 101 of the bill, the difference between the security posted under section 733(d)(2) on an entry during an investigation and the antidumping duty imposed under section 731(a) would be (1) disregarded, if the security is less, or (2) refunded, if the security is more. No interest would accrue in either case.

After an antidumping duty order is issued under section 736, the difference between estimated duty deposits required under section 736(a)(3) and antidumping duties imposed under section 731(a) would be collected or refunded, as the case may be. In either case, interest would be payable as would be required under section 778 of the Tariff Act, as added by section 101 of the bill.

Reason for the provision.—Article 11(1) of the Agreement prohibits collection of the difference between any security posted during the investigation and the final antidumping duty if the latter exceeds the former. Section 737(a) implements this provision for the United States.

Conditional Payment of Antidumping Duty (Section 738 of the Tariff Act of 1930)

Present law.—Under section 208 of the Antidumping Act (19 U.S.C. 167), if the person by whom or for whose account merchandise subject to a dumping finding is imported has not made an oath before the appropriate customs officer (1) that he is not an exporter, or (2) as to the exporter's sales price of that merchandise, then the customs officer may not deliver that merchandise to that person until he has made an oath that he has not sold or agreed to sell the merchandise and he provides a bond in an amount equal to the estimated value of the merchandise. The bond must contain the following conditions. The importer must report to the customs officer the exporter's sales price of the merchandise within 30 days after the merchandise has been sold or agreed to be sold in the United States. The importer must pay upon demand the amount of the special dumping duty, if any imposed under the Antidumping Act on the merchandise. The importer must furnish to the customs

officer such information as may be in his possession and as may be necessary for the ascertainment of the special dumping duty. Finally, the importer will keep such records as to the sale of such merchandise as are required by regulation.

The bill.—Section 738 of the Tariff Act of 1930, as added by section 101 of the bill, would prohibit delivery of merchandise of the class or kind subject to an antidumping duty order to the person by whom or for whose account it was imported unless that person deposits an estimated antidumping duty in an amount determined by the administering authority and complies with the following requirements:

(1) The person must furnish such information as the authority considers necessary for determining the United States price of the merchandise and such other information as the authority deems necessary for determining the antidumping duty on that merchandise.

(2) The person must maintain and furnish to the customs officer such records concerning the sale of the merchandise as the authority requires.

(3) The person must state under oath before the customs officer that he is not an exporter, or, if he is an exporter, declare under oath at the time of entry the exporter's sales price of the merchandise to the customs officer if it is then known. If the exporter's sales price is not then known, the importer must declare the exporter's sales price within 30 days after the merchandise has been sold, or has been made subject of an agreement to be sold, in the United States.

(4) The person must pay, or agree to pay on demand, the customs officer the amount of the antidumping duty imposed on that merchandise.

Reason for change.—Section 738 re-enacts the requirements of section 208 of the Antidumping Act. Section 738 requires the deposit of an estimated antidumping duty before merchandise may be delivered. The requirement under section 208 of the Antidumping Act that the importer provide a bond in an amount equal to the estimated value of the merchandise will be eliminated.

Duties of Customs Officers (Section 739 of the Tariff Act of 1930)

Present law.—Under section 209 of the Antidumping Act, 1921 (19 U.S.C. 168), customs officers are required to use all reasonable ways and means to ascertain, estimate, and appraise the foreign market value or the constructed value, as the case may be, the purchase price, the exporter's sales price, and any other facts which the Secretary of the Treasury may deem necessary for purposes of the Antidumping Act.

The bill.—Section 739 of the Tariff Act of 1930, as added by section 101 of the bill, would require customs officers, by all reasonable ways and means and consistent with the provision of title VII of the Tariff Act of 1930, to ascertain and determine, or estimate, the foreign market value, the United States price, and any other information necessary for the purposes of administering title VII.

Reason for the provision.—Section 739 reenacts the requirements of section 209 of the Antidumping Act, 1921.

Antidumping Duty Treated as Regular Duty for Drawback Purposes (Section 740 of the Tariff Act of 1930)

Present law.—Section 211 of the Antidumping Act, 1921 (19 U.S.C. 170), treats special dumping duties as regular customs duties within the meaning of all laws relating to the drawback of customs duties.

The bill.—Section 740 of the Tariff Act of 1930, as added by section 101 of the bill, would treat antidumping duties in all respects as normal customs duties for the purposes of any law relating to the drawback of customs duties.

Reason for the provision.—Section 740 of this bill reenacts the requirements of section 211 of the Antidumping Act.

SUBTITLE C OF TITLE VII OF THE TARIFF ACT OF 1930—REVIEW OF DETERMINATIONS

Administrative Review of Determinations (Section 751 of the Tariff Act of 1930)

Present law.—Under section 303(a)(5) of the Tariff Act of 1930, (19 U.S.C. 1303), the Secretary of the Treasury may revise the amount of a countervailing duty from time-to-time, as he "deems necessary". Under current practice, the need for a countervailing duty order may be reviewed by the Secretary on his own motion or at the request of an interested party if there are changed circumstances. Under current ITC regulations, the Commission will review an injury finding in a countervailing duty case on its own motion, at the request of an interested party, or upon advice from the Treasury that there are "changed circumstances." Absent "good cause", the ITC will not review an injury determination within 2 years of a final determination that a bounty or grant exists (19 C.F.R. 207.9).

Under section 202 of the Antidumping Act, 1921 (19 U.S.C. 161), the Secretary of the Treasury determines the amount of an antidumping duty on an entry-by-entry basis. Appropriate adjustments to foreign market value for differences in circumstances of sale and adjustments to other price calculations are made in calculating foreign market value, as they are made in calculating fair value during the original investigation. Under current practice, the need for an antidumping duty finding may be reviewed by the Secretary on his own motion or at the request of an interested party if there are changed circumstances. Under current regulations, the ITC will review an injury finding in an antidumping case on its own motion, at the request of an interested party, or upon advice from Treasury that there are "changed circumstances." Absent "good cause", the Commission will not review an injury determination within 2 years of a final determination that injury exists (19 C.F.R. 207.5).

The bill.—Section 751 of the bill would require the authority, at least once during each 12-month period beginning on the anniversary of the date of publication of the countervailing duty order or antidumping duty order, to review—

(1) the amount of any net subsidy,
(2) the amount of any antidumping duty, and
(3) the current status of, and compliance with, any agreement by reason of which an investigation was suspended.

The Secretary would be required to publish a summary of the results of his review, together with the notice of any duty to be assessed, estimated duty to be deposited, or investigated to be resumed.

In the case of a review of an antidumping duty order, the results of the review would include a determination of the foreign market value and the U.S. price of each entry of merchandise subject to that order and included within the review, and the amount, if any, by which the foreign market value of each such entry exceeds the U.S. price of the entry. That determination would be the basis for the assessment of antidumping duties on entries of the merchandise included within the review and for deposits of estimated duty on entries not covered by the review.

In addition to the required review of the amount of duty, if any, to be assessed pursuant to an antidumping duty or countervailing duty order, or a determination to suspend an investigation upon acceptance of an agreement, section 751 would permit the administering authority or the ITC to review, upon request, an agreement which served as the basis for the suspension of an antidumping duty or countervailing duty investigation or an affirmative determination that such an agreement will completely eliminate the injurious effect of subsidized or dumped imports. In addition the authority could review, upon request, a determination that a subsidy exists or that less-than-fair value sales exists. The ITC could review, upon request, a determination that a domestic industry is being injured by reason of imports of subsidized merchandise or imports of merchandise sold at less than fair value.

The authority and the Commission would initiate reviews under this provision only if they are satisfied that "changed circumstances" sufficient to warrant the review exist. Absent a showing of "good cause", the ITC would not review a final affirmative injury determination under the countervailing duty or antidumping duty law and the administering authority would not review (1) a determination to suspend an investigation upon acceptance of an agreement under either law, or (2) a final affirmative determination that a subsidy exists or that sales at less-than-fair value exist, less than 24 months after the date of publication of notice of that determination.

If the administering authority determines, during a review under this section, that a subsidy or sales at less-than-fair value no longer exists, the administering authority could, after that review, revoke, in whole or in part, a countervailing duty order or an antidumping order. The authority could also terminate a suspended investigation after a review under this section.

In the case of any review under this section, the administering authority and the ITC would, upon the request of any interested party, hold a hearing to provide an opportunity for the presentation of views with respect to the issue under review.

Reason for the provision.—This provision expedites the administration of the assessment phase of antidumping and countervailing

duty investigations. It provides a greater role for domestic interested parties and introduces more procedural safeguards.

SUBTITLE D OF TITLE VII OF THE TARIFF ACT OF 1930.—GENERAL PROVISIONS

Definitions; Special Rules (Section 771 of the Tariff Act of 1930)

Administering Authority (Section 771(1))

Present law.—None.

The bill.—The term "administering authority" as defined in section 771(1) of the Tariff Act of 1930, as added by section 101 of the bill, would mean the Secretary of the Treasury, or any other officer of the United States to whom the duties of the administering authority relating to antidumping and countervailing duties under the provisions of subtitles A, B, and C of Title VII of the Tariff Act of 1930, as added by this bill, are transferred by law.

Reasons for the provision.—The amendment made by section 771(1) anticipates possible legislative changes which may provide that an officer of the United States other than the Secretary of the Treasury has responsibility for countervailing duty and antidumping matters.

Country (Section 771(3))

Present law.—The term "country" is not defined in the Antidumping Act, 1921, or in section 303 of the Tariff Act of 1930 (relating to countervailing duties). However, section 303 encompasses with its provisions bounties or grants paid or bestowed by "any country, dependency, colony, province, or other political subdivision of government."

The bill.—Under section 771(3) of the Tariff Act of 1930, as added by the bill, the term "country", as used in new title VII of the Tariff Act of 1930 relating to countervailing duties and antidumping duties, would mean a foreign country; a political subdivision, dependent territory, or possession of a foreign country; and, with respect to countervailing duty proceedings only, could include an association of two or more countries as a customs union outside the United States.

Reasons for the provision.—The definition of country in section 771(3) generally incorporates present practice under the Antidumping Act, 1921, and section 303 of the Tariff Act of 1930. It subsumes all the governmental entities now specified in section 303. The administering authority will determine, on the basis of the facts in each case, what entity or entities will be considered the "country" for the purposes of a title VII proceeding.

Under the definition, Taiwan will be considered a country. In countervailing duty proceedings, a subsidy granted by a political subdivision of a foreign country, such as a province or a development authority, or by an institution of a customs union, will be considered to be granted by a "country." Thus, the European Communities, as well as each of its member states, is a country for purposes of countervailing duty proceedings. However, a customs union may not be considered a country in antidumping duty proceedings. Thus, the foreign market

value of merchandise in such a proceeding may not be calculated on a customs-union-wide basis.

Industry (Section 771(4))

Present law.—The term "industry" when used in the Antidumping Act, 1921, or section 303 of the Tariff Act of 1930, is used in the context of the ITC determining whether an industry in the United States is experiencing injury, a threat of injury, or is prevented from being established, by reason of subsidized or less-than-fair-value imports. The term industry is not defined in either the Antidumping Act or in section 303. As noted in the committee report on the Trade Act of 1974 (S. Rept. 93–1298, pp. 179–181), in practice, the phrase "an industry in the United States", as used in both laws, has been interpreted by the ITC as referring to all the domestic producer facilities engaged in the production of articles like the subsidized or dumped imported articles, although a number of investigations have been concerned with the domestic producer facilities engaged in the production of articles which, while not like the imports concerned, are nevertheless competitive with the imports in domestic markets. In either case, the industry has generally been considered to be a national industry involving all domestic facilities engaged in the production of the domestic articles involved. However, if domestic producers of an article are located, and predominantly or exclusively serve the market, in a geographic region and imports are concentrated in that regional market with resultant injury to the producers in the region, then the Commission has held that injury to a part of the entire domestic industry (*i.e.*, the regional producers) constitutes injury to the entire domestic industry.

The bill.—Under section 771(4) of the Tariff Act of 1930, as added by section 101 of the bill, the term industry generally would mean the domestic producers as a whole of the like product, *i.e.*, a product like the imported article, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of the like product. However, domestic producers in a geographic region in the United States would be considered an industry when they sell all or almost all of their production of the like product in the market in that region and the demand for the like product in that market is not supplied to any substantial degree by producers of the product located elsewhere in the United States. In this situation, an antidumping duty or countervailing duty order could be issued only if there is a concentration of the subsidized or less-than-fair-value imports into the regional market and if the producers of all, or almost all, of the production in that market are being materially injured, threatened with material injury, or the establishment in that region of an industry is being materially retarded, by reason of the subsidized or less-than-fair-value imports.

In determining which domestic producers of the like product to include within the industry, the ITC could exclude those producers who are related to exporters or importers, or who are themselves importers, of the allegedly subsidized or less-than-fair-value merchandise.

In determining the effect of subsidized or less-than-fair-value imports, the Commission would assess that effect in relation to the U.S.

production of only the like product when available data permits the separate identification of production of that product based on criteria such as the production process or the producers' profits. If U.S. production of the like product has no separate identity in terms of such criteria, then the effect of the imports would be assessed by examining the production of the narrowest group or range of products which include the like product and for which the necessary information is available.

Reasons for the provision.—Section 771(4) enacts in many respects current ITC practice, and delineates important concepts with respect to the definition and treatment of the term "industry" as that term is used in determining whether an industry in the United States is materially injured, threatened with material injury, or the establishment of an industry is being materially retarded. "Industry" generally means: (1) All the domestic producers who produce products like the imported articles subject to the investigation, or, if no such product exists, the product most nearly similar in characteristics and in use to the imported article subject to the investigation; (2) domestic producers, wherever located in the United States, who comprise less than the entire group of producers of like products, if the total output of this smaller group of producers constitutes a major proportion of the total domestic production of that product; or (3) a regional industry. What constitutes a major proportion of total domestic production will vary from case to case depending on the facts, and no standard minimum proportion is required in each case. No particular formulation of industry permitted under the statute is to be preferred above others.

When the ITC is considering a regional industry, a countervailing duty or antidumping duty order may be issued based on the impact of subsidized or less-than-fair-value imports on that regional industry only if there is a concentration of such imports in the relevant regional market. The requisite concentration will be found to exist in at least those cases where the ratio of the subsidized, or less-than-fair-value, imports to consumption of the imports and domestically produced like product is clearly higher in the relevant regional market than in the rest of the U.S. market. Of course, in cases in which the output of producers within a region constitutes a major proportion of total domestic production, material injury, a threat thereof, or material retardation of the establishment of an industry, may be found without regard to the connection criteria or other specific criteria relating to regional industry cases.

The ITC is given discretion not to include within the domestic industry those domestic producers of the like product which are either related to exporters or importers of the imported product being investigated, or which import that product. Thus, for example, where a U.S. producer is related to a foreign exporter and the foreign exporter directs his exports to the United States so as not to compete with his related U.S. producer, this should be a case where the ITC would not consider the related U.S. producer to be a part of the domestic industry.

In examining the impact of imports on the domestic producers comprising the domestic industry, the ITC should examine the relevant economic factors (such as profits, productivity, employment, cash flow, capacity utilization, etc.), as they relate to the production of only the

like product, if available data permits a reasonably separate consideration of the factors with respect to production of only the like product. If this is not possible because, for example, of the accounting procedures in use or practical problems in distinguishing or separating the operations of product lines, then the impact of the imports should be examined by considering the relevant economic factors as they relate to the production of the narrowest group or range of products which includes the like product and for which available data permits separate consideration.

Subsidy (Section 771(5))

Present law.—The word "subsidy" is not defined in existing U.S. law relating to international trade. Section 303 of the Tariff Act of 1930 does not use the word "subsidy", but provides for the imposition of a countervailing duty to offset any "bounty or grant" bestowed or paid with respect to an imported product. No definition of bounty or grant is set out in the statute or in regulations. The Secretary of the Treasury has discretion in determining what is a bounty or grant. Some of the practices which have been found to be bounties or grants include: (1) Direct payments to exporters related to the export of merchandise; (2) excessive rebates of indirect taxes on merchandise upon export of the merchandise; (3) export financing at preferential rates; (4) rebates of indirect taxes which are not directly related to the merchandise exported; and (5) the forgiveness of income and social security taxes related to merchandise exported.

The bill.—Section 771(5) of the Tariff Act of 1930, as added by section 101 of the bill, would provide that the term "subsidy" in title VII as added by this bill has the same meaning as "bounty or grant" under section 303. It would provide that subsidies include any export subsidy described in annex A to the Agreement Relating to Subsidies and Countervailing Measures, as approved under section 2(a) of this bill, as well as the following domestic subsidies, if provided by a government to, or required by a government for, a specific enterprise or industry, or group of enterprises or industries, whether publicly or privately owned, and whether paid or bestowed directly or indirectly on the manufacturer, production, or export of any class or kind of merchandise:

(1) The provision of capital, loans, or loan guarantees on terms inconsistent with commercial considerations;

(2) the provision of goods or services at preferential rates;

(3) the grant of funds or forgiveness of debt to cover operating losses sustained by a specific industry; and

(4) the assumption of any costs or expenses (including expenses for research and development) of manufacture, production, or distribution.

Reason for the provision.—The definition of "subsidy" is intended to clarify that the term has the same meaning which administrative practice and the courts have ascribed to the term "bounty or grant" under section 303 of the Tariff Act of 1930, unless that practice or interpretation is inconsistent with the bill. In this regard, the restrictions on offsets contained in section 771(6) of the Tariff Act of 1930, as added by

this bill, are not intended to prohibit the authority from determining that export payments are not subsidies, if those payments are reasonably calculated, are specifically provided as non-excessive rebates of indirect taxes within the meaning of Annex A of the Agreement, and are directly related to the merchandise exported. The reference to specific subsidies in the definition is not all inclusive, but rather is illustrative of practices which are subsidies within the meaning of the word as used in the bill. The administering authority may expand upon the list of specified subsidies consistent with the basic definition. As under current law, both export and domestic subsidies are subject to countervailing duties, and a subsidy may be provided either by a government or governmental entity, subdivision, or customs union, or by a private party or group of private parties.

Net Subsidy (Section 771(6))

Present law.—The term "net subsidy" is not used in the existing countervailing duty law, section 303 of the Tariff Act of 1930. Under section 303, the Secretary of the Treasury does determine the "net amount" of a bounty or grant, but this phrase is undefined. Under current practice, the Secretary determines the net amount by subtracting from the gross amount of the bounty or grant used certain "offsets," such as indirect taxes on items physically incorporated in the exported product but not rebated upon export, and, with respect to a bounty or grant consisting of a payment under a scheme to aid underdeveloped areas, the net additional costs incurred by a firm because the firm locates in an underdeveloped area as opposed to an area more suitable to its needs.

The bill.—Section 771(6) of the Tariff Act of 1930, as added by the bill, would define net subsidy to be the gross subsidy minus only the following amounts, if applicable:

(1) Any application fee, deposit, or similar payment made in order to qualify for, or to receive, the subsidy;

(2) any loss in the value of the subsidy resulting from its deferred receipt, if the deferral is mandated by government order; and

(3) export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the subsidy received.

Reason for the provision.—The bill defines the term "net subsidy" to place clear limits on offsets from a gross subsidy. The gross subsidy is the value of the subsidy provided, or made available, and used. For example, if a firm is eligible for a tax credit as a result of locating a plant in an underdeveloped region of a country, the gross subsidy may be determined by the extent to which the credit is used against taxable income.

There is a special problem in determining the gross subsidy with respect to a product in the case of nonrecurring subsidy grants or loans, such as those which aid an enterprise in acquiring capital equipment or a plant. Reasonable methods of allocating the value of such subsidies over the production or exportation of the products benefiting from the subsidy must be used. In particular, a reasonable period

based on the commercial and competitive benefit to the recipient as a result of the subsidy must be used. For example, allocating a subsidy in equal increments over the anticipated 20-year useful life of capital equipment purchased with the aid of the subsidy would not be reasonable if the capital equipment gave the recipient of the subsidy an immediate significant competitive benefit compared to what would be the situation without the capital equipment and compared to the competitive benefit the equipment would likely provide in the later stages of its useful life.

For purposes of determining the net subsidy, there is subtracted from the gross subsidy only the items specified in section 771(6). The list is narrowly drawn and is all inclusive. For example, offsets under present law which are permitted for indirect taxes paid but not actually rebated, or for increased costs as a result of locating in an underdeveloped area, are not now permitted as offsets. In determining the amount of offsets which are permitted, it is expected that the administering authority will only offset amounts which are definitively established by reliable, verified evidence.

Material Injury (Section 771(7))

Present law.—Under the Antidumping Act, 1921, and under section 303 of the Tariff Act of 1930 (as it relates to duty-free articles and to the extent the international obligations of United States require an injury determination), the U.S. International Trade Commission (ITC) is required to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of the merchandise which the Secretary of the Treasury has found to be subsidized or to be, or likely to be, sold at less than fair value. The ITC examines such economic factors as import penetration in the U.S. market, domestic industry production and sales in the United States, price suppression or depression in the U.S. market, employment, profits, and capacity utilization in the U.S. industry, and other factors bearing on the state of a U.S. industry.

The bill.—Section 771(7) of the Tariff Act of 1930, as added by section 101 of the bill, would define the phrase "material injury" as it is used in title VII of the Tariff Act of 1930, as added by this bill, and set out some additional concepts relevant to the ITC injury determinations under title VII. The term "material injury" would be defined to mean harm which is not inconsequential, immaterial, or unimportant. In making its determinations with respect to injury under title VII, the ITC would consider the volume of imports of merchandise with respect to which the administering authority has made an affirmative final determination on subsidization or less-than-fair-value sales, the effect of such imports on prices in the United States of like products, and the impact of imports of such merchandise on domestic producers of like products.

Specific factors to be examined in such consideration would be included in section 771(7) (C) and (D). With respect to the volume of imports, the ITC would consider whether the volume of imports is significant, or whether there is any significant increase in that volume, absolutely or relative to production or consumption in the United

States. With respect to prices in the United States of the like product, the ITC would consider whether there has been significant price undercutting by the imported merchandise, and whether such imports have depressed or suppressed such prices to a significant degree. In examining the impact of the imports on a U.S. industry, the ITC would consider all relevant economic factors which have a bearing on the state of that industry, and certain factors are specified. Special rules are set out for agricultural products, including that a finding of no material injury or threat of material injury with respect to producers of an agricultural product may not be based solely on the fact that the prevailing market price is at or above the minimum support price, and that the ITC should consider whether any increased burden on government income or price support programs exists in investigations involving agricultural products. Section 771(7)(E) provides that the presence or absence of any of the specific factors which the ITC examines would not necessarily give decisive guidance with respect to the ITC determinations regarding injury.

Section 771(7)(E) would also specify that, with respect to threat of injury, the ITC should take into account the nature of the subsidy and likely effects of such subsidy.

Reasons for the provision.—Section 771(7) defines the term "material inpury," as used in Title VII of the Tariff Act of 1930, as harm which is not inconsequential, immaterial, or unimportant. The term is used in the bill in the context of the ITC determination, in both countervailing duty and antidumping duty investigations, as to whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of the less-than-fair-value or subsidized imports. This material injury criterion, which must be satisfied for countervailing or antidumping duties to be applied under Title VII and, with respect to certain duty-free imports, under section 303 of the Tariff Act, is consistent with the analogous criterion of the Agreement Relating to Subsidies and Countervailing Measures and the Agreement Relating to Antidumping Measures, approved in section 2(a) of the bill.

Under the Antidumping Act, 1921, and with respect to duty-free imports under section 303 of the Tariff Act of 1930 (to the extent that the international obligations of the United States require a determination of injury), the ITC now determines whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the less-than-fair-value or subsidized imports. The ITC determinations with respect to the injury criterion under existing law which have been made in antidumping investigations from January 3, 1975 to July 2, 1979, have been, on the whole, consistent with the material injury criterion of this bill and the Agreements. The material injury criterion of this bill should be interpreted in this manner. This statement does not indicate approval of each affirmative or negative decision of the Commission with respect to the injury criterion, because judgments as to whether the facts in a particular case actually support a finding of injury are for the Commission to determine, subject to judicial review for substantial evidence on the record.

In determining whether an industry is materially injured, as that phrase is used in the bill, the ITC will consider, to the extent permitted by information submitted to it in a timely manner, the factors set forth in section 771(7) (C) and (D) together with any other factors it deems relevant. The significance of the various factors affecting an industry will depend upon the facts of each particular case. Neither the presence nor the absence of any factor listed in the bill can necessarily give decisive guidance with respect to whether an industry is materially injured, and the significance to be assigned to a particular factor is for the ITC to decide. It is expected that in its investigation the Commission will continue to focus on the conditions of trade, competition, and development regarding the industry concerned. For one industry, an apparently small volume of imports may have a significant impact on the market; for another, the same volume might not be significant. Similarly, for one type of product, price may be the key factor in making a decision as to which product to purchase and a small price differential resulting from the amount of the subsidy or the margin of dumping can be decisive; for others, the size of the differential may be of lesser significance.

Because of the special nature of agriculture, including the cyclical nature of much of agriculture production, special problems exist in determining whether an agricultural industry is materially injured. For example, in the livestock sector, certain factors relating to the state of a particular industry within that sector may appear to indicate a favorable situation for that industry when in fact the opposite is true. Thus, gross sales and employment in the industry producing beef could be increasing at a time when economic loss is occurring, *i.e.*, cattle herds are being liquidated because prices make the maintenance of the herds unprofitable.

The existence of agricultural price support programs creates special situations which are dealt with in section 771(7)(D). Government price support operations are intended to assure producers a minimum return through government purchases, loans, or direct payments. The nature of these support programs prevents imports from diminishing the amount received by a farmer below a minimum support level. To this extent, farmers may be shielded from the effects of subsidized or dumped imports because the government increases its outlays to absorb these effects. This increased burden on government support programs may be the major impact of subsidized or dumped imports. The Commission must take this into account in making an injury determination.

A corollary provision is the prohibition against a finding of no injury to agricultural producers merely because prices are above the minimum support level. Minimum support prices may or may not provide an adequate return to farmers. Agricultural producers may well be materially injured by reason of subsidized or dumped imports when prices are well above the minimum support level.

In determining whether an industry in the United States is threatened with material injury, the ITC will consider the likelihood of actual material injury occurring. It will consider any economic factors it deems relevant, and consider the existing and potential situation with respect to such factors. An ITC affirmative determination with respect to threat of material injury must be based upon in-

formation showing that the threat is real and injury is imminent, not a mere supposition or conjecture. The "threat of material injury" standard is intended to permit import relief under the countervailing duty and antidumping laws before actual injury occurs and should be administered in a manner so as to prevent actual injury from occurring. Relief should not be delayed if sufficient evidence exists for concluding that the threat of injury is real and injury is imminent.

Economic factors which may indicate that a threat of material injury is present vary from case to case and industry to industry. The ITC will continue to focus on the conditions of trade and competition and the nature of the particular industry in each case. For example, in some cases, *e.g.*, an industry producing a product which has a relatively short market life and significant research and development costs associated with it, a rapid increase in market penetration could quickly result in material injury to that industry. The existence of such increases in market penetration may be a particularly appropriate early warning signal of material injury in such cases.

In making a determination with respect to threat of material injury in countervailing duty investigations, the ITC may consider the nature of a subsidy practice and whether an adverse impact on a domestic industry is more likely to be associated with such a subsidy practice as opposed to what would be the case with another type of subsidy. This is particularly relevant with respect to export subsidies inconsistent with the Agreement on Subsidies and Countervailing Measures, which are inherently more likely to threaten injury than are other subsidies.

Interested Party (Section 771(9))

Present law.—Under present law, "any person" may file a petition with the Secretary of the Treasury under section 303 of the Tariff Act of 1930 to institute a countervailing duty investigation. Under the Antidumping Act, 1921, no limitation exists in the statute as to who may present information to the Secretary alleging that dumping is occurring.

With respect to an investigation by the ITC in antidumping and countervailing duty cases, practice permits any person with an appropriate interest in the matter to participate in the proceedings before the Commission.

The bill.—Section 771(9) of the Tariff Act of 1930, as added by section 101 of the bill, would define five categories of interested parties. (1) A foreign manufacturer, producer, or exporter, or the U.S. importers, of merchandise which is the subject of an antidumping or countervailing duty investigation, or a trade or business association, a majority of the members of which are such importers; (2) the government of a country in which such merchandise is produced or manufactured; (3) a manufacturer, producer, or wholesaler in the United States of a like product; (4) a certified union or recognized union or group of workers which is representative of the workers in an industry engaged in the manufacture, production or wholesale in the United States of a like product; and (5) a trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States.

Reasons for the provision.—The bill defines "interested party" for the purpose of specifying who may petition for a countervailing duty

or antidumping duty investigation, request continuation of an investigation suspended as a result of an agreement accepted by the administering authority, seek review of such a suspension, and participate in any investigation as a matter of right. The definition should not be interpreted as limiting the authority of the administering authority or the ITC to permit participation in antidumping or countervailing duty proceedings by other persons with an appropriate interest unless the provisions of the bill require such an interpretation.

The provision clarifies that a union may file a petition and participate in proceedings under Title VII as added by the bill. The union or group of workers must represent workers in the relevant U.S. industry.

The provision also provides that a trade or business association may be considered an interested party only when a majority of its members are importers of merchandise under investigation, or manufacture, produce, or wholesale a like product, as the case may be. This limitation is believed to fairly delimit those groups with sufficient interest to always be considered interested parties. An association representative of importers generally, or business generally, would not be considered an interested party under this limitation, although a sub-group of such an association may qualify.

Like Product (Section 771(10))

Present law.—Under the Antidumping Act, 1921, and section 303 of the Tariff Act of 1930, the ITC must determine whether "an industry in the United States" is being or is likely to be injured, or is prevented from being established, by reason of less-than-fair-value or subsidized imports, as the case may be. Neither the phrase "like product" or any other term is used in these statutes to define the industries to be considered by the ITC in making this determination. However, the ITC has generally considered as relevant industries those composed of domestic producer facilities engaged in the production of articles like the imported articles, although it has considered domestic producer facilities engaged in the production of articles which, although not like the imports concerned, are nevertheless competitive with those imports in U.S. markets.

The bill.—Section 771 (10) of the Tariff Act of 1930, as added by the bill, would define the term "like product" to mean a product which is like, or in the absence of like, most similar in characteristics and uses with, the imported article subject to an investigation under Title VII as added by the bill.

Reason for the provision.—The definition of "like product" in the bill has the effect of delimiting the U.S. industry to be examined by the ITC in making its determinations of whether an industry in the United States is experiencing the requisite degree of injury. The ITC will examine an industry producing the product like the imported article being investigated, but if such industry does not exist and the question of the material retardation of establishment of such an industry is not an issue before the ITC, then the ITC will examine an industry producing a product most similar in characteristics and uses with the imported article. The requirement that a product be "like" the imported article should not be interpreted in such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to

the conclusion that the product and article are not "like" each other, nor should the definition of "like product" be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under investigation.

Affirmative Determinations by Divided Commission (Section 771(11))

Present law.—In investigations under the Antidumping Act, 1921 and section 303 of the Tariff Act of 1930, if the ITC commissioners voting on a determination are evenly divided as to whether the determination of the Commission should be in the affirmative or in the negative, the Commission is deemed to have made an affirmative determination.

The bill.—Continues present law.

Reason for the provision.—Section 771(11) of the Tariff Act of 1930, as added by section 101 of the bill, will carry forward under the new law the analogous provision under existing law, with wording changes necessary to conform it to the framework of the new law and clarify its meaning.

Attribution of Merchandise to Country of Manufacture or Production (Section 771(12))

Present law.—Under section 303 of the Tariff Act of 1930, countervailing duties are levied on an article or merchandise in appropriate cases "whether the same shall be imported directly from the country of production or otherwise, and whether such article or merchandise is imported in the same condition as when exported from the country of production or has been changed in condition by remanufacture or otherwise . . ."

The bill.—Continues present law.

Reasons for the provision.—No change in the substance of the present law with respect to this issue has been made in section 771(12) of the Tariff Act of 1930, as added by section 101 of the bill. Changes are made to conform the language to the other changes made in the countervailing duty law by the bill.

Exporter (Section 771(13))

Present law.—For the purposes of determining exporter's sales price under the Antidumping Act, 1921, the exporter of the merchandise is defined to mean the person by whom or for whose account the merchandise is imported into the United States:

(1) If such person is the agent or principal of the exporter, manufacturer, or producer;

(2) if such person owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business of the exporter, manufacturer, or producer;

(3) if the exporter, manufacturer, or producer owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in any business conducted by such person; or

(4) if any person or persons, jointly or severally, directly or indirectly, through stock ownership or control or otherwise, own or control in the aggregate 20 per centum or more of the voting

power or control in the business carried on by the person by whom or for whose account the merchandise is imported into the United States, and also 20 per centum or more of such power or control in the business of the exporter, manufacturer, or producer.

The bill.—Continues present law.

Reasons for the provision.—No change in the substance of the present law is made in section 771(13) of the Tariff Act of 1930, as added by section 101 of the bill. Wording and format changes are made to conform the language to the other changes made in the antidumping duty law by the bill.

Sold, or in the Absence of Sales, Offered for Sale; Ordinary Course of Trade; Such or Similar Merchandise; Usual Wholesale Quantities (Sections 771(14–17))

Present law.—The Antidumping Act, 1921 contains the following definitions:

(1) The term "sold or, in the absence of sales, offered for sale" means sold or, in the absence of sales, offered—

(A) to all purchasers at wholesale, or

(B) in the ordinary course of trade to one or more selected purchasers at wholesale at a price which fairly reflects the market value of the merchandise,

without regard to restrictions as to the disposition or use of the merchandise by the purchaser except that, where such restrictions are found to affect the market value of the merchandise, adjustment shall be made therefor in calculating the price at which the merchandise is sold or offered for sale.

(2) The term "ordinary course of trade" means the conditions and practices which, for a reasonable time prior to the exportation of the merchandise under consideration, have been normal in the trade under consideration with respect to merchandise of the same class or kind as the merchandise under consideration.

(3) The term "such or similar merchandise" means merchandise in the first of the following categories in respect of which a determination for the purposes of the Antidumping Act can be satisfactorily made:

(A) The merchandise under consideration and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, the merchandise under consideration.

(B) Merchandise (i) produced in the same country and by the same person as the merchandise under consideration, (ii) like the merchandise under consideration in component material or materials and in the purposes for which used, and (iii) approximately equal in commercial value to the merchandise under consideration.

(C) Merchandise (i) produced in the same country and by the same person and of the same general class or kind as the merchandise under consideration, (ii) like the merchandise under consideration in the purposes for which used, and (iii) which the Secretary or his delegate determines may reasonably be compared for the purposes of this title with the merchandise under consideration.

(4) The term "usual wholesale quantities", in any case in which the merchandise in respect of which value is being determined is sold in the market under consideration at different prices for different quantities, means the quantities in which such merchandise is there sold at the price or prices for one quantity in an aggregate volume which is greater than the aggregate volume sold at the price or prices for any other quantity.

The bill.—Continues present law.

Reasons for the provision.—No changes in the substance of the present law are made in sections 771(14), 771(15), 771(16), and 771(17) of the Tariff Act of 1930, as added by section 101 of the bill. Wording and format changes are made to conform the language of the bill with respect to these definitions to the changes made in the antidumping duty law by the bill.

United States Price (Section 772 of the Tariff Act of 1930)

Present law.—Under the Antidumping Act, 1921, in order to determine the amount of dumping duties to be imposed on an entry of merchandise, the "purchase price" or "exporter's sale price" of the merchandise is subtracted from the "foreign market value" of such or similar merchandise or the constructed value of the merchandise, as the case may be. Under current law, *purchase price* is defined to be the price at which such merchandise has been purchased or agreed to be purchased, prior to the time of exportation, by the person by whom or for whose account the merchandise is imported, with certain additions and subtractions as specified in the law, including an addition for the amount of any taxes rebated or not collected by reason of the exportation of the merchandise to the United States, which rebate or noncollection has been determined to be a bounty or grant under the U.S. countervailing duty law. Under current law, *exporter's sales price* is defined to be the price at which such merchandise is sold or agreed to be sold in the United States, before or after the time of importation, by or for the account of the exporter, with certain additions and subtractions to the price as specified, including the addition, as was the case in purchase price, of an amount for the rebate or noncollection of a tax determined to be a bounty or grant under the U.S. countervailing duty law.

The bill.—Section 772 of the Tariff Act of 1930, as added by section 101 of the bill, would provide a new term, "United States price," which embraces both the existing terms "purchase price" and "exporter's sales price." The bill reenacts the provisions of the Antidumping Act with respect to these terms with one substantive change and one clarifying change. The bill modifies the definition of purchase price to mean the price at which merchandise is purchased or agreed to be purchased prior to the date of importation (as opposed to prior to the time of exportation as under existing law) from the manufacturer or producer of the merchandise (as opposed to the person by whom or for whose account the merchandise is imported) for exportation to the United States. Additionally, the addition for countervailing duties assessed on the same merchandise to offset subsidies is clarified to apply only to subsidies which are classified as export subsidies.

Reasons for the provision.—Section 772 of the Tariff Act of 1930, as added by the bill, would generally continue existing law with respect to the meaning of purchase price and exporter's sales price. Most changes in wording are necessitated by the creation of the new term "United States price," which incorporates the existing terms purchase price and exporter's sales price and by other simplifying changes.

The purpose of the substantive modification to purchase price is to establish in the statute present administrative practice. If a producer knew that the merchandise was intended for sale to an unrelated purchaser in the United States under terms of sale fixed on or before the date of importation, the producer's sale price to an unrelated middleman will be used as the purchase price. The dicta in *Voss International* v. *United States*, C.D. 4801 (May 7, 1979), which is inconsistent with this practice, is explicitly overruled. Thus, "purchase price" may be used if transactions between related parties indicate that the merchandise has been sold prior to importation to a U.S. buyer unrelated to the producer. Regulations should be issued, consistent with present practice, under which sales from the foreign producer to middlemen and any sales between middlemen before sale to the first unrelated U.S. purchaser are examined to avoid below cost sales by the middlemen.

The purpose of the amendment regarding additions to purchase price and exporter's sales price with respect to countervailing duties also being assessed because of an export subsidy is designed to clarify that such adjustment is made only to the extent that the exported merchandise, and not the other production of the foreign manufacturer or producer or other merchandise handled by the seller in the foreign country, benefits from a particularl subsidy. The principal behind adjustments to the price paid in these instances is to achieve comparability between the price which are being compared. Where the situation is the same, *e.g.*, both the merchandise examined for the purpose of determining "purchase price" and such or similar merchandise examined for the purpose of determining "foreign market value" benefit from the same subsidy, then no adjustment is appropriate.

Foreign Market Value (Section 773 of the Tariff Act of 1930)

Present law.—Under the Antidumping Act, 1921, in order to determine the amount of an antidumping duty to be imposed on imported merchandise, the foreign market value of such merchandise or the constructed value of that merchandise is compared to the purchase price or exporter's sales price.

Under existing law, the foreign market value of imported merchandise is the price, at the time of exportation of such merchandise to the United States, at which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade for home consumption, plus packing costs for shipment to the Unted States. If home market sales are so small in relation to the quantity sold for exportation to third countries as to form an inadequate basis for comparison, then the foreign market value is the price at which that merchandise is sold or offered for sale for exporta-

tion to third countries. Special rules are provided for disregarding sales made at less than the cost of producing the merchandise in question (which may result in the use of constructed value if foreign market value based on home market sales or third country sales cannot be used because such sales are inadequate for comparison), for determining foreign market value when the merchandise is from state-controlled economies, and for determining foreign market value in certain circumstances when multinational corporations are involved.

The constructed value of imported merchandise is defined to be the sum of the material and fabrication or other processing costs; an amount for general expenses and profit (the amount for general expenses being at least equal to 10 percent of the material and fabrication or other processing costs, and the amount for profits being at least 8 percent of the costs and general expenses); and the cost of packing the merchandise for shipment to the United States.

The bill—Section 773 of the Tariff Act of 1930, as added by section 101 of the bill, would retain existing law with several modifications. The term "foreign market value" would be defined under section 773 to include the content of that term as used in existing law (home market price or third country price), as well as the content of the term "constructed value" under existing law. Section 773(a)(2) would also permit the authority to use either third country prices or constructed value if home market prices cannot be determined. Section 773(f) would permit the administering authority to use averaging or generally recognized sampling techniques whenever a significant volume of sales is involved or a significant number of adjustments to prices is required in determining foreign market value. The administering authority would also be permitted under section 773(f) to decline to take account of adjustments which are insignificant in relation to the price or value of the merchandise.

Reason for the provision.—Section 773 of the Tariff Act of 1930, as added by section 101 of the bill, would generally retain existing law as it relates to the use and calculation of foreign market value and constructed value. The bill extends the concept of "foreign market value" to embrace both the existing terms "foreign market value" and "constructed value." This change is not substantive and is intended solely to simplify the law.

The new "foreign market value" term, which describes the value against which the United States price is compared in assessing antidumping duties, retains the substance of sections 205 and 206 of the Antidumping Act, with wording changes necessary to conform the provisions to the style and organization of the new law. Section 773 does modify the preference contained in the present law for the use of third country prices over constructed value, when home market prices may not be used. The administering authority will be authorized to use either standard if the exporter's home market prices are inadequate or unavailable for the purpose of calculating fair market value. The preference expressed in present law can, in some cases, unnecessarily prolong an investigation. For example, where sales in the exporter's home market are found to be below cost of production, present law directs the Secretary to look to prices in third country markets. However, frequently if a producer is selling below cost in his home market, he is also

selling below cost in export markets. Valuable time was lost in determining that third country prices are also inadequate as a basis for foreign market value. Nevertheless, third country prices will normally be preferred over constructed value if presented in a timely manner and if adequate to establish foreign market value.

Section 773(f) of the Tariff Act of 1930, as added by the bill, will make an important modification to current law by permitting the administering authority to use generally recognized averaging and sampling techniques in determining foreign market value and to disregard adjustments which are insignificant in relation to the price or value of the affected transaction.

This provision is intended to prevent, both during antidumping investigations and in the assessment of antidumping duties, delays which are unwarranted and not required by reasonable fairness. It takes into account the administrative burden of assessing antidumping duties on an entry-by-entry basis within the time limits imposed under the bill. In order to reduce the potential for abuse of this authority, it is strictly circumscribed. Thus, the bill provides that averaging and sampling may only be used in cases where the need is greatest, *i.e.*, cases involving a great number of sales or a significant number of adjustments. While the ability to disregard insignificant adjustments is not confined to any particular type of case, it is intended that the term "insignificant" mean individual adjustments having an *ad valorem* effect of less than 0.33 percent and groups of adjustments having a cumulative *ad valorem* effect of less than 1.0 percent. Regulations will establish groups of adjustments based on types of adjustments currently recognized, *i.e.*, differences in circumstances of sale, quantities sold, qualitative characteristics, and levels of trade in the markets being compared. In any event, if any adjustment or group of adjustments having a small *ad valorem* effect have, individually or cumulatively, a meaningful effect on competition between the imported articles being investigated and the like product produced by the domestic industry, then such adjustments should not be disregarded.

This report is not intended as a general expression of approval or disapproval of current regulations or administrative practice. This should be emphasized with respect to regulations regarding the current law on dumping from nonmarket economy countries. The reenactment of current statutory provisions on this subject is not an expression of Congressional approval or disapproval of the regulations promulgated by the Secretary of the Treasury on August 9, 1978 (43 F.R. 35262).

Hearings (Section 774 of the Tariff Act of 1930)

Present law.—Under section 303 of the Tariff Act of 1930, no hearing is required by either the Secretary of the Treasury or the U.S. International Trade Commission (ITC) before the imposition of countervailing duties. In practice, the Secretary permits parties to a proceeding to present written views, and upon request, to make a presentation of views orally to a designated official. The ITC provides by regulation for a hearing prior to its decision on the issue of injury.

Under the Antidumping Act, 1921, before the making of any final determination by the Secretary of the Treasury regarding less-than-

fair-value sales and by the ITC regarding the issue of injury, the Secretary or the ITC, as the case may be, must hold a hearing upon request of any foreign manufacturer or exporter, or U.S. importer, of the merchandise in question, or upon request of any U.S. manufacturer, producer, or wholesaler of merchandise of the same class or kind. The hearing is not subject to the provisions of the so called "Administrative Procedure Act" relating to adjudicative proceedings, and any person who could request a hearing may appear by counsel or in person, and any other person who shows good cause may also appear.

The bill.—Under section 774 of the Tariff Act of 1930, as added by section 101 of the bill, the administering authority and the ITC would be required to hold a hearing in the course of an investigation to determine whether antidumping or countervailing duties should be imposed. The hearing could be held by the administering authority at any time prior to the making of a final determination with respect to less-than-fair-value sales or subsidization, as the case may be, and by the ITC at any time prior to its final injury determination under the antidumping or countervailing duty provisions of this bill.

Notice of any hearing in any antidumping or countervailing duty proceeding under title VII of the Tariff Act of 1930 as added by the bill, including the hearings described in the preceding paragraph, must be published in the Federal Register prior to the hearing, and a transcript of the hearing must be prepared and be available to the public. Any such hearings would not be subject to the provisions of sections 554, 555, 556, 557, and 702 of Title 5 of the United States Code relating to adjudicative hearings.

Reasons for the provision.—Section 774 continues the requirement of present law with respect to hearings in antidumping duty investigations, and adds a requirement for hearings in countervailing duty investigations. While these required hearings are not subject to the provisions of Title 5 of the United States Code relating to adjudicative hearings, they must be conducted in a manner designed to permit full presentation of information and views. It is partcularly important, in light of the provision for judicial review of such proceedings on an administrative record, as provided by this bill, that parties be given every possible opportunity to respond to information submitted by other parties.

Subsidy Practices Discovered During an Investigation (Section 775 of the Tariff Act of 1930)

Present law.—None.

The bill.—Under section 775 of the Tariff Act of 1930, as added by section 101 of the bill, if, in the course of a countervailing duty investigation under title VII of the Tariff Act of 1930, as added by this bill, the administering authority discovers a practice which appears to be a subsidy but was not included in the matters alleged in the countervailing duty petition, then it must include the practice in the ongoing investigation if it appears to be a subsidy with respect to the merchandise which is the subject of the investigation, or transfer the information concerning the practice (other than confidential information) to the library of foreign subsidy practices and countervailing measures which would be established under section 777(a)(1) of the

Tariff Act, if the practice appears to be a subsidy with respect to any other merchandise.

Reason for the provision.—Section 775 is primarily intended to consolidate in one investigation with respect to subsidization of a particular class or kind of merchandise, all subsidies known by petitioning parties to the investigation or by the administering authority relating to that merchandise. In investigating an allegation of subsidization the administering authority often acquires information relating to possible subsidization of the merchandise or other merchandise not available to the petitioner or other domestic parties. These possible additional subsidy practices generally are not included within the ongoing investigation under present practice. Rather than institute unnecessary separate investigations into such practices, make piecemeal determinations without proper aggregation of subsidization practices, and increase expenses and burdens, the bill will include such practices within the scope of any current investigation, or make them a part of the library of subsidy practices so that persons in the future may know of them when deciding whether to petition for an investigation. The inclusion of such a practice should not delay the conclusion of any current investigation any more than absolutely necessary.

Verification of Information (Section 776 of the Tariff Act of 1930)

Present law.—None.

The bill.—Section 776 of the Tariff Act of 1930, as added by section 101 of the bill, would require that all information relied on by the administering authority in making a final determination in an investigation regarding either subsidized or less-than-fair-value imports be verified unless, in an antidumping investigation, verification is waived under the procedure for a rapid preliminary determination. The methods and procedures used to verify information would be described in the authority's final determination. If the administering authority is not able to verify the information submitted, it would rely on the best information available, which may include the information submitted in the petition. Section 776 also would provide that whenever a party or any other person refuses or is unable to produce information in a timely manner and in the form required, or otherwise significantly impedes an investigation, both the administering authority and the ITC must use the best information otherwise available.

Reason for the provision.—Numerous complaints have been made regarding the current practices on verification of information submitted to the Department of the Treasury in antidumping and countervailing duty proceedings, particularly information submitted by foreign governments. Section 776 requires vertification by the administering authority of all information relied upon, including governmental submissions. If such information cannot be verified, the administering authority must then use the best information available in making its determination.

Access to Information (Section 777 of the Tariff Act of 1930)

Present law.—Under the Antidumping Act, 1921, the Secretary of the Treasury and the ITC is required to make available nonconfidential

information contained in the transcript of any hearing held and developed in connection with an investigation, to the extent required by the Freedom of Information Act (5 U.S.C. 552(b)). No specific provision exists with respect to countervailing duty investigations, but the Freedom of Information Act applies.

The bill.—Under section 777(a) of the Tariff Act of 1930, as added by section 101 of the bill, a library of information relating to foreign subsidy practices and countervailing measures would be established, and material in the library would be made available to the public upon request.

With respect to countervailing duty and antidumping duty investigations, the administering authority and the ITC would inform parties to an investigation of the progress of that investigation and would maintain a record of ex parte meetings between interested parties, or other persons providing factual information in connection with an investigation, and the person charged with making the determination and any person charged with making a final recommendation to that person, in connection with that investigation. The administering authority and the Commission could disclose any confidential information received in the course of a proceeding if it is disclosed in a form which cannot be associated with, or otherwise be used to identify, operations of a particular person, and any information submitted in connection with a proceeding which is not designated as confidential by the person submitting it.

With respect to the confidential information developed in an antidumping or countervailing duty proceeding, section 777(b) would provide that information submitted to the administering authority or the ITC which is properly designated as confidential by the person submitting it shall not be disclosed to any person without the consent of the person submitting it unless pursuant to a protective order. The administering authority and the Commission could require that information for which confidential treatment is requested be accompanied by a nonconfidential summary. If the administering authority or the ITC determines that designation of any information as confidential is unwarranted, then the administering authority or the ITC, as the case may be, would return it to the party submitting it unless the request for confidential treatment is withdrawn. This provision would not affect the right of the ITC to subsequently seek information it has returned under section 777 pursuant to a court order sought under section 333 of the Tariff Act of 1930 (19 U.S.C. 1333).

Under section 777(c), upon receipt of an application which describes with particularity the information requested and sets forth the reasons for the request, the administering authority and the ITC could make confidential information, submitted by any party to the investigation, available under a protective order. The administering authority and the ITC would provide regulations for appropriate sanctions to enforce protective orders, including disbarment from practice before the agency.

If the administering authority denies a request for confidential information or the ITC denies a request for information submitted by the petitioner, or an interested party supporting the petitioner, concerning the domestic price or cost of production of the like product,

then application could be made to the U.S. Customs Court for an order directing the administration authority or the ITC to make that information available. After notification of all parties to the investigation and after an opportunity for a hearing on the record, the court "under the standards applicable in proceedings of the court," issue an order, under such conditions as the court deems appropriate and as are in accordance with the statute, directing the administering authority or the ITC to make all or a portion of the requested information available under a protective order and setting forth sanctions for violation of such order. The quoted phrase is intended to refer to the court's practice of determining *de novo*, after, if necessary, an *in camera* examination of the documents, whether the need of the party requesting the information outweighs the need of the party submitting the information for continued confidential treatment. Because the investigation in connection with which the information is sought is not stayed or stopped by a court proceeding to determine whether disclosure should be ordered, it is assumed that the Chief Judge of the Customs Court will act expeditiously to assign a judge to cases arising under this section who will be available to conduct a hearing whenever required and that a decision as to whether or not to issue an order will be reached as soon as possible.

Reasons for the provision.—Section 777 provides the maximum availability of information to interested parties consistent with the need to provide adequate protection for information accorded confidential treatment. Petitioners under the antidumping and countervailing duty laws have long contended that their ability to obtain relief has been impaired by its lack of access to the information presented by the exporters and foreign manufacturers. By the same token, importers, exporters, and other respondents in such cases have complained of lack of access to information supplied by the domestic parties to such cases, particularly with respect to the economic health of the domestic industry involved. Access to information at the administrative level is even more imperative under the bill, which provides that the standard of judicial review of most administrative actions in countervailing duty and antidumping duty proceedings is one of review on the administrative record.

The provisions of the bill relating to a record of *ex parte* meetings is a significant addition to current law. This record is to be included in the record of the investigation. Antidumping and countervailing duty proceedings are investigatory rather than adjudicatory in nature, and this provision is intended to insure that all parties to the proceeding are more fully aware of the presentation of information to the administering authority or the ITC.

The bill also provides limited access to confidential information either in the form of nonconfidential summaries or pursuant to an administrative or court protective order. Upon receipt of a proper application, the administering authority and the ITC may make information available under protective order pursuant to regulations to be developed by each agency. This authority to make limited disclosure is a specifically authorized exception to the provisions of 18 U.S.C. 1905, and limited disclosure under this provision is not intended to result in any requirement for general disclosure under the Freedom of

Information Act. Generally, it is expected that disclosure will be made only to attorneys who are subject to disbarment from practice before the agency in the event of a violation of the order. With respect to the ITC, it is anticipated that, to the extent that information cannot be made available in a non-confidential form which permits an adequate analysis of the issues in a case by a party, such information will be disclosed under a protective order if the ITC believes such information can be protected from disclosure. If a party's request for information under a protective order is denied, it can seek access to the information under a judicial protective order of the U.S. Customs Court issued in accordance with the amendments under the bill.

Interest on Certain Overpayments and Underpayments (Section 778 of the Tariff Act of 1930)

Present law.—Under current law, no interest may be required or paid by the Secretary of the Treasury with respect to underpayments or overpayments of amounts to secure a liability for special dumping or countervailing duty.

The bill.—Section 778 of the Tariff Act of 1930, as added by the bill, would provide that interest is payable at the rate in effect under section 6621 of the Internal Revenue Code of 1954 on the date on which the rate or amount of antidumping or countervailing duty is finally payable, or 8 percent, whichever is higher, on overpayments and underpayments of amounts deposited on merchandise entered, or withdrawn from warehouse, for consumption on or after the date on which notice of an affirmative final determination by the Commission with respect to that merchandise is published.

Reason for the provision.—Section 778 provides specific statutory authority to require payment of interest on overpayments or underpayments of amounts to secure a liability for an antidumping or countervailing duty. A minimum rate of 8 percent is provided to insure that the rate charged will be somewhat in line with current commercial rates and thus help in making the imposition of antidumping and countervailing duties remedial and reducing incentives to delay payments of duties owed.

Pending Investigations (Section 102 of the Bill)

Present law.—None.

The bill.—On the day section 701 of the Tariff Act of 1930 becomes effective with respect to a country, section 102(a) of the bill would require the administering authority to terminate any countervailing duty investigation, under section 303 of the Tariff Act of 1930 (U.S.C. 1303), of products of that country if there has been no final determination in the investigation. The administering authority and the Commission would be required to commence an investigation, under title VII of the Tariff Act, of the same subsidy as was being investigated in the terminated investigation.

If a preliminary determination has not been made under the terminated investigation, the investigation under title VII would commence as if an affirmative determination under section 702(a) or (c) were

made on the date of termination of the section 303 investigation. If an affirmative or negative preliminary determination has already been made under section 303 of the Tariff Act in an investigation which is terminated under section 102(a), then the administering authority would be required to make a preliminary determination under section 703(b) of the Tariff Act on the date of termination of the section 303 investigation. The substance of the determination under section 703 (b) in such cases would be the same as that of the preliminary determination under section 303. The effective date of title VII of the Tariff Act with respect to a specific country would be determined under section 701(b) of the Tariff Act and sections 107 and 2(b) of the bill.

On the effective date of title VII of the Tariff Act, section 102(b) of the bill would require the Secretary of the Treasury and the ITC to terminate any investigation under the Antidumping Act, 1921 (19 U.S.C. 160 *et seq.*), if the Secretary has not made a final determination in the case. The Secretary and the Commission must commence an investigation under title VII with respect to the same case, as if the decision to commence an investigation under 731 were made on the date of termination. If a preliminary determination has already been made in the terminated case, then the administering authority would be required to make a preliminary determination in the title VII investigation under section 733(b) of the Tariff Act on the date of termination of the Antidumping Act investigation. The substance of the preliminary determination under section 733 would be the same as that of the preliminary determination under the Antidumping Act investigation. The effective date of title VII of the Tariff Act would be January 1, 1980, if the Subsidy and Antidumping Agreements have entered into force for the United States by that date.

If the ITC is conducting an investigation but has not made a final determination under section 201(a) of the Antidumping Act on the effective date of title VII of the Tariff Act, or under section 303(b) of that act on the effective date of title VII with respect to the country the practices of which are under investigation, then section 102(c) of the bill would require the Commission to terminate its investigation under the Antidumping Act or section 303 and to commence an investigation under section 705(b) or 735(b), as appropriate, to be completed within 75 calendar days after that investigation is commenced under section 102(c) of the bill and section 705(b) or section 735(b) of the Tariff Act.

Reason for the provision.—Section 102 is a transition rule for cases in progress under the current countervailing and antidumping laws. The cases would continue but under the new laws. Section 102 provides counting rules for application of the new time limits depending on the stage of the investigation under current law. These counting rules would also apply to an investigation under section 303 of the Tariff Act which begins after the effective date of the amendments under section 103 of the bill. For example, if an investigation under section 303 is being conducted in accordance with the procedures under title VII of the Tariff Act, as would be provided under section 303(b) of the Tariff Act under the amendments in section 103 of the bill, and section 701 of the Tariff Act becomes effective with respect to

the relevant country, then the investigation under section 303 in accordance with title VII would be terminated and a new investigation under subtitle A of title VII commenced, as is provided under section 102 of the bill.

Amendment of Section 303 of the Tariff Act of 1930 (Section 103 of the Bill)

Present law.—Section 303 of the Tariff Act (19 U.S.C. 1303) contains few procedural provisions. It requires a preliminary Treasury determination within 6 months after a petition is filed and a final determination within 12 months after a petition is filed. The ITC injury determination is required within 3 months after a final Treasury determination but only with respect to duty-free goods and only to the extent required by the international obligations of the United States. The United States is obligated to apply the injury test under section 303 only with respect to duty-free products of countries which have fully acceded to the General Agreement on Tariffs and Trade.

The bill.—The amendment under section 103(a) of the bill would exclude from the coverage of section 303 of the Tariff Act articles which are the product of a country under the agreement, within the meaning of section 701(b) of the Tariff Act, *i.e.*, articles to which section 701 of the Tariff Act would apply.

The amendment under section 103(b) would require the imposition of countervailing duties under section 303 to be in accordance with the requirements of title VII of the Tariff Act. However, the following provisions of title VII would *not* apply to cases under section 303 other than cases involving duty-free goods to the extent that an injury test must be applied to such goods:

(1) There would be no ITC determination as to (A) a reasonable indication of injury under section 703(a), (B) elimination of injurious effect under section 704(h), and (C) injury under section 705(b).

(2) An investigation could not be suspended upon acceptance of an agreement to eliminate injurious effects under section 704(c).

(3) There would be no critical circumstances determinations relating to the retroactive imposition of countervailing duties under sections 703(e) and 705 (a)(2) and (b)(4)(A).

Reasons for the provision.—The amendments under section 103 conform section 303 of the Tariff Act to appropriate provisions of title VII of the Tariff Act, as added by section 101 of the bill. Sections 303(a) (1) and (2) of the Tariff Act will continue in effect with respect to articles not subject to section 701 of that act. Section 303 will continue to impose countervailing duties, without an injury determination, on all dutiable and certain duty-free articles with respect to which bounties or grants are being provided. The President's statement of proposed administrative action erroneously asserts that an injury determination will be required before countervailing duties can be imposed on duty-free articles from any country. Duty-free articles from certain countries will be subject to countervailing duties after an injury determination, but only if international obligations of the United States, other than the Agreement on Subsidies and Countervailing Measures, require that determination with respect to products of those countries.

The committee believes the procedures and standards under new title VII are a significant improvement over existing law and practice and should be applied to section 303. Obviously, all references to injury and all determinations relating to injury under title VII are irrelevant to proceedings under section 303 which do not require an injury determination.

Transition Rule of Countervailing Duty Orders (Section 104 of the Bill)

Present law.—Upon the effective date of the new countervailing duty provisions of title VII of the Tariff Act of 1930, as added by section 101 of this bill, there will be a number of countervailing duty orders in effect pursuant to the provisions of the existing countervailing duty law, section 303 of the Tariff Act. These orders have been or will be issued upon a finding that a bounty or grant is being paid or bestowed, and in most cases, no showing of injury to a domestic industry has been or will be made.

With respect to certain countervailing duty orders issued after the effective date of the Trade Act of 1974, the imposition of countervailing duties has been waived by the Secretary of the Treasury pursuant to section 303(d) of the Trade Act. Section 303(d) of the Trade Act permits the Secretary to waive the imposition of countervailing duties under certain circumstances, and in particular when steps have been taken to reduce substantially or to eliminate during the period of the waiver the adverse effect of the bounty or grant which has been determined to have been paid or bestowed. This authority to waive countervailing duties was intended to permit the negotiation in the Multilateral Trade Negotiations of an agreement on subsidies and countervailing measures free from the negative impact of countervailing duties imposed by the United States which the countries with whom it was negotiating considered to be improper.

The bill.—Section 104 of the bill would provide rules for reviewing certain countervailing duty orders in effect on the effective date of title VII of the Tariff Act of 1930, as added by section 101 of the bill.

Section 104(a) of the bill would require the administering authority to notify the U.S. International Trade Commission (ITC) by January 7, 1980, of any countervailing duty order in effect on January 1, 1980 (1) under which the Secretary of the Treasury has waived the imposition of countervailing duties under section 303(d) of the Tariff Act and which applies to merchandise, other than certain cheese under quota, which is a product of a country to which subtitle A of title VII of the Tariff Act applies; (2) published after September 29, 1979, and before January 1, 1980, with respect to products of a country to which subtitle A of title VII of the Tariff Act applies; or (3) applicable to frozen, boneless beef from the European Communities under Treasury Decision 76–109. The administering authority would furnish to the Commission the most current information it has with respect to the net subsidy benefiting the merchandise subject to any countervailing duty order so notified.

Within 180 days after it receives the most current information from the administering authority, the ITC would make a determination of

whether an industry in the United States is, or, with respect to orders under which countervailing duties are being collected, would be, materially injured, threatened with material injury, or the establishment of an industry in the United States is or would be materially retarded, by reason of imports of the merchandise subject to the order. If the Commission determination with respect to the question of material injury is affirmative, the order would remain in effect and the administering authority would terminate the waiver, if any, of the imposition of countervailing duties in effect for any merchandise subject to the order. The countervailing duty order under section 303 which applies to the merchandise would remain in effect until revoked, in whole or in part, pursuant to provisions for review of countervailing duty orders provided in section 751(d) of the Tariff Act, as added by section 101 of this bill. Upon being notified by the Commission of a negative determination with respect to the question of material injury, the administering authority would revoke the countervailing duty order and publish notice in the Federal Register of the revocation.

Section 104(b) of the bill would cover countervailing duty orders not covered by section 104(a) which apply to merchandise which is a product of a country to which subtitle A of title VII of the Tariff Act applies and which are in effect on January 1, 1980, or are issued pursuant to court order in an action brought under section 516(d) of the Tariff Act before that date. With respect to these orders, the Commission would make a material injury determination with respect to merchandise covered by such an order upon the request of the government of the country concerned or exporters accounting for a significant proportion of exports to the United States of such merchandise, if the request is submitted within 3 years after the effective date of the new title VII of the Tariff Act, *i.e.*, January 1, 1980. The material injury determination which the Commission would make is whether an industry in the United States would be materially injured or would be threatened with material injury, or whether the establishment of an industry in the United States would be materially retarded, by reason of imports of the merchandise covered by the countervailing duty order if the order were revoked.

Whenever the Commission receives a request for review under section 104(b), it would promptly notify the administering authority which would suspend the liquidation of entries of the merchandise covered by the order which are made on or after the date of receipt of the Commission's notification, or, in the case of butter from Australia, entries of merchandise subject to the assessment of countervailing duties under Treasury Decision 42937, as amended. Estimated countervailing duties would continue to be collected pending the determination of the Commission with respect to material injury. This determination would be made within 3 years after the date of commencement of a Commission investigation pursuant to a request for a review of the order.

If the Commission's determination with respect to material injury under section 104(b) is affirmative, the administering authority would liquidate entries of merchandise the liquidation of which has been suspended during the period of the Commission's investigation and impose countervailing duties in the amount of the estimated duties

required to be deposited. The countervailing duty order would remain in effect until revoked in whole or in part under section 751(c) of the Tariff Act. If the Commission's determination with respect to material injury upon review is negative, then the administering authority would revoke the countervailing duty order, publish notice of that action in the Federal Register, and refund, without payment of interest, any estimated countervailing duties collected during the period of suspension of liquidation.

Section 104(c) of the bill would provide that, subject to the provisions of sections 104(a) and (b), any countervailing duty order issued under section 303 which is in effect on the effective date of title VII of the Tariff Act, or issued pursuant to court order in a proceeding brought before that date under section 516(d) of the Tariff Act, would remain in effect after that date and be subject to review under section 751 of the Tariff Act, as added by section 101 of this bill.

Reasons for the provision.—Under section 701 of the Tariff Act of 1930, as added by section 101 of the bill, countervailing duties will be imposed on imports from certain countries only when the ITC determines that the material injury criterion of section 701 has been satisfied. Countervailing duty orders in effect on the effective date of new section 701 of the Tariff Act with respect to products from a country to which the material injury test of new section 701 will be applied were issued without the necessity of demonstrating injury. Section 104 of the bill provides for a review of these orders for the purpose of making an injury determination, thus making the application of such an order consistent with the new countervailing duty provisions provided by this bill.

Section 104(a) provides rules for reviewing certain outstanding countervailing duty orders, including some with respect to which the Secretary of the Treasury has waived the imposition of countervailing duties under section 303(d) of the Tariff Act. The International Trade Commission must review these on a priority basis, making a material injury determination within 180 days after the date on which it receives current information regarding net subsidy from the administering authority. The waiver issued with respect to such an order under section 303(d) will remain in effect during the review of the ITC.

The review of injury with respect to orders covered by section 104(b) will be undertaken by the Commission only upon request by designated entities. The request must occur within a 3-year period, and the Commission would have 3 years in which to complete its investigation. While a 3-year period for completion of each investigation is provided, it is anticipated that the Commission will establish a priority for review so that the decisions with respect to the cases are issued periodically over the 3-year period.

Continuation of Certain Waivers (Section 105 of the Bill)

Present law.—Section 303(d) of the Tariff Act of 1930 (19 U.S.C. 1303) permits the Secretary of the Treasury to waive, under certain conditions, the imposition of countervailing duties under that section. A waiver under subsection (d) may be revoked at any time and must

be revoked if the statutory conditions for the waiver are no longer met. A waiver ceases to be effective if either House of Congress adopts a resolution disapproving that waiver under the procedures in section 152 of the Trade Act (19 U.S.C. 2192).

The authority to waive countervailing duties under section 303 will terminate on the day on which the President signs the bill. Waivers issued under that authority will terminate when revoked, overridden by Congress, or on the day the President signs the bill.

The bill.—Section 105 would amend section 303(d)(4)(B) of the Tariff Act to continue the effectiveness of certain waivers in effect on the date of enactment of the bill until the earlier of the date on which (1) the waiver is revoked, (2) the waiver is overridden by Congress under section 303(e)(2) of the Tariff Act, or (3) the ITC determines whether a domestic industry is being injured by reason of imports subject to the waiver under section 104 of the bill. The waivers which would be extended are only those covering merchandise of a country which would be a country under the agreement within the meaning of section 701(b) of the Tariff Act if that section were in effect. All other waivers and the authority to issue waivers under section 303(d)(4)(A) of the Tariff Act would terminate on the date of enactment of the bill.

Reasons for the provision.—The amendment under section 105 is intended to keep outstanding waivers of countervailing duties on merchandise of countries to which the United States will accord the benefits of the Subsidies Agreement in effect until the ITC can make an injury determination with respect to that merchandise or the waiver is revoked or modified. This provision will implement an understanding reached between the United States and its major trading partners during negotiation of the Subsidies Agreement.

Conforming Changes (Section 106 of the Bill)

Present law.—None.

The bill.—Section 106 would repeal the Antidumping Act, 1921, (19 U.S.C. 160 *et seq.*), and change references to that act in other laws to references to subtitle B of title VII of the Tariff Act of 1930. Findings under the Antidumping Act (1) in effect on the date of enactment of the bill, or (2) issued under a court order in a judicial action brought before that date, would remain in effect subject to review under section 751 of the Tariff Act of 1930.

Reasons for the provision.—Subtitle B of title VII of the Tariff Act, as added by section 101 of the bill, contains a comprehensive antidumping law. Many of the substantive rules of the Antidumping Act are reenacted in subtitle B. The Committee does not intend to change the substantive rules except as specifically noted in this report. Changes in organization and terminology have been made solely to modernize and clarify the terms of those rules. Therefore, although the Antidumping Act, 1921, is replaced by subtitle B, the committee intends the administrative and judicial precedents relating to the terms under the Antidumping Act to continue to apply under the new law.

Effective Date (Section 107 of the Bill)

Present law.—None.

The bill.—Section 107 of the bill would make the amendments under title I of the bill, other than the amendments under section 105, effective on January 1, 1980, if the agreements on subsidies and antidumping duties enter into force with respect to the United States, as determined under section 2(b)(2) of the bill, on or before that date.

Reasons for the provision.—Title I of the bill is intended to implement the Subsidies and Antidumping Agreements. It will become effective only if both those agreements enter into force with respect to the United States on or before January 1, 1980.

TITLE II—CUSTOMS VALUATION

Introduction

Title II of the bill would implement in U.S. law the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (Customs Valuation Agreement), approved by the Congress in section 2(a) of the bill.

The purpose of customs valuation is to establish the value of imported goods for the assessment of those customs duties which are levied on an *ad valorem* basis. The method of valuation which a country uses is as important as a tariff rate in determining the actual amount of duty charged and can be used to restrict trade.

Multilateral Trade Negotiations (MTN)

The basis and complexity of customs valuation systems used throughout the world vary considerably. Some systems, such as the Brussels Definition of Value (BDV) used by the European Communities (EC) and most of the countries in the world, employ a "notional" standard for valuation purposes. Under this system, the customs value of an imported product is the price at which that product *would be* sold if the actual transaction in question were a perfectly competitive transaction. Adjustments to the actual value to reach the ideal value are made, and such adjustments are often criticized as arbitrary and almost always increase the value and, therefore, the tariff liability. Other customs valuation systems, such as the U.S. system, use a "positive" standard, where customs value is usually the price at which goods are sold in the actual transaction. In certain circumstances, such systems also provide for alternative definitions of value for use in those cases where the price cannot be used. Still other systems assess customs duties primarily on the basis of national or official values which are arbitrary and are used to increase duties collected and/or to protect domestic industries, or primarily on the basis of the domestic selling price of the goods in the country of exportation. Other aspects of customs valuation systems making for complexity and controversy include: The existence in some systems of numerous alternative definitions of value; complex laws and administrative regulations making it difficult to easily predict the amount of duty that will be owed; the absence of requirements and procedures for review of valu-

ation decisions; and the absence of published administrative regulations and decisions.

Against this background, negotiations in the MTN on an international set of rules for customs valuation took place with the active participation of the major industrialized countries and many of the developing countries.

The United States sought a "positive" standard (transaction value, *i.e.*, price actually paid or payable with specified adjustments) as the basic international standard for customs valuation. This would eliminate the often arbitrary upward price adjustments which occur in systems which use a notional standard, such as the BDV, and arbitrary national or official values. The United States also sought increased "transparency" in valuation systems by publication of administrative regulations and decisions, and sought procedures for adequate review of valuation decisions.

The EC and other countries sought simplification of the U.S. system, which has 9 alternative definitions of customs value. Specifically, the EC wanted the elimination of the American selling price (ASP) and Final List standards of valuation employed by the United States on certain products, and wanted to limit, if not eliminate, the use of the constructed value (cost of production, plus expenses and profit) standard of customs valuation employed by the United States in certain circumstances.

An Agreement on Customs Valuation was achieved in the MTN and signed by most of the developed countries participating in the negotiations, *e.g.*, the United States, the EC, Japan, Canada, and the Nordics, and by some of the developing countries.

It should be noted that many developing countries apparently will continue to apply the BDV, even though the rigidity, arbitrariness, and obsolescence of the BDV was a major reason for the new Customs Valuation Agreement. The Customs Cooperation Council (CCC) in Brussels now administers the BDV. It is believed that the Executive branch of the U.S. Government should move expeditiously to seek to replace the BDV by the new Customs Valuation Agreement. Unless this is done, there will be needless conflict between the developed and developing countries and between the two organizations (GATT, which on a political level will oversee the new agreement, and the CCC, which oversees the BDV), with the possibility that all technical issues on customs valuation practices will be elevated to trade policy confrontations. The administration has reported that the CCC has indicated its willingness and ability to carry out the responsibilities assigned to them under the Agreement, and the CCC also stated that it will shift the emphasis of CCC valuation activities to the agreement, encouraging the remaining BDV countries to eventually apply the new agreement. The Administration should strongly support the CCC toward this end.

Summary of the Agreement

Methods of customs valuation.—The Customs Valuation Agreement establishes five alternative methods of customs valuation. Each

is summarized briefly below in the order in which it would be applied.

1. *The transaction value of the imported goods, i.e.*, the price actually paid or payable for the goods with adjustments for certain specified costs, charges, and expenses which are incurred but not reflected in the price actually paid or payable for the goods (including selling commissions, container costs, packing costs, certain royalties and licenses fees, and assists) (article 1 of the agreement).

2. If the transaction value of the imports cannot be determined or used, then the *transaction value of identical goods* sold for export to the same country, and exported at or about the same time as the imported goods (article 2 of the agreement).

3. If the transaction value of identical goods cannot be determined, then the *transaction value of similar goods* sold for export to the same country and exported at or about the same time as the imported goods (article 3 of the agreement).

4. If customs value cannot be determined by looking to transaction value, then the *deductive* value or *computed* value, as the importer chooses. The *deductive* value for the imported goods is determined by the price at which the imported goods, or identical or similar imported goods, are sold in the greatest aggregate quantity to unrelated persons in the country of importation in the same condition as imported (or after further processing), with deductions for commissions or profit, general expenses, transport and insurance costs, customs duties and certain other costs, charges and expenses incurred as a result of reselling the goods. (Article 5 of the agreement.)

5. The *computed value* of the imported goods, determined by summing the cost of producing the article in the country of exportation, an amount for general expense and profit, and the cost or value of all other expenses necessary to reflect the valuation option (*i.e.*, f.o.b. or c.i.f.) chosen by the signatory. (Article 6 of the Agreement.)

In those rare instances where a value cannot be determined under any of the valuation methods described above, the agreement provides that "the value shall be determined using reasonable means consistent with the principles and general provisions of this code . . ." The customs values determined under this residual method "should be based to the greatest possible extent on previously determined customs values." Several valuation methods are specifically precluded from being used as a basis for determining customs value, including methods such as the American selling price (ASP) and foreign value methods currently used in the United States.

Circumstances under which the transaction value will not be used.—The most significant circumstances under the agreement which would result in the transaction value not being used is when the transaction in question is between related parties. If the buyer and seller are related, the transaction value may not be used unless an examination of the circumstances surrounding the sale demonstrates that such relationship did not influence the price, or the importer demonstrates that the transaction value closely approximates one of several other enumerated values, subject to other criteria of the agreement.

Dispute resolution.—The agreement is to be administered at the political level by the GATT and at the technical level by the Customs Cooperation Council. A party to the agreement may request consultations with another party who is alleged to be violating the agreement with a view to reaching a mutually satisfactory solution.

If no mutually satisfactory solution is reached between the parties within a reasonable period of consultations, the committee of all the signatories (committee) must meet within 30 days after a request from either party and attempt to facilitate a mutually satisfactory solution. If the dispute is of a technical nature, a technical committee within the Customs Cooperation Council will be asked to examine the matter and report to the committee within 3 months.

If no mutually agreeable solution is reached, the committee must, upon the request of either party, establish a panel to examine the mattter and make such findings as will assist the committee in making recommendations or giving a ruling on the matter. After the panel makes its report, the committee shall take appropriate action (in the form of recommendations or rulings). If the committee considers the circumstances to be serious enough, it may authorize one or more parties to suspend the application to any other party of obligations under the Agreement.

Miscellaneous.—The agreement provides that its provisions may be applied by valuing articles either on an ex-factory, f.o.b., or c.i.f. basis. In addition, there are technical provisions in the agreement covering such areas as currency conversion, rapid clearance of goods, domestic appeal rights, and publication of laws and regulations affecting customs valuation.

The agreement sets forth special and differential treatment for developing countries in three ways—through a 5-year delayed implementation of the agreement, through a 3-year exemption for the application of computed value, and through technical assistance (with no specific monetary or resource commitment).

The agreement is to enter into force on January 1, 1981. Other final provisions to the agreement cover such areas as accession, withdrawal, amendments, and reservations.

The agreement contains a number of interpretative notes that form an integral part of the agreement.

Valuation of Imported Merchandise (Section 201 of the Bill)

Present law.—The current U.S. valuation system is composed of two separate customs valuation laws, sections 402 and 402a of the Tariff Act of 1930 (19 U.S.C. 1401a and 1402, respectively). There are 9 possible standards for customs value under these laws. The five standards in section 402a are the valuation standards established in the original Tariff Act of 1930. The Customs Simplification Act of 1956 added a new section 402 containing four additional standards. The original five standards are used to appraise only those articles for which the dutiable value during fiscal year 1954 would have been 5 percent less if valued under the new section 402 standards compared to being valued under the old standards. These articles are listed in Treasury Decision (TD) 54521 and are known as the "Final List" articles.

Although the names describing the different standards of valuation under sections 402 and 402a are either the same (export value, U.S. value, American selling price) or almost the same (cost of production vs. constructed value), they often differ significantly by reason of definition.

A. Section 402a (Final List).—Valuation under section 402a of Final List articles applies to 14 percent of all customs entries. Section 402a provides for valuation on the basis of an article's export value or foreign value, whichever is higher. If neither value can be determined, then valuation occurs on the basis of the U.S. value. If the U.S. value cannot be used, then a cost of production standard is used.

Export value bases valuation on the transaction value of the imported goods so long as that transaction price is consistent with the price at which the goods are "freely offered for sale to all purchasers" in the "usual wholesale quantities" in the principal markets of the exporting country, for export to the United States. As a result of narrow court interpretations of this language, less than one-third of the customs entries appraised under section 402a are appraised on the basis of export value.

Foreign value bases valuation on the price of merchandise for sale in the home market of the country of exportation which is "such or similar" to the imported merchandise and freely offered for sale to all purchasers in the usual wholesale quantities. Foreign value is the basis of customs value for less than one-fourth of the customs entries under section 402a.

U.S. value is a "deductive" valuation method which starts with the freely offered resale price in the United States of merchandise such or similar to the imported merchandise and then deducts from that price all of the costs and expenses incurred subsequent to the exportation of the goods (such as ocean freight and insurance charges, import duty. and commissions (not exceeding 6 percent) or general expenses (not exceeding 8 percent) and profit (not exceeding 8 percent) realized in the resale of the goods in the United States). Less than 3 percent of the customs entries valued under section 402a are done so on the basis of U.S. value.

The *cost of production* method of valuation attempts to arrive at the customs value of imported goods by aggregating all of the costs of producing the merchandise and the cost of placing it in a condition packed, ready for shipment to the United States. Added to that amount is an amount (at least 10 percent) to reflect general expenses, plus an amount for the usual profit (at least 8 percent of the other costs and expenses). About 38 percent of importations valued under section 402a are appraised on the basis of cost of production. Cost of production is often the basis of valuation in related-party transactions when the transaction price between the buyer and seller includes little or no profit or does not include the cost of goods or services which have been supplied by the buyer to the seller free of charge or at reduced cost to assist in production of the goods ("assists").

B. Section 402.—About 86 percent of all customs entries are valued under the standards set out in section 402. Valuation under section 402 is based on export value. If export value cannot be determined,

the U.S. value is used. If neither of these bases may be used, then the constructed value is determined.

Export value under section 402 is the price at which merchandise such or similar to the imported merchandise is freely sold or offered for sale in the usual wholesale quantities in the exporting country for export to the United States. Export value under section 402 almost always yields a customs value which appropriates the actual transaction value. Related-party transactions can be accepted as representing export value as long as the U.S. Customs Service (Customs) determines that the price "fairly reflects market value". Nearly 70 percent of all entries and over 80 percent of the entries subject to valuation under section 402 are valued on the basis of export value. Transactions outside export value are almost always related-party transactions for which Customs considers an element of value to be either missing or understated in the transaction value.

U.S. value under section 402 uses terms defined as for export value and is calculated in the same manner as U.S. value under section 402a, except that there are no statutory maximums for general expenses and profit. U.S. value is rarely used as the basis of valuation, comprising only 2 percent of the entries valued under section 402, primarily because when Customs determines that no export value exists because the transaction price is deficient, that determination will also frequently disqualify the use of U.S. value.

Constructed value under section 402 is similar to the cost of production standard under section 402a, except that it does not prescribe statutory minimums for general expenses and profit. Due to the minimal use of U.S. value and the large number of related-party transactions that are found not to "fairly reflect market value", over 12 percent of the customs entries valued under the provisions of section 402 use constructed value as the basis of valuation.

C. American Selling Price.—The American selling price (ASP) method of customs valuation is used under both sections 402a and 402, and is virtually identical under both laws. The value of the import is based on the selling price of a U.S. manufactured article which is like or similar to the imported article. ASP is used only if required specifically by law. It must be used to value benzenoid chemicals, certain plastic- or rubber-soled footwear, canned clams, and certain gloves. Entries valued on the basis of ASP account for less than 2 percent of the entries handled by Customs. Virtually all ASP entries have a customs value that is higher than the transaction price because the customs value is based on the selling price of a U.S. manufactured article and the actual transaction value of the imported article has no bearing on the customs value.

The bill.—Section 201 of the bill would revise section 402 of the Tariff Act of 1930, which specifies the statutory standards for appraising the value of imported merchandise, to make it consistent with the Customs Valuation Agreement. It would also repeal section 402a of the Tariff Act of 1930 which is used to appraise Final List articles. Section 402, as amended by the bill, would set forth the bases on which imported merchandise is to be appraised for the purpose of levying ordinary custom duties. It would not change or affect those separate provisions of U.S. law that set forth how imported merchandise is to be

appraised or valued for the purpose of levying antidumping duties or countervailing duties.

The amended version of section 402 would establish five methods—one primary method and four secondary methods—of determining customs value. The five methods are arranged in a hierarchial fashion, with an order of priority governing the application of each method. The first, or primary method, the transaction value of the merchandise (price actually paid or payable with certain adjustments), would be used whenever possible. In cases where it could not be used, the second method would be used. If customs value could not be found using the second method, the third method would be used, and so on. The second, third, fourth, and fifth methods of valuation, which would be consistent with the methods contained in the Agreement, would be, respectively: The transaction value of identical merchandise; the transaction value. The fourth and fifth methods could be applied in reverse order at the option of the importer.

If a value could still not be determined, a residual method of valuation would provide for the value to be determined on a basis derived from one of the first five methods, with reasonable adjustments to such methods.

A. *Transaction value.*—The primary method of valuation under new section 402 would be the transaction value of the imported merchandise, *i.e.*, the price actually paid or payable for the merchandise when sold for exportation to the United States, increased by the amounts attributable to the factors listed in new section 402(b)(1) (*i.e.*, the packing costs and selling commissions incurred by the buyer, assists, royalties and license fees the buyer is required to pay as a condition of the sale of the merchandise to him, and the proceeds of a subsequent resale, disposal, or use of the imported merchandise accruing to the seller), if those amounts are not otherwise included in the price actually paid or payable. The term "price actually paid or payable" would be defined in new section 402(b)(4)(A) to be the total payment (directly or indirectly but excluding amounts for transportation, insurance, and related services associated with international shipment) made or to be made for the imported merchandise by the buyer to, or for the benefit of, the seller.

With respect to additions to the transaction value for any of those factors specified in new section 402(b)(1), such additions would be made only when their accuracy could be determined from sufficient relevant information. If the amount of the addition could not be determined because sufficient relevant information were not available, then the transaction value of the merchandise could not be determined and another method of valuation would have to be used.

With respect to additions to transaction value for "assists," new section 402(h)(1) would provide a definition of the term "assist." Besides being used as an addition to the price actually paid or payable, assists could be used as a factor in determining the suitability of deductive value, or as an element of computed value. The definition specifies those particular items or services which would be treated as an assist when supplied directly or indirectly by the buyer of the imported mer-

chandise, free of charge or at reduced cost, for use in connection with the production or the sale for export to the United States of the imported merchandise. These items would include, most importantly, materials incorporated in, and tools, dies, etc., used in, the production of the imported merchandise, as well as engineering, development (including non-basic research), and design work necessary for the production of the imported merchandise and undertaken elsewhere than in the United States.

Special rules would apply in determining the value of assists of engineering, development, artwork, designwork, and plans and sketches that are undertaken elsewhere than in the United States. Further, if such an activity were performed outside the United States by a U.S. domiciliary who is acting as an employee or agent of the buyer of the imported merchandise, and that work is incidental to other specific activities undertaken within the United States, it would not be treated as an assist.

New section 402(b)(3) would list those items which will not be included in the transaction value, if identified separately from the price actually paid or payable and from the items specified in new section 402(b)(1) (the additions to the price paid or payable). These items include reasonable charges incurred for the construction, erection, assembly or maintenance of, or technical assistance provided with respect to, the merchandise after its importation, transportation of the merchandise after its importation, as well as certain duties and taxes payable on the merchandise by reason of its importation.

New section 402(b)(4)(B) would provide that any rebate of, or other decrease in, the price actually paid or payable that is made or otherwise effected between the buyer and seller after the date of importation of the merchandise into the United States must be disregarded in determining the transaction value.

New section 402(b)(2) would indicate those factors which can lead to a rejection of transaction value as the method of customs valuation. These factors include: Certain restrictions on the disposition or use of the imported merchandise other than those which are imposed or required by law, which limit the geographical area of resale, or which do not substantially affect the value of the merchandise; conditions or considerations attaching to the sale or price of the imported merchandise for which a value cannot be determined with respect to the imported merchandise; where proceeds from a subsequent resale, disposal, or use of the merchandise accrues to the seller and an appropriate addition cannot be made to the price paid or payable; and certain cases where the buyer and seller are related. The purpose of these limitations is to insure that a particular transaction is *bona fide* and "at arm's length" before the transaction value standard will apply.

Two alternative methods are provided for determining whether the transaction value may be used when the buyer and seller of the merchandise are related. The first method provides that if an examination of the circumstances of the sale of the merchandise indicates that the relationship did not influence the price, the transaction value can be accepted, if all other conditions are met. The second method involves comparing the transaction value with a set of "test values," listed in new section 402(b)(2)(B), to see if the transaction closely approxi-

mates one of the test values. Customs would take into account and make adjustments for differences with respect to the sales involved (such as commercial levels, quantity levels, and other factors) in determining whether the transaction value "closely approximates" a given test value. Since the two methods are alternatives, a finding under either one that the related-parties' transaction value is acceptable for customs purposes is sufficient.

B. *Transaction value of identical merchandise and similar merchandise.*—If the primary valuation method, *i.e.*, the transaction value of the merchandise being appraised, cannot be accepted by the Customs Service, the customs value is determined by sequentially applying alternative methods. The first alternative, provided in new section 402(c), is the previously accepted transaction value, adjusted for commercial and quantity levels as appropriate, of identical merchandise sold for export to the United States and exported at or about the same time as the goods being valued. The second alternative provided by new section 402(c) is the previously accepted transaction value, adjusted for commerical and quantity levels as appropriate, of similar merchandise sold for export to the United States and exported at or about the same time as the goods being valued. Both "identical merchandise" and "similar merchandise" are defined in new section 402(h).

Generally, merchandise would not be regarded as "identical merchandise" or "similar merchandise" unless it was produced in the same country as the merchandise being valued. Also, merchandise produced by a different person could be taken into account only when there is no identical or similar merchandise, as the case may be, produced by the same person as the goods being valued. Neither "identical" nor "similar" merchandise includes merchandise reflecting or incorporating engineering, development, artwork, design work, or plans or sketches if such was given free or at reduced cost by the buyer to the seller for use in connection with the production or sale for export to the United States of the merchandise, and was not treated as an assist because it was undertaken within the United States.

Appropriate adjustments are permitted to allow for differences in commercial level and quantity factors, when no sales of identical or similar merchandise (as the case may be) can be found at the same commercial level and in substantially the same quantity as the sale of the merchandise being appraised. Any such adjustment must be based on sufficient information. New section 402(c)(2) also incorporates the so-called "prudent buyer" rule, which requires Customs to use the lowest of several values where more than one applicable value is found. This conforms with present practice.

C. *Deductive value.*—If the three previously mentioned value standards cannot be accepted for customs purposes, the customs value will be determined on the basis of the deductive value or computed value, in that order, unless the importer chooses, under new section 402(a)(2), to reverse the order of application of the two standards. If the importer requests such a reversal, but it then proves impossible to determine an acceptable computed value, the deductive value method will be applied.

New section 402(d) would set out the basic rules for determining deductive value. It provides that for purposes of determining the deductive value, the appraisement will be based on whichever of three prices, appropriately adjusted, is applicable depending upon when, and in what condition, the merchandise concerned is sold in the United States. For purposes of deductive value, the term "merchandise concerned" means the merchandise being appraised, identical merchandise, or similar merchandise.

If the merchandise concerned is sold in the condition as imported at or about the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity at or about such date.

If the merchandise concerned is sold in the condition as imported, but is not sold at or about the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity after the date of importation of the merchandise being appraised but before the close of the 90th day after the date of such importation.

Finally, if the merchandise concerned was not sold in the condition as imported and not sold before the close of the 90th day after the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise being appraised, after further processing, is sold in the greatest aggregate quantity before the 180th day after the date of such importation. The importer must specifically elect to use this "further processing" option, and notify the customs officer concerned of that election.

The unit price determined under one of the three options must be reduced, to arrive at the deductive value, by an amount equal to those items listed in new section 402(d)(3)(A), which include—

1. Commissions paid or agreed to be paid, or additions usually made for profit and general expenses, in connection with sales in the United States of imported merchandise of the same class or kind as the merchandise being appraised;

2. Actual and associated costs of transportation and insurance incurred with respect to international shipment of the merchandise;

3. Usual costs and associated costs of transportation and insurance incurred within the United States with respect to such merchandise;

4. Customs duties and Federal taxes imposed on the merchandise by reason of its importation, and Federal excise taxes on the merchandise for which vendors in the United States are ordinarily liable; and

5. In the case of a price determined under the "further processing" method, the value added by that processing, after importation into the United States.

The deduction made for profit and general expenses must be based upon the importer's profits and general expenses, unless they are inconsistent with those reflected in sales in the United States of imported merchandise of the same class or kind.

D. *Computed value.*—New section 402(e) would provide that the computed value of imported merchandise is the sum of—

1. The cost or value of the materials and the fabrication and other processing employed in the production of the imported merchandise;

2. an amount for profit and general expenses equal to that usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by the producers in the country of exportation for export to the United States;

3. any assist, if not included in (1) or (2) above; and

4. the packing costs.

The amount for profits and general expenses included in the computed value should be based upon the producer's profits and expenses, unless those figures are inconsistent with those usually reflected in sale of merchandise of the same class or kind as the imported merchandise that are made by the producers in the country of exportation.

E. *Value if other values cannot be determined or used.*—New section 402(f) would provide that the final method of appraisement, to be used only when a value cannot be accepted under any of the previous valuation methods, is to be based on a value that is derived from one of the previous methods, with such methods being reasonably adjusted to the extent necessary to arrive at a value.

New section 402(f) would also list a series of valuation methods which are specifically prohibited from being used in appraising imported merchandise for the purpose of determining customs value. These include the American selling price method contained in both current section 402 and 402a; the foreign value method contained in current section 402a; and a system that provides for the appraisement of imported merchandise at the higher of two alternatives, also a feature of current section 402a.

F. *Miscellaneous.*—New section 402 would contain other concepts and principles which would alter existing valuation law in several respects. New section 402(g)(3) would provide that for purposes of this section, information submitted by an importer, buyer, or producer in regard to the appraisement of merchandise may not be rejected by the Customs Service solely on the basis of the accounting method by which that information was prepared, if that preparation was in accordance with "generally accepted accounting principles." This term is defined to mean any generally recognized consensus or substantial authoritative support regarding which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed, and which financial statements should be prepared. The applicability of a particular set of generally accepted accounting principles must be determined on a case-by-case basis and will depend upon the basis on which the value of the merchandise is sought to be established and the element of value in question. This provision should not be construed in a manner which forces the U.S. Customs Service to accept the information submitted solely because it is prepared and submitted in a manner which is in accordance with generally accepted accounting principles. Rather, the intent is to allow the importer, buyer, or producer to prepare his figures in any one of a variety of acceptable methods.

New section 402(a)(3) would state that upon written request by the importer, and subject to provisions of law regarding the disclosure of information, the customs officer concerned shall provide the importer with a written explanation of how the value of that merchandise was determined. It is understood that Customs will provide a reasonable and concise explanation, and that such explanation is not meant to serve as a precedent with respect to other importations.

Reason for the provision.—The methods of valuation under new section 402 of the Tariff Act of 1930 as added by section 201 of the bill would make U.S. valuation methods consistent with those provided in the Customs Valuation Agreement. They represent a simplification of U.S. law and add significantly more predictability regarding the value which will be used for customs purposes.

As previously indicated, under new section 402 the primary basis of valuation would be the transaction value of the imported merchandise. Under existing U.S. law, "export value" is the primary basis of valuation. Export value is generally defined as the price, at the time of exportation to the United States, at which such or similar merchandise, packed ready for shipment to the United States, is freely sold or offered for sale in the usual wholesale quantities and in the ordinary course of trade, in the principal markets of the exporting country for export to the United States.

The use of transaction value as the primary basis for customs valuation will allow use of the price which the buyer and seller agreed to in their transaction as the basis for valuation, rather than having to resort to the more difficult concepts of "freely offered," "ordinary course of trade," "principal markets of the country of exportation," and "usual wholesale quantities" contained in existing U.S. law. The major differences between transaction value and export value relates to the elements of time, quantity, transaction level, and additions to the transaction price. As for time, export value takes prices on the date of export while transaction value takes the price for the merchandise itself, regardless of the time such price was agreed to. Regarding quantity, export value takes prices in the usual wholesale quantities while transaction value takes the price of the quantity involved in the transaction. As for transaction level, export value takes prices at the wholesale level while transaction value takes prices at the actual transaction level. With respect to additions to the transaction price, export value has no facility for adjusting prices for certain elements of value involved in the transaction but not included in the price, thereby forcing the valuation process to move to alternative standards, while transaction value allows for additions to the price to make it acceptable for customs purposes.

While transaction value is a different basis of value than export value, the practical effects in terms of differences in appraised values appear to be minimal, because under current practice the U.S. Customs Service frequently uses the transaction or invoice price to calculate a statutory export value.

The additions to be made to the price actually paid or payable to arrive at the transaction value, which are set forth in new section 402(b)(1), are consistent with current law and practice in some respects but differ in others. Packing costs and selling commissions are

currently added to the price of the merchandise, if not otherwise included in that price, to arrive at export value. This practice will be continued under transaction value.

Under current law, the existence of an assist, which would be defined for the first time in the law by this bill, requires appraisement under a secondary valuation method, usually constructed value under section 402 or cost of production under section 402a. Under new section 402(b)(1), additions for assists could be made directly to the price to arrive at a transaction value, thus eliminating the need to appraise under alternative valuation bases. This should simplify the customs valuation process when an assist is present. Further, for purposes of determining the proper value to be added for an assist, the information available in the buyer's commercial record system would be used to the greatest extent possible. Also, under current practice, an assist is dutiable generally regardless of who furnishes the assist. Under the bill, an assist would be dutiable only if furnished directly or indirectly by the buyer of the imported merchandise. Under current practice, certain assists such as engineering, design work, accounting services, legal services, etc., are dutiable. Under the bill, the only assists of this type that would be dutiable are engineering, development, artwork, design work, and plans and sketches produced outside the United States. Finally, under the bill, and the statement of proposed administrative action approved under section 2(a) of this bill, the apportionment of the value of the assist to the imported merchandise could be done using a variety of methods. The use of any particular method will depend in each case upon the documentation provided by the importer to support his requested method and whether the requested method is consistent with generally accepted accounting principles. This contrasts with current practice in which only a limited number of methods of apportionment are acceptable to the Customs Service.

Under the bill, the provisions for additions for certain royalties and license fees and for the proceeds accruing to the seller of any subsequent resale, disposal or use of the imported merchandise generally would follow current practice. Customs Service officials will make a decision as to whether an addition will be made on a case-by-case basis. Since transactions involving royalties, license fees, patents, and copyrights are complex business arrangements tailored to cover a specific set of conditions, each case must be carefully examined before the Customs Service can reach a final decision. The existing treatment under law of royalties for customs purposes is intended to continue under the operation and administration of new section 402(b)(1). Therefore, certain elements called "royalties" may fall within the scope of the language under either new section 402(b)(1)(D) or 402(b)(1)(E), or both. Similarly, some elements called "royalties" may not be dutiable under either 402(b)(1)(D) or 402(b)(1)(E). This determination will be made by Customs on a case-by-case basis.

Regarding related-party transactions, significant changes to current law would be made. Under new section 402, the fact that the buyer and seller are related would not, as is now the case, almost automatically preclude the use of transaction value; rather the Customs Service would use alternative methods of determining the acceptability of

using transaction value in such cases. It is understood that the Customs Service will, by regulation, provide that if, in light of information provided by the importer or otherwise, the customs officer concerned has grounds for rejecting the price as the basis for transaction value under Section 402(b)(2)(A)(iv), the customs officer concerned would communicate these grounds to the importer, who would be given a reasonable opportunity to respond. If the importer so requests, the communication of the grounds would be in writing.

As indicated previously, under the bill there would be two alternative methods of determining whether the transaction value in a related-party transaction is acceptable, or whether it is necessary to move to another base of valuation. The first method involves an examination of the circumstances of sale of the imported merchandise to determine if the relationship between the buyer and the seller influenced the price actually paid or payable. The second method involves a comparison of the transaction value with a series of test values. This approach would offer a wider range of possibilities for determining the acceptability o frelated-party prices than does current law. Under current law, the only method that can be used is a determination of whether the related-party price "fairly reflects the market value." Moreover, the most often used test to determine whether a related-party price "fairly reflects the market value" is a comparison of that price with prices in sales to unrelated buyers of identical or similar merchandise for export to the United States. Under the bill, related-party transaction values would be acceptable if they closely approximate the transaction value of identical or similar merchandise in sales to unrelated buyers in the United States, and also if they closely approximate the deductive value of identical or similar merchandise, the computed value of identical or similar merchandise, or the transaction value in sales to unrelated buyers in the United States of merchandise that is identical to the imported merchandise except for having been produced in a different county. In applying these test values, the Customs Service would for the first time be able to take into account differences in the values being compared for commercial levels, quantity levels, the elements for which additions to the price actually paid or payable are provided, and the costs incurred by the seller in sales in which he and the buyer are not related that are not incurred by the seller in sales in which he and the buyer are related.

While it is understood that previous examinations by the U.S. Customs Service of a particular relationship may obviate the need to fully examine that relationship in each transaction, one of the two alternative methods must always be met to stay in transaction value. It is recognized that trade between related parties is growing in importance. The new related party criteria place a special responsibility on the Customs Service to carefully monitor such transactions, both for the purpose of protecting the revenue and for the accurate reporting of the actual value of import trade.

With respect to the use of alternatives bases of valuation under the bill, if the transaction value of the imported merchandise cannot be determined or used, the customs value would be the transaction value, adjusted as appropriate for differences in quantities and commercial levels, of identical or similar merchandise sold for export to the United

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States and exported at or about the same time as the imported merchandise. The hierarchical structure of current U.S. law, that is, the preference of identical merchandise over similar merchandise, would be maintained. The provision in the bill which allows for appropriate adjustment for differences in commercial levels, quantities, or both, is not contained in current law.

The deductive value method of valuation in the bill is similar in concept to the U.S. value method as it exists under current law. However, the terms "freely offered", "usual wholesale quantities", "ordinary course of trade", and "principal markets", which exist under the concept of U.S. value in current law and add complexity to valuations under that standard, would not exist under the deductive value standard in the bill. In determining deductive value under the provisions of the bill, Customs would make determinations on what constitutes a sufficient number of units to establish the unit price on a case-by-case basis whenever all the units of the merchandise concerned have not been resold.

A major departure in the deductive value standard in the bill from current U.S. law would be that, if the imported merchandise or identical merchandise or similar merchandise is not sold in the condition as imported within 90 days after the date of importation of the imported merchandise, the importer may request that this merchandise be appraised on the basis of the unit price at which the imported merchandise, after further processing, is sold in the greatest aggregate quantity to unrelated buyers. Deductions from the unit price will be made in this case for the value added by such processing as well as for the other items for which deductions are allowed when deductive value is applied. While this method normally would not be available when the imported goods lose their identity during the course of "further processing," it may be applicable if the Customs Service could accurately determine the value added by the processing without unreasonable difficulty. This is a novel concept in U.S. law, and the Customs Service will eventually develop more detailed guidelines on its application based on its experiences in administering the provisions. For purposes of deductive value under the bill, merchandise of the same class or kind used as a basis for the deduction for general expenses and profit could be from any country; under present law, such merchandise of the same class or kind is limited to merchandise coming from the same country of exportation as the merchandise being appraised.

The computed value standard under the bill conceptually would follow the constructed value standard under present section 402 and the cost-of-production standard under present section 402a. Most determinations made under the computed value method would involve instances where the buyer and seller are related. Determination of an acceptable computed value generally would require the producer to supply all the necessary cost information and provide facilities for later verification. There are certain differences in computed value as provided by the bill from constructed value under present law that should simplify the use of this standard. This would aid not only the Customs Service, but the importer as well, since he would be able to rely more on his own records than under existing law. For example, the bill would confine the computed value standard to the cost of pro-

ducing the imported merchandise, whereas the current law is concerned not only with the cost of producing the imported merchandise but with the cost of producing identical or similar merchandise as well. The bill also would provide for the use of the producer's own general expenses and profit unless such amount is inconsistent with the general expenses and profit usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by producers in the country of exportation for export to the United States. As in the case of deductive value, it is expected that the Customs Services will develop a uniform policy in determining what constitutes an "inconsistency" in this regard. The term "profit and general expenses" should be considered as a whole. It is expected that when the Customs Service uses information other than that supplied by or on behalf of the producer, the importer, upon request, shall be informed in writing of the source of such information, the data used, and the calculations based upon such data, subject to other provisions of U.S. law.

If the customs value cannot be determined under any of the five previous bases of value, then under the bill, the imported merchandise would be appraised on the basis of a value derived from one of those five methods, with the method being reasonably adjusted to the extent necessary to arrive at a value. This parallels the situation that exists today. The statement of proposed administrative action on title II of this bill, approved under section 2(a) of the bill, lists a number of examples which illustrate the use of "reasonable adjustments" to the previously stated valuation standards. Essentially, the examples rely on flexible interpretations or the flexible administration of requirements in one of the previous standards. While a certain degree of flexibility in administering this final valuation standard is needed, Customs must develop appropriate guidelines on which importers may rely. Section 500, while amended by the legislation, remains as the general authority to appraise merchandise within the constraints of section 402 of the Tariff Act. However, it is not a separate basis of value.

It should be noted that neither the Customs Valuation Agreement nor this bill specifically address a number of special valuation problems. For example, business records and technical data present long-recognized special valuation problems, with their customs valuation often in doubt, resulting in delays and uncertainties which are troublesome for importers as well as the Government. While present practice has alleviated some of these problems with business records and technical data, difficulties still remain. It is believed that a fair and reasonable administrative solution to this particular valuation problem can be found expeditiously. If this does not prove possible, the Customs Service should submit a legislative proposal to resolve the problem.

Conforming Amendments (Section 202 of the Bill)

Present law.—Various provisions of existing law refer to section 402(a) of the Tariff Act of 1930 or to the American selling price (ASP) basis of customs valuation, including sections 332 (e), 336, and 351(a) of the Tariff Act of 1930, various headnotes to the Tariff Schedules of the United States (TSUS), section 601(4) of the Trade

Act of 1974, and section 993(c) of the Internal Revenue Code of 1954. Additionally, section 500(a) of the Tariff Act of 1930, which provides the basic authority for the appraisement of merchandise, states that one duty of a customs officer shall be to "appraise merchandise in the unit of quantity in which the merchandise is usually bought and sold by ascertaining or estimating the value thereof by all reasonable ways and means in his power, any statement of cost or costs of production in any invoice, affidavit, declaration, or other document to the contrary notwithstanding."

The bill.—Section 202 of the bill would delete references to section 402(a) of the Tariff Act of 1930 and the ASP basis of customs valuation from the provisions of law and the headnotes of the TSUS now containing such references and would substitute, where appropriate, references to the new section 402 as amended by this bill. Further, section 500(a) of the Tariff Act of 1930 would be amended by deleting the words "in the unit of quantity in which the merchandise is usually bought and sold," and by adding a reference to the new section 402 as the only basis for any appraisement of merchandise.

Reasons for the provision.—Section 202 makes necessary conforming changes to various laws. Additionally, section 500(a) is amended to clarify that while this section is the general authority for Customs to appraise merchandise, it is not a separate basis or standard of valuation. Consistent with prior judicial decisions, section 500 as amended does not give added authority to the appraising custom officer to value merchandise in any manner he so chooses: he must appraise merchandise pursuant to section 402. Section 500 allows a customs officer to consider the best information available in appraising merchandise, and to make factual determinations reasonably derived from the information available.

Presidential Report (Section 203 of the Bill)

Present law.—None.

The bill.—Section 203 would direct the President to submit a report to Congress, as soon as practicable after the close of the 2-year period beginning on the date on which the amendments made by title II of the bill take effect, containing an evaluation of the operation of the Customs Valuation Agreement, both domestically and internationally.

Reasons for the provision.—The valuation standards and rules provided in this bill are the result of an international negotiation to establish agreed international rules for customs valuation. In many cases, the new U.S. law which would be established by this bill involves significant changes from current U.S. law. Further, the United States agreed to change its law in this area in return for changes in the way other countries value merchandise for their customs purposes, believing this would benefit U.S. exports. The report required by section 203 should permit Congress to evaluate whether the changes made to U.S. law result in a fair, efficient system which adequately protects the revenue, and whether the Customs Valuation Agreement has been fully implemented by other countries, is fairly and effectively operating, and has resulted in the anticipated benefits for U.S. exports. It is expected that the report would give special attention to the fol-

lowing concepts: transactions between related parties, the definition and application of "assists", and whether to place in statutory language the interpretative notes to the Agreement.

Transition to Valuation Standards Under This Title (Section 204 of the Bill)

Present law.—None.

The bill.—Section 204(a)(1) would provide that, except as provided in section 204(a)(2), the amendments made in this title (except those made by section 223(b), relating to certain rubber footwear), would take effect on—

1. January 1, 1981, if the Customs Valuation Agreement enters into force with respect to the United States by that date; or
2. if the previous clause (1) does not apply, that date after January 1, 1981, on which the agreement enters into force;

and would apply with respect to merchandise that is exported to the United States on or after whichever of such dates applies.

Section 204(a)(2) would provide that if the President determines before January 1, 1981, that (1) the European Economic Community (EEC) has accepted the obligations of the agreement with respect to the United States and (2) each of the member states of the EEC has implemented the agreement under its law, then he must, by proclamation, announce such determination, and the amendments made by this title (except those in section 223(b)) would take effect on the date specified in the proclamation, but in no event before July 1, 1980, and would apply with respect to merchandise that is exported to the United States on or after the effective date. This section also contains language to cover the possibility that if the provisions of this bill have become effective before Januray 1, 1981, under section 204(a)(2) because of action by the EEC and its member states, but the agreement does not enter into force with respect to the U.S. until after January 1, 1981, then those provisions of law that were amended by this title would be revived (as in effect on the day before such amendments took effect) on January 1, 1981, and would apply with respect to merchandise exported to the United States on or after January 1, 1981, and before the date on which the agreement enters into force.

Section 204(c) would provide that the amendments made by section 223(b), relating to certain rubber footwear, would take effect July 1, 1981, or, if later, the date on which the Customs Valuation Agreement enters into force with respect to the United States, and would apply, together with the other amendments made by this title, to rubber footwear exported to the United States on or after such date.

Reasons for the provision.—Section 204 specifies when the amendments made by title II become effective, and to which merchandise such amendments apply. The special provision relating to an early effective date of the amendments to the U.S. customs valuation law made by title II if the EEC and its member states take certain action takes account of an understanding with the EEC, as part of the MTN, that the United States would no longer apply the American selling price (ASP) method of customs valuation (which would be eliminated by title II's implementation) as of the time that the EEC and its member

states have, respectively, accepted the Customs Valuation Agreement with respect to the United States and implemented it under their laws. This special provision should not be interpreted as indicating that the EEC and its member states are the only essential countries for purposes of U.S. implementation of the Customs Valuation Agreement; all essential countries must accept the Agreement for the United States to accept the Agreement and for it to enter into force with respect to the United States on or after January 1, 1981.

Final List and American Selling Price Rate Conversions (Sections 222 and 223 of the Bill)

Present law.—The current U.S. valuation system is composed of two separate customs valuation laws, section 402 and 402a of the Tariff Act of 1930. There are 9 possible standards for customs value. The five standards in section 402a are the valuation standards established in the original Tariff Act of 1930. The Customs Simplification Act of 1956 added a new section 402 to the Tariff Act of 1930 containing four additional standards. The original five standards are used to appraise only those articles for which the dutiable value during fiscal year 1954 would have been 5 percent less under the section 402 standards added in 1956 as compared to under the section 402a standards. These articles were determined by the Secretary of the Treasury and are listed in Treasury Decision (TD) 54521, and are known as the "Final List" articles. Final list valuation applies to about 14 percent of all customs entries.

The American selling price (ASP) method of valuation exists under both section 402a and 402, and is virtually identical under both sections. The value of the import is based on the selling price of a U.S. manufactured article which is like or similar to the imported article. ASP is used only if required specifically by law. It must be used to value benzenoid chemicals, certain plastic- or rubber-soled footwear, canned clams, and certain gloves. Entries valued on the basis of ASP account for less than 2 percent of the entries handled by Customs. Virtually all ASP entries have a customs value that is higher than the transaction value because the customs value is based on the selling price of a U.S. manufactured article and the actual transaction value of the imported article has no bearing on the customs value.

The bill.—Sections 222 and 223 would convert the rate of duty applicable to certain articles in the TSUS which are on the Final List or are valued on an ASP basis to a rate providing equivalent duty receipts if the article were valued not under existing section 402a or on an ASP basis, but rather on the basis of existing section 402 of the Tariff Act of 1930.

Reason for the provision.—The U.S. acceptance of the Customs Valuation Agreement will require the repeal of the ASP system of customs valuation for benzenoid chemicals (coal-tar products), certain plastic- or rubber-soled footwear, canned clams, and certain knit wool gloves and mittens. The converted rates were determined by the administration based on studies by the U.S. International Trade Commission. The U.S. acceptance of the agreement also will require the repeal of section 402a of the Tariff Act of 1930, the basis for valuing items on

the so-called "Final List." This required an adjustment of the tariff rates on certain ball bearings and pneumatic tires.

The nomenclature and rates of duty contained in sections 222 and 223 for merchandise currently subject to the ASP method of valuation and for certain merchandise currently subject to valuation under section 402a are designed to insure that U.S. industries producing the merchandise in question will receive protection under that nomenclature and rates of duty that is substantially equivalent to the protection they receive from present rates of duty applied on appraised value determined under present U.S. law.

Converted Rates for Purposes of Trade Agreements Authority (Section 224 of the Bill)

Present law.—None.

The bill.—Section 224 of the bill would provide that for purposes of sections 101 and 601(7) of the Trade Act of 1974, the rates of duty appearing in the rate column numbered 1, if any, for the items amended by sections 222 and 223 would be considered to be the rates of duty existing or in effect on January 1, 1975.

Reason for the provision.—This provision permits the President to exercise his authority under section 101 of the Trade Act of 1974 to modify duties on the Tariff Schedules of the United States (TSUS) items amended by sections 222 and 223. Presidential authority under section 101 is keyed to rates of duty existing on January 1, 1975. The rates of duty applying to TSUS items amended by sections 222 and 223 of the bill will not be existing until some time after the date of enactment of this bill, but by the terms of section 224 will then be considered to have been in effect on January 1, 1975.

Modification of Tariff Treatment of Certain Chemicals and Chemical Products (Section 225 of the Bill)

Present law.—None.

The bill.—Section 225 would permit the President to proclaim a modification of the article descriptions in subparts B and C (relating to certain chemicals and chemical products) of part 1 of schedule 4 of the Tariff Schedules of the United States (TSUS) (as amended by section 223(d)), in order to transfer from any item within those subparts to any other item within those subparts certain chemicals and products with respect to which a negotiating partner in the Tokyo Round of the Multilateral Trade Negotiations (MTN) submitted a proper notice, before July 31, 1979, to the United States. The notice must state that the rate of duty in such subpart for such chemicals or products that would apply but for section 225 is, based on past import data for the chemical or product, inappropriate and nonrepresentative. The President, in making such a transfer, must consider proper chemical nomenclature and customs classification principles.

The President may not make any such modification under this section unless the U.S. International Trade Commission (ITC) determines, before January 1, 1980, that:

1. The chemical or product was not valued for customs purposes on the basis of ASP upon entry into the United States dur-

ing a period determined by the Commission to be representative; and

2. A rate of duty provided for in such subparts, other than the rate of duty that would apply but for this section, is more appropriate and representative for such chemical or product.

Reason for the provision.—This section authorizes the President to proclaim the reclassification of certain chemicals and chemical products currently included in competitive basket categories in the TSUS as actually noncompetitive items at lower rates of duty. It is expected to be applied only to the extent necessary to carry out trade agreements entered into in the MTN. The President is expected to be guided by the recommendation of the ITC in establishing new nomenclature.

TITLE III—GOVERNMENT PROCUREMENT

Introduction

Although the Committee on Finance has jurisdiction over all trade agreements and the bill has been referred solely to that committee, the subject matter of Title III of the bill is within the jurisdiction of the Committee on Governmental Affairs. The Committee on Governmental Affairs conducted extensive consultations with the Administration to develop Title III. For this reason, the Committee on Finance incorporates the views of the Committee on Governmental Affairs, together with supplemental views of a member of that committee, as the Senate report on Title III:

Title III of the bill implements in domestic law the Agreement on Government Procurement approved by the Congress in section 2(a) of the bill. Government procurement is the purchase of products and services by government agencies (i.e., entities) for their own use. Although governments are among the world's largest purchasers of goods and services (in 1978, the United States Government spent some $90 billion on procurement), government procurement was excluded from the national treatment of obligations and most favored nation clauses of the General Agreement on Tariffs and Trade (GATT). The United States recognized that government procurement practices, whether formal or informal, which discriminate against foreign suppliers act as a nontariff barrier to trade. Thus, a major objective of the United States during the Tokyo Round of Multilateral Trade Negotiations was to establish an international obligation among signatory countries to employ transparent, nondiscriminatory procurement practices. To accomplish this, the Agreement on Government Procurement requires open procurement procedures, including the publication of relevant laws, regulations, and tendering opportunities. Since the provisions of the agreement reflect many aspects of current U.S. procurement practice, few changes in domestic law will be required. At the same time, these requirements are supposed to begin to open up the procurement systems of other signatory countries, thereby enabling American firms to compete for foreign government contracts on an equal footing. The estimated size of this new potential market is $20 billion.

United States procurement practices and procedures are governed by statutes and implementing regulations, which are easily identified, open, and consistent in their administration. Regulations detail specific

procedures for drafting non-restrictive purchase descriptions (specifications), publicizing tendering opportunities, opening bids and selecting contractors. An aggrieved bidder, whether foreign or domestic, may protest any irregularities immediately to the General Accounting Office, which applies well established principles to determine whether applicable laws and regulations have been followed. During performance of the contract, contractors are assured proper treatment by contract clauses, regulations, and an extensive appeals process embracing review by agency boards of appeals and the courts. All of these features of the U.S. system already apply to both domestic and foreign contractors, regardless of any stipulation in the Agreement on Government Procurement.

In the United States, preferences for domestic suppliers are clearly set out in statutes such as the Buy American Act (41 U.S.C. 10a–10d), which establishes a price preference on bids which favor domestic firms. Thus, the U.S. procurement system is already open to any foreign firm which can overcome this relatively modest preference (which usually amounts to 6 or 12 percent). By contrast, other countries normally maintain closed procurement systems and only purchase foreign goods when similar goods are not available domestically. In effect, they rely on what amounts to an administrative embargo to restrict competition from foreign suppliers.

Summary of the Agreement

The agreement is designed to discourage discrimination against foreign suppliers. The benefits of the agreement will be available only to goods originating in the territory of the signatory countries. The agreement establishes open or "transparent" procurement procedures, which are fully publicized, consistently administered, and which cover all aspects of the procurement process. It adopts common "ground rules" of procurement practice which not only reflect the principles of transparent procedures, but which also provide basic norms of international procurement practices to the benefit of all suppliers interested in bidding on contracts abroad. It establishes a disputes mechanism which calls for bilateral consultations between the procuring government and the government of an aggrieved foreign supplier, and sets up multilateral conciliation procedures should bilateral procedures reach an impasse. Finally, the agreement calls for developing countries to be provided with technical assistance where appropriate to help them meet their obligations under the agreement.

Scope.—The original U.S. negotiating objective had been to include within the agreement all entities under the direct and substantial control of the government, and to provide a balance of concessions in terms of quantity (total value) and quality (types of products covered). Most of the signatory governments were not prepared to agree to this breath of coverage. Consequently, the agreement will apply solely to those agencies which each signatory country has listed in annex I of the agreement. For the United States, the agreement will not apply to the Department of Transportation, the Department of Energy, the Tennessee Valley Authority, the

Corps of Engineers of the Department of Defense, the Bureau of Reclamation of the Department of the Interior, certain parts of the General Services Administration, the Postal Service, COMSAT, AMTRAK and CONRAIL. The agreement does not apply to procurements of State and local governments or to State and local procurements financed through Federal funds.

The agreement does not apply to contracts of less than 150,000 SDR's (special drawing rights—equal to approximately $190,000), and it does not apply to certain classes of purchases. It does not cover the procurement of services, except for those services which are incidental to the purchase of goods. To the extent that there is ambiguity in the scope and meaning of the term "services incidental to the supply of products", the committee is of the opinion that, where feasible, services which are related to the end use of a product (e.g. insurance, financing, etc.) should be covered by the agreement. It will not cover the procurement of arms, ammunition, war materials, and purchases indispensible for national security or national defense purposes. Nor will it apply to purchases by Ministries of Agriculture for farm support programs or human feeding programs such as the U.S. school lunch program.

U.S. coverage under the agreement will not affect our set-aside programs for small and minority businesses, or contracts for goods made in prisons, by the blind, or by the severely handicappsd. The requirements in the Defense Department Appropriations Act that certain products (i.e. textiles, clothing, shoes, food, stainless steel flatware, certain specialty metals, buses, hand tools, ships, and ship components) be purchased only from domestic sources are not affected by the agreement.

Tendering provisions.—The first obligation of signatories to the agreement is to publish their procurement laws and regulations and to make them consistent with the rules of the agreement. Furthermore each government agency covered by the agreement is required to publish a notice of each proposed purchase in an appropriate publication available to the public, and to provide all suppliers with enough information to permit them to submit responsive tenders.

The agreement prohibits discrimination against foreign suppliers in all aspects of the procurement process, from the determination of the characteristics of the product to be purchased to tendering procedures to contract performance.

It prohibits the adoption or use of technical purchase specifications which act to create unnecessary obstacles to international trade. It mandates the use, where appropriate, of technical specifications based on performance rather than design, and of specifications based on recognized national or international standards.

A number of tendering (or selection) procedures are authorized by the agreement, provided that equitable treatment of all suppliers is assured and that as many suppliers as is possible are allowed to compete for contracts. "Open tendering procedures" allows all interested suppliers to compete for award of a particular contract. The agreement also allows purchasing entities to pre-qualify suppliers by setting up bidders lists and then limiting competition for particular contracts to pre-qualified suppliers. The agreement prohibits discrimination in the

process of pre-qualifying suppliers, and requires that qualified supplier lists, and the requirements necessary to get on them, be published periodically. The use of "single tendering" procedures (or non-competitive procurement) is authorized only under specified circumstances, such as in times of emergency when needed products could not be obtained on a timely basis through other procedures.

While the agreement would not prohibit the granting of an offset or the requirement that technology be licensed as a condition for award, signatories have agreed to recognize that such practices should be limited and used in a nondiscriminatory manner.

Disputes Provisions.—Parties to the agreement are required to notify unsuccessful suppliers promptly upon award of a contract, and to provide them, upon request, with pertinent information concerning the reasons why they were not selected, as well as with the name and relative advantages of the winning supplier.

The agreement does not, however, require the price of the winning bid to be revealed publicly, as is the practice in the United States. Parties to the agreement are required to establish procedures for reviewing complaints arising out of any phase of the procurement process. But the agreement does not specifically mandate procedures whereby an aggrieved American bidder could protest an alleged irregularity to an impartial tribunal which could act promptly to direct the award of a contract to the protesting bidder when the protest is supported by relevant facts. The U.S. system can and does allow for the award of contracts to aggrieved bidders, whether foreign or domestic, and the committee expects the U.S. Government to vigorously urge the other signatories to establish similar procedures.

The agreement does enable the government of an aggrieved supplier to enter into bilateral consultations with the procuring government. If consultations prove fruitless, the agreement provides for a "good offices" effort conciliation by a Committee of Signatories to the Agreement. Any party to a dispute can move to have a factfinding panel established. The committee makes rulings and recommendations based on the report submitted to it by the factfinding panel.

If a country is unable to implement the committee's recommendations, it must provide the committee with its reasons for noncompliance promptly and in writing. In serious cases, the committee may nevertheless decide to authorize a party or parties to the agreement to suspend the application of the agreement to a country which is unable to implement its recommendations. Recommended time limits are established for each step in the disputes process; these time limits run over a year in length.

The committee expects that these protests will be handled on a case by case basis. Furthermore, the committee expects the U.S. Government to have qualified officials available in foreign countries to assist U.S. businesses, and, if necessary and appropriate, to act as advocates for a U.S. firm before a foreign government.

General Authority To Modify Discriminatory Purchasing Requirements (Section 301 of the Bill)

Present Law.—The Buy American Act of 1933, 41 U.S.C. 10a–10d, as implemented by Executive Orders 10582 and 11051, requires the

purchase of domestic products unless the cost is unreasonable or the domestic purchase is not otherwise in the public interest. In practice, Buy American operates to give a price preference to firms using materials of domestic origin. The preference is 6 or 12 percent for civilian agency purchases, and 50 percent for Defense Department procurements.

Several related laws will not be affected by the agreement. They are listed below:

1. *Small Business and Minority Business Programs* (15 U.S.C. 637 and implementing laws and regulations, and P.L. 95–507). Set-asides, that is, purchases reserved for small and minority businesses, are excluded from the agreement's coverage.

2. "*Berry Amendment*" *Types of Restrictions on the Defense Department*—(DOD Appropriations Act, P.L. 95–457). The Defense Department will continue to purchase, solely from U.S. sources, its needs for textiles, clothing, shoes, food, stainless steel flatware, certain specialty metals, buses (P.L. 90–500, sec. 404) ships, and components thereof (Byrnes-Tollefson Amendment to DOD Appropriations Act).

3. *Hand Tools* (GSA Appropriations Act)—Fifty percent differential in favor of domestic suppliers for all procurements of hand tools will not be affected.

4. Prison- and Blind-Made Goods—(18 U.S.C. 4124 and 41 U.S.C. 48) are an exception to agreement coverage.

5. *Cargo Transportation Preferences* (10 U.S.C. 2631, 46 U.S.C. 1241(b)(1), International Air Transportation Fair Competitive Practices Act of 1974, P.L. 92–623) are specifically not considered by the United States to be a service "incidental" to a procurement.

6. *Purchases by State and Local Governments:* Are not affected by the agreement, since the agreement applies only to purchases made by specified Federal agencies. The agreement does call on the U.S. Government to inform State and local governments of the principles and rules of the agreement, and to draw their attention to the overall benefits of liberalized government procurement.

7. *Federal Grant Funds to State and Local Governments:* Purchases by State and local governments which are financed with Federal Grant Funds (for example) State purchases made with Federal funds under the Surface Transportation Act and the Clean Water Act) are not covered by the agreement.

The Bill.—Section 301(a) would grant the President authority, effective on January 1, 1981, to waive the application of discriminatory government procurement law, such as the Buy American Act (41 U.S.C. 10a et seq.) and those labor surplus area set-asides that are not for a small business. This waiver would be authorized only in the four circumstances contained in subsection (b), and only for purchases covered by the agreement. Purchases covered by the agreement are those made by the U.S. agencies designated in the agreement that are greater than 150,000 SDR's (approximately $190,000), and not subject to an exclusion, such as national security and small or minority business set-asides.

Section 301(b) specifies four circumstances in which the President may designate a foreign country as eligible for a waiver from U.S.

statutes which establish a preference for domestic suppliers. The first three methods require the foreign country to provide appropriate reciprocal competitive government procurement opportunities to U.S. products. The fourth method applies only to "least" developed countries (the countries on the United Nations list, presently 29 in number) and would not require reciprocity in return for application of the waiver.

Under section 301(b)(1), a country must be a party to the agreement and must provide appropriate procurement opportunities to the United States. Major industrial countries could qualify for a waiver only under section 301(b)(1).

The second method, as set forth in section 301(b)(2), would permit a waiver for those countries which are willing to provide reciprocity and to apply the procedural obligations of the Agreement de facto with respect to U.S. products. It would permit waivers for a country which is unwilling to join a multilateral agreement, but which nevertheless assumes the obligations of the agreement by signing a bilateral agreement with the United States.

The third method through which a waiver may be granted is set forth in section 301(b)(3). It applies to nonsignatory countries which agree to provide the United States with reciprocal competitive opportunities, but refuse to assume the procedural obligations of the agreement.

Section 301(c) would allow the President to modify or withdraw a waiver or designation to accommodate technical name changes. It would also enable him to make any alterations necessary to restore a balance in coverage following a dispute settlement proceeding based upon a breach of the Agreement by another party, or to achieve a balance following expansion of coverage in future negotiations.

Reasons for the provision.—The agreement requires all signatory countries to refrain from discriminating against foreign suppliers and products in procurements covered by the agreement. This provision enables the President to make those adjustments in the application of relevant domestic laws, regulations, and procedures which are necessary to implement our obligations under the agreement. The adjustments would take the form of waivers of the application of such laws to countries designated under subsection (b).

Subsection (b) sets out the circumstances in which waivers may be granted. Subsection (b)(3) would be used for instance, where the procurement system of a country was not sufficiently developed to permit adoption of the agreement without serious dislocations. In light of the importance the committee attaches to the procedural obligations of the agreement, the committee expects that waivers under subsection (b)(3) will be granted only after thorough, careful deliberations.

Authority To Encourage Reciprocal Competitive Procurement Practices (Section 302 of the Bill)

Present law.—None.

The bill.—Section 302(a) would require the President, once he grants any waiver under section 301(b), to enact a prohibition on the procurement of goods from countries which did not obtain a 301(b)

waiver. This prohibition, which applies to procurement covered by the agreement, would take effect immediately for major industrial countries. The President would have the authority to delay its application to all other countries, but only for a period not to exceed 2 years.

Section 302(b) would authorize agency heads to waive the prohibition on a case by case basis when to do so would be in the national interest. It would also permit the Secretary of Defense to waive the prohibition for products of countries which enter into a reciprocal procurement agreement with the Department of Defense. All such waivers would be subject to interagency review and to general policy guidance by the interagency Trade Policy Committee.

Section 302(c) would require the President to report to the committees of jurisdiction in the House and Senate on or before July 1, 1981 on the effects on the U.S. economy of the refusal of developed countries to allow the agreement to cover their government entities that are the principal purchasers of goods and equipment in appropriate product sectors. The President's report is to include an evaluation of the effect such refusal has on employment, production, competition, costs and prices, export trade, balance of payments, inflation, technology and the Federal budget. It is the committee's intent that this requirement particularly address reciprocity in the heavy electrical, telecommunications and transportation equipment product sectors.

The President's report would also include an evaluation of alternative means to obtain equity and reciprocity in such product sectors, including: (1) prohibiting the procurement of products of such countries by U.S. entities not covered by the agreement; (2) modifying the application of the Buy American Act to effectively prohibit U.S. agencies not covered by the agreement from procuring products of countries not parties to the agreement or otherwise eligible for a waiver under section 301 of this act; and (3) denying the use of Federal funds and credits for any other domestic purchase from such countries. The committee recognizes that the President has the authority, under the existing provisions of the Buy American Act, to effectively prohibit U.S. agencies not covered by the agreement from procuring products of countries not parties to the agreement or otherwise eligible for a waiver under section 301 of the bill. These provisions would also apply to the report and related action required under section 304 of this act.

This evaluation of alternative ways to obtain reciprocity would include an analysis of the effect each alternative means would have on the U.S. economy. It would also weigh the effect on the success of future negotiations on expansion of the agreement's coverage, other trade negotiating objectives, the relationship of the Federal Government to State and local governments, and other factors that may be appropriate.

Subsection (3) of section 302(c) would require the President to consult with respresentatives of the public, industry and labor in preparing the report. It would also require him to make pertinent, nonconfidential information obtained in the course of the report's preparation available to the private sector advisory committees established under section 135 of the Trade Act of 1974.

Subsection 302(d) would establish a timetable for actions which the President would propose to take as a result of the findings in the report in section 302(c). It would require the President to submit a report outlining the actions he deems appropriate to establish reciprocity with major industrial countries in government procurement. The report is to be submitted to the congressional committees with jurisdiction by October 1, 1981. If the President determines that new statutory authority is needed to implement his recommendations, he would first consult with the appropriate congressional committees and submit a draft proposal to those committees. After this consultation period, but no earlier than January 1, 1982, the President could submit a bill implementing his legislative recommendations to the Congress. Once any such bill is submitted to the Congress, the appropriate committees would give it prompt consideration and make their best efforts to take final committee action in an expeditious manner.

Reasons for the provision.—Section 302 is designed to encourage other countries to participate in the agreement and to provide reciprocal competitive opportunities to the United States.

The committee felt that a significant disappointment in the negotiations leading to the agreement was the refusal by developed countries to include in the agreement their agencies which are the principal purchasers of goods and equipment in certain product sectors.

The effect of this refusal is to maintain the status quo ante for procurement not covered by the agreement. In practice, foreign suppliers will still be able to bid on U.S. purchases not covered by the agreement (subject to the Buy American differential) while U.S. suppliers will continue to be effectively banned for competing for similar foreign procurements.

The report called for in subsection (c) is intended to assess the domestic impact of this refusal and to evaluate alternative means to obtain reciprocal competitive opportunities for the United States. It is the committee's intent that the report particularly address reciprocity in the heavy electrical, telecommunications and transportation product sectors.

The timetable for actions set forth in section 304(d) is intended to require the President to describe the actions he plans to take shortly after the report in section 302(c) is filed.

If any of the actions require new statutory authority, this section is intended to assure that the relevant congressional committees give the President's legislative proposals prompt consideration.

Waiver of Discriminatory Purchasing Requirements With Respect to Purchases of Civil Aircraft (Section 303 of the Bill)

Present law.—None.

The bill.—Section 303 would authorize the President to waive, effective January 1, 1980, the application of the Buy American Act for government purchases of civil aircraft and related articles of countries party to the Civil Aircraft Agreement (Title VI of this Act). This authority is not restricted to entities covered by the Government Procurement Agreement or its purchase value threshold.

Expansion of Coverage of the Agreement (Section 304 of the Bill)

Present law.—None.

The bill.—Paragraph 6 of Part IX of the agreement calls for all parties, not later than three years after the agreement takes effect, to undertake further negotiations with a view toward expanding the coverage of the agreement.

Section 304 would establish objectives for the United States to pursue during these renegotiations. The overall goal of the United States, as set forth in section 304(a), would be to maximize the economic benefits accruing to the United States by expanding foreign markets for U.S. agricultural, industrial, mining, and commercial products. This means reducing or eliminating those devices which distort trade or commerce related to procurement. Section 304(a) would also require the President to consider the results of the reports on labor surplus areas which he will have completed in accord with section 306(a). Since no data on labor surplus programs is currently available, the committee expects that the results of the reports required by section 306 will be carefully weighed in establishing renegotiation objectives.

Moreover, the committee expects the U.S. Government, during renegotiations, to seek to explore the possibility of expanding the agreement to cover services such as banking, insurance, and communications. The committee also recognizes that the term "services incidental to the supply of products" is not well-defined in the agreement, and expects the U.S. Government, prior to renegotiations, to clarify this term.

Subsection (b) would set out sectoral negotiating objectives. It calls on the President, during renegotiations, to seek to obtain the same opportunities in developed countries for U.S. exports which the United States affords to the products and supplies of such countries.

Subsection (c) would direct the President, during renegotiations, to seek to establish a system to independently verify certain types of procurement related information which each party to the agreement is obliged to provide to the Committee of Signatories. The information, which is to be submitted annually, includes such basic statistics as the number and total value of contracts awarded broken down by procuring entities and by categories of products.

If the President determines that the renegotiations are not progressing satisfactorily and are not likely to result in an expansion of the agreement to cover purchases by entities in developed countries that are principal purchasers of goods and equipment in appropriate product sectors, section 304(d) would require him to report to the appropriate congressional committees. The President is also directed to indicate what actions will be taken to attempt to obtain reciprocity with such countries on a product sector basis.

Taking into account the economic factors required to be analyzed in his report (on impact of restrictions) required by section 302(c) and recognizing his existing authority, the President could recommend legislation to the Congress to prohibit U.S. entities not covered by the agreement from purchasing products of such countries. It is not the committee's intent that the President's recommendations

should be developed with respect to any particular U.S. agencies or any particular industries or product sectors. It is also the committee's view that the President should be selective in his use of this authority and use it only in the overall national interest. Finally, subsection (d) would require the President, in his annual report on the trade agreements program under section 163(a) of the 1974 Trade Act, to report any actions he had deemed appropriate to establish reciprocity in appropriate product sectors with major industrial countries.

Subsection (e) would deal with expansion of coverage of the agreement by making any future waiver for procurement not initially covered by the agreement subject to consultations with the private sector advisory committees and the Congress under procedures established under the Trade Act of 1974.

Reasons for the Provision.—The objective of the renegotiations called for in the agreement is to reduce or eliminate those devices which distort trade. In procurement, the committee recognizes that any country which fails to assure equality of treatment in its technical specifications, tendering procedures, or during contract performance is employing devices which distort trade or commerce. Such practices are fundamentally inconsistent with the agreement's mandate for equivalent competitive access and nondiscrimination against foreign suppliers and products.

As stated earlier, the committee is concerned that several major industrial countries continue to refuse to provide reciprocal competitive opportunities for U.S. goods in basic product sectors by excluding from coverage under the agreement their governmental entities which are major purchases of goods in such product sectors. In section 304(b), the committee expects the President to vigorously and continuously seek to establish reciprocity in these basic product sectors, particularly in the heavy electrical, telecommunications, and transportation equipment product sectors.

The independent verification objective called for in section 304(c) is based on the committee's belief that the ready availability of timely, accurate procurement statistics in an effective way to assess the efficacy of the agreement.

Monitoring and Enforcement (Section 305 of the Bill)

Present law.—None.

The bill.—In the preparation of his recommendation for the reorganization of trade functions (section 1111), section 305(a) would require the President to ensure that careful consideration is given to the monitoring and enforcement requirements of the agreement and this title, with particular regard to the technical specifications, tendering, and review required by the agreement or otherwise agreed to by a country to which the United States accords agreement benefits.

Subsection (b) requires the Secretary of the Treasury to issue prompt determinations and rulings on the country of origin of specified products. It also provides for criminal penalties for fraudulent conduct in connection with obtaining a waiver under section 301 or avoiding a prohibition under section 302.

Subsection (c) requires the President to evaluate the domestic procedures relating to rules of origin, and to report thereon to the Con-

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gress. The rules of origin report will also examine the rules of origin employed by other major industrial countries.

Reasons for the provision.—In this regard, the committee anticipates an upgrading of commercial programs overseas to assure that U.S. trading partners are meeting their trade agreement obligations, including those under the technical specification and tendering information and review procedures of the Agreement on Government Procurement.

Furthermore, the committee expects that the United States will actively use the provisions of title VII of the agreement to assure that the obligations of the agreement are enforced. The committee anticipates that all violations of the agreement will be promptly investigated and that every serious violation will be vigorously pursued.

In calling for the reports on section 305(c), the committee recognized the growing importance of the relationship between rules of origin, customs unions, regional trading blocks, preferential trade agreements and the Generalized System of Preferences.

There was interest that the administration prepare a report to the Congress on suggested improvements and simplification of existing practice. U.S. rules of origin should facilitate fair and equitable trade expansion. These rules should not encourage exports to the United States of goods, products, commodities or other articles of trade from countries not having low-tariff agreements with the United States, via countries enjoying low-tariff agreements with the United States. This qualification should also apply to U.S. insular possessions.

The committee was concerned that the rules of origin of the major industrial countries not be used to impose limitations on the export from the United States to other countries of goods, components, or other articles of trade incorporated into finished products.

Should the President determine that foreign rules of origin were employed to restrict United States exports, the President has the authority to increase the Buy American percentage differential for exports to U.S. noncovered entities under the code. The administration should attempt through negotiations to eliminate such trade practices which have the effect of discriminating against goods of U.S. origin.

Labor Surplus Area Studies (Section 306 of the Bill)

Present law.—Since 1952, the Federal Government has pursued a policy of awarding a portion of its procurement contracts to firms in regions of high unemployment. Under the terms of the Agreement, the existing 12% Buy American differential in favor of domestic sources located in these labor surplus areas, and the policy area concerns, would be waived for U.S. procurements covered by the agreement.

The committee attempted to obtain an assessment of the impact that such waivers would have on regional economics and employment prior to its consideration of this agreement. No satisfactory assessment was provided to the committee on the basis of Federal agency experience with the programs. The committee is concerned about the effects that this waiver will have on the government's commitment to and its ability to stimulate employment in, areas of the country where the workforce is underutilized.

The bill.—Section 306 requires the President to conduct two studies relating to the impact of the agreement on procurement by the government of products produced in labor surplus areas. Subsection (a) would require an analysis of the economic impact of the waiver of both the Buy American differential and procurement set-asides for labor surplus areas, including the impact on employment in various regions of the country. Noting that renegotiation of the agreement is to be resumed in three years from the date of implementation, the committee believes that concessions granted regarding waivers of the labor surplus program should be considered as a potential issue for renegotiation should the economic impact assessment reveal disproportionate dislocations. In the absence of data which show the nature and concentrations of these economic effects the committee believes first, that the President should seek to make such a determination and second, that these findings should be reflected in the renegotiation posture of the United States.

Subsection (b) would call for an analysis of any such waiver on the fulfillment of the objectives of Executive Order 12073 (which calls upon executive agencies to "emphasize procurement set-asides in labor surplus areas in order to strengthen our Nation's economy"), and on the achievement of individual targets for labor surplus area procurement by each Executive agency, as established by the Administrator of General Services pursuant to that Executive Order. The President is required to provide interim reports to the appropriate committees of Congress no later than January 1, 1980, and to file his final report by July 1, 1981.

Reasons for the provision.—The committee expects that the results of these studies, and the interim consultations with congressional committees mandated in the second study, will serve as the basis for actions to insure that the agreement will not adversely affect the overall objectives of the labor surplus procurement programs. The committee urges that, in accordance with the interim and final results of these studies, the program of procurement set-asides for labor surplus areas be strengthened and expanded by those entities and for those purchases which are not on the U.S. list, in order to compensate for losses that the program will suffer due to the waiver of the program for those entities which are listed.

Finally, the committee notes that procurement set-asides for small and minority concerns, and for such concerns which are located in labor surplus areas, are entirely excluded from coverage by the agreement.

Availability of Information to Congressional Advisors (Section 307 of the Bill)

Present Law.—None.

The bill.—Section 307 would require the STR to make available to Members of Congress designated as official advisors under section 161 of the 1974 Trade Act, information compiled by the Committee on Government Procurement (Committee of Signatories) as required by the agreement.

Reason for provision.—The purpose of this section is to prevent any confidential information from being inadvertently disclosed to the public and to assist Congress in its oversight responsibilities. The committee does expect all statistics and information which can be disseminated to the public to be so disseminated.

Effective Dates (Section 309 of the Bill)

Among others, definitions in section 308 would include: "eligible products" to be those covered by the agreement; the "rule of origin" to be the current U.S. customs rule for MFN purposes; "civil aircraft" to be all aircraft other than aircraft purchased or used by the Department of Defense or the U.S. Coast Guard, and "major industrial country" to be any country as defined in the Trade Act of 1974 (section 126).

Definitions (Section 308 of the Bill)

Waivers with respect to Government Procurement Agreement obligations under section 301 would be effective on January 1, 1981. Waivers with respect to Civil Aircraft Agreement obligations under section 303 would be effective January 1, 1980.

Remedies Under Section 301

The committee intends that section 301 of the Trade Act of 1974 shall be a vehicle for enforcing obligations undertaken by signatories to the Agreement, and also for addressing discriminatory acts of other unreasonable and unjustifiable restrictions against U.S. commerce. Further, the committee recognizes that any domestic party adversely affected by the lack of reciprocity in competitive government procurement opportunities for any particular product sector not covered by the Agreement, could seek a remedy under section 301. If, with respect to such a remedy, the President determined it was appropriate, feasible and consistent with the purposes of the Trade Act to take affirmative action after consideration of all relevant factors, including the effect on exports, the cost to the government, inflation, availability of domestic products, and the effects on competition in such a case, the committee recognizes that it may be appropriate for the President to consider effectively prohibiting entities not covered by the Agreement from accepting bids that would result in the purchase of products originating in the country or instrumentality involved. In the committee's view, any action must be consistent with the Government Procurement Agreement, other MTN agreements, and the Trade Agreements Act of 1979.

Analysis of Potential Benefits to the United States

Introduction.—Negotiations on the scope of the agreement centered on the inclusion or exclusion of specific ministries, departments, and other government agencies. The original U.S. objective had been to achieve the broadest possible coverage under the agreement. Most of the signatory governments were not prepared to agree to this breadth of coverage. One important reason for this reluctance on the part of

the other signatory countries stemmed from the fact that their government purchases constitute a significant share of the market in some product sectors. For instance, in most European countries, power generating facilities are owned by the government, while in the United States, such facilities are generally privately owned. As a result, most European countries refused to place their power generating agencies under the Agreement. In this instance, as in many others, the United States reduced the size of its offer (i.e., the number and types of agencies to be covered under the agreement) to reflect, to the extent practicable, the size and nature of the offers of other signatories. The final result of this process was an offer by each signatory country which consisted of a list of government entities to be covered by the agreement.

Analysis of the coverage of the agreement is a difficult, imprecise task. First, government purchasing procedures vary from country to country. Some governments rely on central purchasing entities for the bulk of their procurement, while others allow each agency to do its own purchasing. Some governments are highly centralized, while others have numerous semiautonomous subjurisdictions.

Second, very little data is available on the size and scope of government purchasing activities. Even the United States has only recently begun to compile procurement statistics on a centralized, systematic basis. As a result, currently available statistics on government procurement are of limited use as an analytical tool, and must be viewed in light of their limitations. Data is compiled on a year by year basis, which tends to mask or unduly highlight large but intermittent purchases. The year-by-year compilation also tends to give a distorted picture of the growth in government procurement. Finally, fluctuating exchange rates make it difficult to pin down the dollar value of offers of purchases which are made using other currencies.

One final consideration which is key to the analysis of the benefits of this agreement is the currently large disparity in the openness of government procurement markets to foreign products. The U.S. procurement market is already open to any foreign firm that can overcome a relatively modest preference margin. On the other hand, our trading partners, for the most part, only purchase foreign goods when the goods to be procured are not available domestically.

In general, major signatories have agreed to coverage of most purchases of goods by their central government ministries and departments—excluding national security purchases. While a comparison in dollar terms is not by itself a particularly useful way of measuring reciprocity, the overall picture is as follows. The United States has offered coverage totaling $12.5 billion while our negotiating partners have offered an aggregated coverage totaling approximately $20.7 billion (not including offers by Austria and the developing countries).

On a country basis, offers amount to:	*Billions*
European Community	$10.5
Japan	6.9
Canada	1.25
Sweden	1.1
Switzerland	.33
Finland	.26
Norway	.17

It is not possible to calculate in dollar terms the increase in U.S. exports or imports that will result from this agreement. However, it should be noted that U.S. trading partners will be expected to provide new export opportunities in areas where the United States is highly competitive. These areas include, inter alia, computers, business machines, laboratory equipment, pharmaceuticals, measuring instruments and, to a limited extent, telecommunications equipment. Given the nature of this agreement, a useful way to analyze its economic benefits is to examine the degree to which the United States and our trading partners have agreed to cover government entities, and the extent to which comparable entities serving comparable functions are covered. This can best be assessed by an analysis of the U.S. offer and of those of our negotiating partners.

United States.—Of the major participants in the government procurement negotiations, the United States has the lowest level, in relative terms, of government participation in its economy. Nevertheless, the large dollar value of the U.S. procurement market provided considerable flexibility in fashioning both the basic coverage of the agreement and the U.S. entity offer.

The United States has offered approximately $12.5 billion in coverage out of $90 billion in total federal procurement. In other terms, we have offered approximately 15 percent of our total procurement market. This offer includes coverage of most executive agencies with some important exceptions. The 85 percent which will not be covered includes these exceptions as well as purchases of services, construction contracts, and purchases excluded on national security grounds.

From the outset of negotiations it was expected that the telecommunications, heavy electrical, and transportation (mostly railroad) sectors would be problem areas. The U.S. market in these areas is already essentially open to purchasing based on commercial considerations because most of such entities are in the private sector. On the other hand, there is a high degree of government incursion in these areas on the part of our trading partners. The EC was expected to be particularly difficult in the negotiations since it had been unable to agree to the opening of markets in these areas even among its member states. As anticipated, the EC did not offer these entities although the EC did offer the post offices within the Postal-Telegraph-Telephone systems (PTTs) which was an important foot in the door. Our other trading partners followed suit (with the exception, in part, of Japan). As a result, the United States sought to redress his imbalance by withdrawing coverage of:

Department of Transportation;
Department of Energy;
The Bureau of Reclamation;
The Army Corps of Engineers; and
The Tennessee Valley Authority.

In an additional balancing move, the United States did not offer coverage of such government chartered corporations as COMSAT, AMTRAK, CONRAIL, or the U.S. Postal Service, none of which are bound by the Buy American Act.

In regard to purchases by the Department of Defense, certain sensitive products are excluded from coverage. These exceptions are cur-

rently covered by the Berry Amendment and include food, clothing including leather gloves and shoes, textiles, buses, vessels or major components thereof, hulls and superstructures. Specialty metals are also excluded.

Purhases of such products as flatware and tools were excluded through our withdrawal of GSA's Regional Office 9 in San Francisco and the National Tool Center.

Finally, there is an explicit provision in the U.S. offer allowing for continued set-aside programs for small and minority business.

Covered U.S. entities purchased a broad range of products, including purchase of such goods as office machines, office furnishings, paper, vehicles, data processing equipment, laboratory equipment, medical supplies and equipment, aircraft, and measuring equipment.

It should be noted that the United States and all its major trading partners have agreed to eliminate discriminatory government purchasing practices by all government entities in regard to aircraft in the context of the Aircraft Agreement. There is no value threshold in the Aircraft Agreement.

European Communities.—The EC offer is valued at $10.5 billion. The offer includes essentially all central government entities with the exception of the most quasi-governmental entities such as the power and transportation entities and the telecommunications portions of their PTT's.

It is worth noting that these are not total product exclusions. Some central government agencies which purchase telecommunications equipment (e.g. Interior or Justice ministries) will be covered by the agreement. Nevertheless, the exclusions of PTT's from the offer of the EC was dismaying: it marked the loss of a significant export opportunity for U.S. suppliers.

In some measure, the EC offer goes beyond what its member states had previously agreed to undertake among themselves through their "internal directive" of 1976. For instance, the threshold agreement is approximately $190,000 whereas the threshold in this internal directive is approximately $250,000. The PTTs are excluded in their entirety from the internal directive while all but the telecommunications purchases of the PTTs are included under the Agreement. Also, computers will be covered immediately under the Agreement whereas the internal directive phase in coverage of computers over a period of over three years.

The current EC internal directive represents a significant additional dimension to the EC offer in that the offer ends discrimination against U.S. supplies in favor of suppliers from the member states. As noted earlier, our trading partners generally do not buy from foreign supplier if the required goods are available in the domestic market. Prior to the internal directive a member state such as France purchased domestically if possible and if not possible, then purchased foreign goods. In such instances U.S. exporters competed on an essentially equal basis with bidders from other EC member states. Under the internal directive, France now seeks to purchase first from an EC supplier and only purchase from outside the EC if a product is not produced in a member state. Given the size and diversity of the EC market, this has seriously diminished U.S. competitive opportunities.

This Agreement is supposed to remedy this discrimination and allow competition with both domestic manufacturers and other EC suppliers.

An overall review of the entities which the EC has offered indicates major new opportunities for sales in areas such as computers, business machines, scientific and controlling instruments, pharmaceuticals and general hospital supplies.

Likely purchasers of computers and business machines would include the French Ministries of the Economy, the Budget, and the various social security entities; the German Ministries of Justice, Finance, and Research and Technology; the Italian Ministries of Finance and States; and the Belgian Ministries of Finance and Social Security. Purchasers of scientific and controlling instruments would include the Belgian Ministries of Agriculture and Public Health and Environment; the French Ministries of Education, Agriculture and Health and Family; the German Ministries of the Interior, Finance and Economic Affairs; and the British Department of Environment, Transportation, and Health and Social Security. Likely purchasers of pharmaceuticals and general hospital supplies include the Danish Risoe Research Establishment, State Serum Institute, and Ministry of Defense; the French Ministries of Defense and Health; the German Ministries of Labor, Defense, and Interior; and the Italian Ministries of Health, Treasury and Defense.

Japan.—The current Japanese offer, which is valued at $6.9 billion goes considerably beyond the offers of our other trading partners in quantity, if not quality. In addition to including all central government entities, Japan has offered portions of the quasi-public Nippon Telephone and Telegraph (NTT), Japanese National Railroads (JNR), and Tobacco and Salt Monopoly. In regard to NTT, Japan has agreed to a program aimed at providing coverage, particularly in the important telecommunications area, aimed at mutual reciprocity in market access. As part of this understanding Japan has offered to go beyond the obligations of the Agreement in regard to NTT by allowing foreign firms to participate in the R&D process and by facilitating foreign access to the market for privately owned equipment. Telecommunications negotiations are to be concluded by the end of 1980, in advance of the January 1, 1981 effective date of the Procurement Agreement.

Japan has not offered the remainder of its plethora of quasi-public entities—including the Electric Power Development Corporation (EPDC)—and has excepted existing special set-aside programs for cooperatives. However, almost all power generating facilities are privately owned and the programs for cooperatives amount to no more than a few million dollars.

Japan's offer could provide major benefits to U.S. exporters. At the present time, public tendering is essentially unheard of in Japan and procedures are unintelligible to all but selected Japanese firms. The agreement with Japan is supposed to open new and large markets to U.S. exports of computers and business machines, telecommunications equipment, scientific and controlling instruments, and medical supplies and equipment. Japan has followed a strong buy national policy in the computer area. It is estimated that in 1975, 98.4 percent of computers used by the government were the products of Japanese manu-

facturers. This total does not include U.S. subsidiaries in Japan since they are not considered to be domestic by the Japanese. U.S. private sector advice indicates major opportunities for sales of computers and business machines to the Defense Agency, the Ministry of Finance, the Meteorology Agency, the Ministry of Construction, the Ministry of Foreign Affairs, the Science and Technology Agency and NTT.

If negotiations on NTT are successful, a large new market in telecommunications equipment is supposed to open. Purchases by NTT total $3.3 billion annually, of which a significant portion is telecommunications equipment. Other purchasers of telecommunications equipment include the Ministries of Transportation and Construction. Medical supplies and equipment are purchased by the Ministries of Education, Health and Welfare, Agriculture and Forestry, as well as the Defense Agency.

Japanese participation in this Agreement would be particularly significant because of the nature of the Japanese market. U.S. exporters have had great difficulty in selling to Japan because of the complexity of Japan's marketing system. These complexities should no longer exist in the area of government procurement under this agreement. Ministries will be required to tell an interested U.S. bidder all he needs to know to submit a bid for consideration. Winning bids are supposed to be determined strictly on a competitive basis with all factors known. Therefore, it should be relatively easy to sell competitive products to the Japanese government. These sales may encourage U.S. exporters to take the extra effort necessary to sell in the private sector and make their products more familiar to the Japanese. Success in penetrating the Japanese procurement market however, will depend largely on effective U.S. surveillance and enforcement of Japan's obligations under the agreement.

Canada.—Canada's offer is valued at $1.25 billion. It includes coverage of all central government entities with exceptions closely tracking our own. Canada has excluded from coverage its Department of Communications, Department of Transportation, and Fisheries and Marine Service. Canada has also taken an exception for set asides for small business and qualified its offer of the Department of Post Office with a caveat that it will cease to be covered if it is converted to a Crown corporation.

A review of the Canadian offer indicates important new opportunities for U.S. exporters. Purchasers of computers and business machines include the Department of Energy, Mines, and Resources, the Department of Environment, the Department of Industry Trade and Commerce, and the Department of Finance, Scientific and controlling instruments are purchased by the Department of Agriculture, the Department of Energy, Mines, and Resources, the Department of Environment, and the Department of National Health and Welfare, medical supplies and equipment are purchased by the Department of National Health and Welfare and the Department of Defense. In addition, coverage of the Department of Supply and Services should be an important benefit to U.S. exporters in the paper sector.

Sweden.—Sweden's current offer totals approximately $1.1 billion. In scope the original Swedish offer was the most generous, covering all central government entities including telecommunications, power gen-

eration, and transportation entities. However, Sweden sees the natural market for its exports as the EC and tied the quality of its offer to what it received in return from the EC. In the face of the EC's failure to offer entities in these three sectors. Sweden was unwilling to maintain its offer and made withdrawals in these and other areas.

The Swedish offer refers to purchasing entities within government ministeries rather than entire government ministries. Nevertheless, based on the entity list it provided, it appears that Sweden has offered (in whole or in part) most of its central government entities.

A number of entities may be of interest to U.S. exporters. Purchasers of computers and business machines include the Agency for Administrative Development, and the Central Bureau of Statistics. Scientific and controlling instruments are purchased by the National Board of Health and Welfare. Purchasers of medical supplies and equipment include the Medical Board of the Armed Forces and the National Board of Health and Welfare.

Switzerland.—Switzerland's offer is valued at $330 million. As in the case of Sweden, Switzerland was originally willing to offer all central government entities including entities in the telecommunications, transportation, and power generating areas. However, Switzerland was also unwilling to maintain its offer in the face of the EC's failure to offer comparable coverage.

The Swiss offer refers to purchasing entities within government ministries rather than the entire government ministries. It appears that Switzerland has offered all central government ministries, including the Ministry of Transport, Communications, and Energy, but not including the telecommunications purchases of the PTT or the state-owned railways.

A number of entities may be of interest to U.S. exporters. The Office Central Federal du Material and, to some extent, the Bibliotheque Central Federale serve as a central purchasing agency for most purchases by the federal ministries. The former is the major purchaser of computers and business machines. Scientific and controlling instruments are purchased by entities within the Federal Department of the Interior, Finance and Customs, Public Economy, and Transport, Communications, and Energy. Medical supplies and equipment are purchased by the Federal Public Health Service and the Federal Department of Defense.

Finland.—Finland's offer is valued at $260 million. Like the Swiss offer, the Finnish offer is stated in terms of purchasing entities of ministries rather than entire ministries. It appears that Finland has offered most of its central government entities.

It appears that a number of entities are of interest to U.S. exporters. Computers and business machines are purchased by the State purchasing Centre and probably the Technical Research Centre. Scientific and controlling instruments are purchased by the Agricultural Research Centre, the Finnish Meteorological Institute, the National Board of Vocational Education, the State Purchasing Centre, and the Technical Research Centre.

Norway—Norway's offer is valued at $170 million. Although the Norwegian offer refers to purchasing entities within ministries, rather than the ministries themselves, it appears that Norway has

offered (in whole or in part) most of its central government entities.

A number of offered entities may be of interest to U.S. exporters. Computers and business machines are purchased by the Central Government Purchasing Office, the Defense Ministry and the Postal Services Administration. Scientific and controlling instruments are purchased by the Universities of Oslo, Trondheim, Bergen, and Tromso and the State Hospital. Medical supplies and equipment are purchased by the State Hospital and Defense Ministry. Telecommunications equipment is purchased by the Police Services and Norwegian Broadcasting Corporation.

Conclusions.—From the foregoing it appears that the United States and its major trading partners will be starting from a base of roughly comparable coverage, with several notable exceptions mentioned above. This should result in important new opportunities for U.S. exporters. However, the size of these opportunities and our ability to take advantage of them is not clear. With the significant exception of the United States, most signatories have maintained closed procurement systems and have consistently discriminated against foreign suppliers in the past. While the agreement is a good first step in opening up the government procurement market, the agreement, in and of itself, will not guarantee open access or change deeply rooted habits. Only effective, vigorous monitoring and enforcement of the agreement by the U.S. Government can assure that the opportunities the agreement is designed to provide will in fact materialize. This means working in partnership with U.S. suppliers to help them compete for contracts overseas by (for example) providing assistance in obtaining necessary procurement information in a timely manner, and setting up expedited procedures for obtaining U.S. export licenses. The agreement's disputes resolution procedures can be cumbersome and time consuming, and could be employed in a dilatory manner by a country intent on avoiding its obligations under the agreement. The U.S. Government can demonstrate its determination to see the agreement work, both to U.S. businesses and to our trading partners, only by using the disputes procedures to assure that obligations under the agreement are met. If the disputes procedures are inadequate to ensure mutual reciprocity, the U.S. Government should be prepared to carefully reevaluate the benefits of remaining a signatory to the agreement. Therefore, more than any other agreement, this agreement will require close monitoring and cooperation between business and the government.

Supplemental Views of William S. Cohen: Government Procurement

I am generally in agreement with the Governmental Affairs Committee's recommendations with regard to the Government Procurement Agreement. I do, however, have strong reservations concerning the committee's view on the treatment of major industrial countries who are nonsignatories.

One of our primary objectives in the Geneva negotiations was to open Japanese markets to U.S. firms. The rigid government procurement system of the Japanese has been considered one of the most difficult nontariff barriers to U.S. trade. Now that Ambassador Strauss has determined that the Japanese offer on their government procure-

ment contracts is insufficient, we must resolve the issue of how the Japanese are to be treated under this agreement.

Traditionally, the Japanese have had a closed government procurement system where foreigners are excluded from bidding on government contracts. The Japanese have only purchased items for the government that could be bought in Japan. At the same time, the Japanese have been able to overcome the Buy America differentials that are imposed by the U.S. Government and have been successful in winning U.S. contracts. I certainly do not consider this a reciprocal trading arrangement. Reciprocity can only be accomplished here with a more extensive ban of Japanese bids on U.S. Government procurement contracts.

The U.S. trade deficit climbed to a record $34 billion last year, while the Japanese recorded a record surplus of $19 billion. Clearly, the Japanese need no further advantages in world trade.

There seems to be growing sentiment for positive steps to be taken to improve the U.S. trading position. Recently, the Joint Economic Committee expressed support for unilateral sanctions against countries that run continually high trade surpluses against the United States. Congressman Vanik has discussed the possibility of imposing an import surcharge that would automatically trigger when the U.S. trade deficit reached a certain level.

It is time too for the United States to demand reciprocal treatment by our trading partners, which is why I would recommend even stronger action than that recommended by the committee.

TITLE IV—TECHNICAL BARRIERS TO TRADE (STANDARDS)

Introduction

Although the Committee on Finance has jurisdiction over all trade agreements and the bill has been referred solely to that committee, the subject matter of title IV of the bill is within the jurisdiction of the Committee on Commerce, Science, and Transportation. For this reason, the Committee on Finance incorporates the views of the Committee on Commerce as the Senate Report on title IV of the bill:

The development, adoption or application of product standards, product certification systems, and procedures for determining conformity of products with standards are often used to interfere with international commerce. Product standards can be manipulated to exclude imports in numerous ways. Certification systems, which provide assurance that products conform to standards, may limit access to imports or deny the right of a certification mark to imported products. Testing can be conducted arbitrarily or in such a way as to increase unnecessarily expenses or otherwise disadvantage importers. Standards-related activities have been used to exclude U.S. products from foreign markets.

The purpose of the Agreement on Technical Barriers to Trade (standards code) is to discourage discriminatory manipulations of products standards, product testing and product certification systems. It will further encourage the use of open procedures in the adoption

of standards and certification systems. Such procedures are used already by United States Government agencies under the Administrative Procedures Act and by state government agencies and private voluntary standards developing bodies in this country.

The importance of standards, testing, and certification in international trade is often not fully appreciated. The Office of the Special Representative for Trade Negotiations (STR) estimates that in 1977, the last full year for which figures are available, approximately $69 billion of our exports were "standards-sensitive", i.e., vulnerable to changes in standards, certification systems, and tests.

Proposed discriminatory European practices designed to prevent U.S. electrical products from obtaining access to a regional certification system provided the impetus for an agreement on standards-related activities. A working group of the GATT began to develop a code in 1967, and in 1975, the Trade Negotiations Committee established a Non-Tariff Measures Sub-Group on "Technical Barriers to Trade" which prepared the agreement that would be implemented by title IV of H.R. 4537.

On March 22, 1979, the Committee on Commerce, Science, and Transportation held a closed executive session with representatives of the STR and the Department of Commerce to discuss the standards agreement. Title IV of H.R. 4537 was subsequently drafted by the appropriate congressional committees and provides the legal basis for the implementation of the agreement.

The misuse of product standards, product testing, and product certification impedes international trade and reduces the variety of goods available to the consumer. Adherence to the agreement's provisions by the Parties to the Agreement (Parties) and the general acceptance of its principles by non-adherents should contribute to freer trade within the international trading system.

Enactment of H.R. 4537 alone will not eliminate all unnecessary technical barriers to U.S. exports. The committee expects the Executive to pursue a vigorous policy of identifying these technical barriers to trade and seeking to eliminate them as expeditiously as possible. Such a policy will entail additional expenditures overseas to support export promotion and commercial programs in our embassies and closer cooperation between the private and governmental sectors to maximize benefits to the United States under the agreement.

Description of the Agreement

The agreement contains specific obligations by Parties to ensure that mandatory and voluntary standards are not prepared, adopted or applied with a view to creating obstacles to international trade nor have the effect of creating unnecessary obstacles to international trade. Imports are to receive non-discriminatory treatment with respect to such standards. The agreement does not restrict a nation's right to adopt standards necessary to protect human, animal or plant life or health, the environment, to ensure the quality of its exports or to prevent deceptive practices.

The agreement applies to both industrial and agricultural product standards-related activities. Standards are to be specified in perform-

ance rather than design or descriptive characteristics whenever possible. The agreement does not apply to purchasing specifications of governmental bodies or standards activities engaged in by private organizations for their own production or consumption.

In the preparation of new standards or revisions of old standards, parties shall use, as a basis, where appropriate, the relevant portions of existing international standards. This does not mean that parties are bound to use international standards less stringent than national standards. Indeed, the agreement lists examples of situations where use of international standards might be inappropriate. In the development and preparation of mandatory or voluntary standards, Parties are to follow open procedures, including public notice and an opportunity for foreign parties to comment. Parties are also encouraged to participate fully in international, standards activities.

Provisions of the agreement apply to voluntary and mandatory standards and certification systems promulgated by central governments (including the Commission of the European Community) state and local governments, and private sector organizations. Only central governments, which are Parties, are bound directly by the agreement. However, they are obligated to take such reasonable measures as may be available to them to ensure that local government bodies and nongovernmental bodies comply with provisions of the agreement. Although local government or private sector bodies are not directly obligated by the agreement, if their standards-related activities are found to create unnecessary obstacles to international trade, the Party in whose territory such governmental or private bodies are located would be subject to international proceedings and, if necessary, to appropriate retaliation.

With respect to product testing and related administrative procedures, Parties are to accept foreign products for testing under nondiscriminatory conditions. Moreover, they are to ensure that central governmental bodies accept, whenever possible, foreign test results or certificates or marks of conformity by relevant bodies, but only if they are satisfied with the technical competence and methods employed by foreign entities.

Parties shall ensure that certification systems of central government bodies and their application shall not have the effect of creating unnecessary obstacles to international trade. Parties should have nondiscriminatory access to all certification systems, including receiving the mark, if any, on a nondiscriminatory basis. The rules of openness and notice also apply to any proposed certification systems.

Parties shall take such reasonable measures as may be available to them to ensure that regional and international certification systems of which their central government bodies are members are open on a non-discriminatory basis and grant access to suppliers of like products, including receipt of any mark of certification. Parties shall also take measures to ensure that local and private certification systems follow similar principles.

Parties must, upon request, give information to other Parties concerning standards and certification activities within their territories. Special provision is made for the developing countries to receive advice and technical assistance, on mutually agreed terms and conditions, regarding the establishment of national standardizing bodies and participation in international standardizing bodies. Special and dif-

ferential treatment is to be accorded developing countries in the form of such time-limited derogations as the Committee on Technical Barriers to Trade may agree.

Finally, the agreement provides for a dispute settlement mechanism through a process of bilateral consultations, review by the Committee on Technical Barriers to Trade, technical expert groups, and panels. Disputes are expected to be resolved as expeditiously as possible, particularly in the case of perishable products. Retaliatory action in the form of withdrawal of agreement benefits may be authorized if a Party's standard, testing method or certification system is found by the Committee on Technical Barriers to Trade to violate an agreement obligation, *e.g.*, by creating an unnecessary obstacle to international trade.

The agreement is prospective in effect. However, existing standards, test methods and certification systems may be the subject of complaint.

Summary of Title IV

Title IV establishes the statutory framework for the United States' implementation of its obligations under the Agreement on Technical Barriers to Trade.

Historically, the leading role in the United States with regard to developing and implementing standards has been performed by private sector organizations, which are supported by private funds.

The committee finds that standards-related activities can provide an efficient means for facilitating domestic and international commerce; and for protecting human health and safety; animal and plant life and health; the environment and the consumer. The present system of private standards development has facilitated communications between sellers and buyers in domestic and international markets, improved the efficiency of the design, production and inventory or products, and promoted the interchangeability, safety, and energy efficiency of products.

Private standards and certification organizations perform valuable functions, as exemplified by the significant contribution that U.S. participants have made toward the development of voluntary international standards and to the activities of private international standards organizations in which they hold membership. Federal agencies and state and local governments also fulfill important roles in carrying out standards related activities in areas of health, safety, essential security, and the protection of the environment and the consumer.

In the course of such standards-related activities, entities may inadvertently create barriers to international trade. Standards and certification systems by definition, cause commercial obstacles since they differentiate between those products which are acceptable in terms of safety, quality, etc. and those which are not. Nonetheless, often such obstacles may be unnecessary by exceeding the level which is necessary to achieve the objective of the standards. Complaints about those which serve no legitimate domestic purpose, other than to restrict imports, can be expected. In general, procedures followed by Federal agencies already meet our agreement obligations. Implementation by other parties should increase U.S. export opportunities which too often in the past have been limited by arbitrary action, closed procedures or denial of access.

The committee is also concerned about standards-related activities of Federal agencies which deliberately or accidentally limit U.S. exports. The committee expects Federal agencies to monitor these export disincentives and to review them with respect to other national priorities such as the need to increase exports.

SUBTITLE A—OBLIGATIONS OF THE UNITED STATES CERTAIN STANDARDS-RELATED ACTIVITIES

Certain Standards-Related Activities (Section 401 of the Bill)

Present law.—None.

The bill.—Section 401 would acknowledge the legitimate interest and need of Federal and state agencies and private persons to engage in standards-related activities, as defined in section 451(14), that do not create or have the effect of creating unnecessary obstacles to the foreign commerce of the United States. Federal agencies and state and local governments possess and exercise their legitimate police powers to protect the health and safety of human, animal or plant life, the environment, essential security interests and interests of the consumer. Private standards-developing organizations, including trade associations, engage in such activities to facilitate trade, improve products, and achieve other reasonable commercial objectives.

This section would also provide that no standards-related activities of any private person or Federal or State agency shall be deemed to constitute an unnecessary obstacle to the foreign commerce of the United States if the "demonstrable purpose" of the standards-related activity is to achieve a legitimate domestic objective and if such activity does not operate to exclude imported products which fully meet the objectives of such activity.

Reasons for the provision.—The phrase "demonstrable purpose" is intended to mean something which is capable of being shown or proved. The mere assertion that the standards-related activity being challenged serves a legitimate domestic objective is insufficient. The level of protection afforded by a standard promulgated by a Federal or State agency or private standards organization would not be subject to challenge by another domestic entity. However, the particular means to achieve that level could be challenged if it operated to exclude imported products which fully met the objective. Moreover, a standard which could be shown to be clearly discriminatory against imports would always be subject to challenge.

The phrase "legitimate domestic objective" is to be interpreted with reference to recognized existing authority of Federal and State agencies and private persons in the standards area and is meant neither to expand nor dilute existing authority. Thus, the protection of health and safety would be a legitimate domestic objective while discrimination against an import principally or solely for the protection of a domestic product would not be legitimate.

In the first instance, the judgment as to whether a domestic standards-related activity creates an unnecessary obstacle to the international trade of the United States will rest with each appropriate Federal, state, or private sector entity.

Upon receipt of a foreign complaint alleging a violation of the agreement, the appropriate entity may wish to review the particular standards-related activity being challenged on its own volition or during the bilateral consultations arranged by STR. The STR does not have authority to compel a modification of the standards activity although it will process representations by complainants, participate as necessary in bilateral consultations, and, when necessary, defend the U.S. practice before the Committee on Technical Barriers to Trade. Recommendations for change, if any, might be considered only after an adverse finding by the Committee on Technical Barriers to Trade, and after a meeting of the interagency trade policy committee.

Federal Standards-Related Activities (Section 402 of the Bill)

Present law.—None.

The bill.—This section would establish an obligation that Federal agencies, as defined in Section 451(3), shall not engage in any standards-related activity that creates unnecessary obstacles to the foreign commerce of the United States, and includes a list of procedures and principles relating to (1) nondiscriminatory treatment, (2) use of appropriate international standards, (3) performance criteria, and (4) access to certification systems by foreign suppliers, which apply to the standards-related activities of Federal agencies.

Pursuant to the provisions of the agreement, section 402(2) would also require Federal agencies, in developing new or revising existing standards, to take into consideration international standards and if appropriate, to base the standards on international standards. Section 402(2)(B)(1) would provide a non-exclusive list of instances in which this requirement would not apply. Thus, for example, the term "fundamental technological problems" might also include the domestic need for interchangeable standards. Moreover, the phrase "the prevention of deceptive practices" reflects language in the agreement and is interpreted by this committee to incorporate, for example, the meaning of "unfair or deceptive" practices in the Federal Trade Commission Act, the Federal Food, Drug, and Cosmetic Act, and the Federal Meat Inspection Act.

For purposes of section 402(4), which would require Federal agencies to permit access to any certification system used by it, the term "access" shall have the same meaning as used in the agreement, *i.e.*, access for suppliers shall mean certification from the importing Party under the rules of the system, including the receipt of a mark of certification, if any.

Reasons for the provision.—With respect to the requirement that Federal agencies accord imported products treatment no less favorably than that accorded to domestic products, the committee recognizes that there may be some instances in which an imported product may be tested because of foreign conditions which differ from those found in the United States. For example, in the case of pesticides used overseas but not domestically or for plant or animal diseases, tests of such pesticides may need to be performed on the imported product. Such a requirement shall not be construed as a violation of the United States commitment to nondiscriminatory treatment.

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The agreement requires Parties to take such reasonable measures as may be available to them to ensure that non-Federal entities and international and regional certification systems in which relevant bodies within their territories belong or participate, grant access for suppliers of like products from other parties. Accordingly, Federal agencies would comply with this provision by encouraging non-Federal entities as well as regional and international certification bodies in which they participate to grant access to products of other Parties.

State and Private Standards-Related Activities (Section 403 of the Bill)

Present law.—None.

The bill.—Section 403 would express the sense of the Congress that State agencies (which include local bodies) and private persons should not engage in any standards-related activity which creates unnecessary obstacles to the foreign commerce of the United States. Section 403(b) would also direct the President to take such reasonable measures as may be available to promote the achievement of this objective. Among the means available to promote this objective of compliance are educational programs, consultations and discussions, dissemination of information, and similar voluntary programs.

Reasons for the provisions.—Under the agreement, the United States has undertaken an obligation to take all reasonable measures available to it to ensure compliance by its non-central governmental bodies. The committee expects good faith efforts to be made to fulfill this obligation.

The committee is cognizant of the fact that the agreement does not exempt the trade restrictive standards-related activities of non-central governmental bodies although such bodies are not bound directly. In the event that such a non-Federal standard, test method or certification system is found by the Committee on Technical Barriers to Trade to be an unnecessary obstacle to trade in violation of the agreement, there is existing legal authority under its power to regulate interstate and foreign commerce to obtain a modification if the Executive decides to seek a change. Therefore, no additional authority is needed or created in title IV to enable the Federal Government to fulfill its agreement obligations with respect to non-central governmental bodies.

SUBTITLE B—FUNCTIONS OF FEDERAL AGENCIES

Functions and Special Representative (Section 411 of the Bill)

Present law.—None.

The bill.—Section 411 would provide that the STR shall coordinate the consideration of international trade policy issues and develop international trade policy with respect to the implementation of Title IV. The Statement of Administrative Action lists the agencies with which STR will consult in fufilling this function.

Section 411(b) would give the STR responsibility for coordinating United States discussions and negotiations with foreign countries for the purpose of establishing mutual arrangements with respect to

standards-related activities in consultation with the relevant Federal agencies.

Reasons for the provision.—The committee understands that whenever a health, safety or environmental issue arises, the Federal agency which developed the standard or administers the test or certification system will be involved at all stages in the consideration of the issue, including the final review of any adverse finding by the Committee on Technical Barriers to Trade.

The committee is concerned that discussions affecting standards-related activities may occur between U.S. and foreign governmental entities without proper Executive coordination as to the relationship of such discussions to the overall national interest and to trade policy considerations. The committee is aware of current discussions involving uniform standards for the required disclosure of proprietary data and expects the STR to begin multilateral negotiations to protect the property value of such data submitted under each nation's environmental laws and regulations.

Establishment and Operation of Technical Offices (Section 412 of the Bill)

Present law.—None.

The bill.—Section 412 would establish a technical office within the Department of Commerce for nonagricultural products and a technical office within the Department of Agriculture for agricultural products. The Statement of Administrative Action describes a variety of functions to be performed by these offices, including steps which are necessary to enable U.S. exporters to take advantage of the opportunities provided by the agreement, and to disseminate information.

The statement also lists new additional responsibilities to be fulfilled by U.S. embassies, including the following: facilitating the acquisition by private persons and Federal and State agencies of copies of Parties' private and governmental proposed and final standards; facilitating access for U.S. suppliers to foreign certification systems; providing the information center with data on standards-related activities within Parties; and monitoring action taken by foreign Parties of U.S. comments on foreign standards-related activities.

Reasons for the provision.—The committee recognizes that title IV will require improvements in the familiarity of commercial officers with standards and an increase in their number. Further, the committee anticipates that this general issue will be discussed in the context of trade reorganization and authorizations to Federal agencies to carry out their responsibilities under this act.

Representation of United States Interests Before International Standards Organizations (Section 413 of the Bill)

Present law.—None.

The bill.—Pursuant to section 413(a), the Secretaries of Commerce and Agriculture would keep adequately informed of international standards-related activities and identify those that may substantially affect the commerce of the United States and inform, consult and

coordinate with the STR any activities that result from such monitoring and information collections.

Section 413(b) would authorize the Secretary of Commerce for non-agricultural products and the Secretary of Agriculture for agricultural products to encourage private entities which are members of the organization to participate in a particular standards-related activity if they determine that U.S. interests are not being adequately represented. If that member refuses, the Secretary concerned could make appropriate arrangements to secure adequate representation.

Reasons for the provision.—As the committee has noted, the private sector has played the leading role in representing U.S. interests before international standards organizations. However, there may be a small number of instances in which U.S. interests may not be adequately represented because of inadequate funds or a lack of interest by the appropriate private entity in a particular topic.

Section 413 is not intended to detract from the current reliance on private entities, and cooperation with the private sector shall be sought at all times. The term "appropriate arrangements" includes, but is not limited to, providing funds to expert private persons or Federal officials to represent the United States, providing logistical, legal, and technical assistance to these individuals, etc.

In those cases in which U.S. interests before an international standards organization are represented by one or more Federal agencies recognized by that organization, the Secretary concerned shall encourage cooperation among interested Federal agencies to develop a uniform position and shall encourage such Federal agencies to seek information from, and cooperate with, affected domestic interests. The Secretary shall not preempt the responsibilities of any Federal agency that has jurisdiction over the activities covered by such organization unless requested to do so by the agency.

Standards Information Center (Section 414 of the Bill)

Present law.—None.

The bill.—Section 414 would direct the Secretary of Commerce to maintain within the Department a standards information center, which the Statement of Administrative Action proposes to be the National Bureau of Standards, since the NBS already maintains an informational program. The information center would serve as the "inquiry point" required to be established by the agreement. The center's functions are listed in section 414(b) and are described in greater detail in the Statement of Administrative Action.

Reasons for the provision.—The committee intends that the function of serving as an "inquiry point" for requests for information will include providing information on private sector inquiry points and on the location of public notices in the United States with respect to proposed and finalized standards and related activities.

The committee also deems it desirable that Federal agencies, other than the Department of Commerce, whose activities are affected by standards and certification systems establish similar inquiry points to (1) respond to questions about Federal agency standards and certification activities and (2) coordinate their activities with the Department of Commerce's "inquiry point".

Contracts and Grants (Section 415 of the Bill)

Present law.—None.

The bill.—Section 415 would authorize the STR and the Secretaries of Commerce and Agriculture to make grants or enter into contracts with other Federal agencies, State agencies or private persons for the purposes of carrying out this title and encouraging compliance with the agreement. The programs and activities for which grants and contracts could be made include, but are not limited to, the following: increasing public awareness of proposed and finalized standards-related activities; facilitating international trade through appropriate international and domestic standards-related activities; providing, if appropriate, adequate U.S. representation in international standards-related activities; and encouraging U.S. exports through increased awareness of foreign standards-related activities.

Reasons for the provision.—The Administration has provided no details as to how it intends to implement this section. The committee expects that agencies that are authorized to make grants and contracts under this section will formulate rules and regulations and will establish a coordinating mechanism for the administration of this system.

The committee intends assistance under this section to be limited in terms of dollars. It does not intend the Federal agencies to compete with similar existing programs maintained by private sector organizations.

Technical Assistance (Section 416 of the Bill)

Present law.—None.

The bill.—Section 416 would authorize the STR and the Secretaries of Commerce and Agriculture to make available to other Federal or State agencies or private persons technical assistance in the form of employees, services, and facilities to assist them in carrying out standards-related activities in a manner consistent with Title IV.

Consultation with Representatives of Domestic Interests (Section 417 of the Bill)

Present law.—None.

The bill.—In carrying out their responsibilities under this title, the STR and the Secretaries of Commerce and Agriculture would be directed under section 417 to solicit technical and policy advice from the private sector committees established under section 135 of the Trade Act of 1974 and may solicit advice from State and local agencies and private persons.

Reasons for the provision.—The committee expects these Federal officials or their representative officials to maintain a list of domestic parties interested in such activities.

The work of the private sector committees, particularly the industry committee, was helpful in developing the United States' position in the multilateral trade negotiations. The committee believes that private sector representatives can continue to contribute to the vigorous pursuit and enforcement of U.S. rights under the agreement by

identifying foreign barriers and providing technical assistance in disputes, and urges its close collaboration between Federal agencies and the advisory committees.

SUBTITLE C—ADMINISTRATIVE AND JUDICIAL PROCEEDINGS REGARDING STANDARDS-RELATED ACTIVITIES

Chapter 1—Representations Alleging United States Violations of Obligations

Rights of Action Under this Chapter (Section 421 of the Bill)

Present law.—None.

The bill.—Except as provided under this chapter, subtitle C would create no right of action with respect to allegations that any standards-related activity engaged in within the United States violates the obligations of the United States under the Agreement.

Reason for the provision.—The committee notes that section 421 further restricts remedies of section 3(f) of this bill to exclude all rights of action, whether private or governmental, other than those provided under this chapter.

Representations (Section 422 of the Bill)

Present law.—None.

The bill.—The right to make a representation to STR alleging that the United States has violated its obligations under the agreement would be available under section 422 to a Party and foreign countries that may not be Parties but are found by the STR to extend rights and privileges to the United States that are substantially the same as those that would be extended if that country were a Party. Representations shall be made in accordance with procedures prescribed by the STR and must further provide a reasonable indication that the standards-related activity complained about has a significant trade effect.

Reasons for the provision.—The Statement of Administrative Action does not describe the procedures to handle representations. The committee expects the regulations regarding forms and procedures to be drafted and promulgated as necessary.

Action After Receipt of Representations (Section 423 of the Bill)

Present law.—None.

The bill.—Upon receipt of representations, the STR would review the issues concerned in consultation with the agencies and representatives listed in section 423(a) and undertake to resolve, on a mutually satisfactory basis, the issues in the representation through bilateral consultations between the foreign and domestic persons. International arbitration at this stage of the dispute settlement process may be used if mutually agreed to by the Parties concerned.

If an appropriate international forum finds that a standards-related activity engaged in within the United States violates the obligations of the United States under the agreement, the interagency trade policy committee established under section 242(a) of the Trade Expansion Act of 1962 would review the finding and matters related thereto with a view to recommending action.

Reasons for the provision.—The committee does not intend the STR to undertake the entire review process if the case is frivolous or if the complainant does not provide sufficient evidence that the standards-related practice against which an allegation is made has a significant trade effect and violates the obligations of the United States under the agreement.

The committee believes there exists ample existing authority to modify the standards-related activity if the Executive so decided. With respect to non-Federal practices which are determined to violate the agreement, the committee discussed existing authority in its analysis of section 403. The United States also has the option of retaining the standards-related activity and incurring the retaliatory action authorized by the Committee on Technical Barriers to Trade.

Chapter 2—Other Proceedings Regarding Certain Standards-Related Activities

Finding of Reciprocity Required in Administrative Proceedings (Section 441 of the Bill)

Present law.—None.

The bill.—Section 441 would require a finding of reciprocity by the STR before a Federal agency's administrative proceeding may consider a complaint or petition against any standards-related activity regarding a product if that activity is engaged in within the United States and is covered by the agreement. The STR would inform the Federal agency in writing that—

(1) The country of origin of the imported product is a Party or a foreign country which, although not a Party, is found by the STR to extend rights and privileges to the United States that are substantially the same as those that would be so extended if that country were a Party; and

(2) The dispute settlement procedures provided under the agreement are not appropriate.

Section 441(b) would exempt from this requirement of section 441 (a) the following: (1) actions arising under the antitrust laws; (2) statutes administered by the Secretary of Agriculture; (3) and procedural requirements that provide for an opportunity to participate in agency rulemaking or to seek the issuance, amendment or repeal of a rule.

Reason for the provision.—The committee is aware of efforts by certain Federal regulatory agencies to create additional methods for relief or appeal the results of the development and maintenance of standards and certification systems. While the committee takes no position at this time regarding such proposed rulemaking or existing

rules, it is concerned that they may be used to circumvent the requirement of reciprocity. Accordingly, it is the objective of this section to restrict access to such administrative relief by foreign countries and U.S. parties acting in behalf of products from such countries if the country of origin is not a Party or does not provide substantially equivalent rights to the United States.

The STR would also have to find, to enable such administrative proceedings to continue, that the dispute settlement procedures provided under the agreement are not appropriate even if the reciprocity requirement is satisfied. Complaints about the international trade effects of U.S. standards-related activities should utilize the dispute settlement procedures provided by the agreement even if administrative relief is available except in those cases when the STR finds these procedures are inappropriate, *e.g.*, if the exporting country decides not to make a representation and administrative relief is the only alternative for the U.S. importer or if time is of the absolute essence. The burden of proof would be on the complainant that dispute settlement procedures are inappropriate.

Additional criteria for determining when the agreement procedures may not be appropriate for the purposes of allowing a complaint or petition to proceed before an agency could be listed in regulations.

Not Cause for Stay in Certain Circumstances (Section 442 of the Bill)

Present law.—None.

The bill.—Section 442 would provide that no standards-related activity being engaged in within the United States may be stayed in any judicial or administrative proceeding on the grounds that such activity is currently being considered, pursuant to the agreement, in an international forum.

Reason for the provision.—The purpose of this section is to clarify the existing authority of a Federal or State agency or private person to engage in a standards-related activity, such as the issuance of a marketing order, even if a formal complaint has been made by a Party and is being considered by the Committee on Technical Barriers to Trade.

SUBTITLE D—DEFINITIONS AND MISCELLANEOUS PROVISIONS

Definitions (Section 451 of the Bill)

Present law.—None.

The bill.—Section 451 of this subtitle would define important terms which are used in this title. The definitions are self-explanatory.

Reasons for the provision.—The committee would note that a "State agency" includes local entities and that "Federal Agency" includes independent regulatory agencies. The term "Secretary concerned" means that Secretary of Commerce whenever non-agricultural products are involved and the Secretary of Agriculture whenever agricultural products are involved. The committee does not define "agricultural" or

"non-agricultural" products since this will be determined by the Executive agencies.

Exemptions Under Title (Section 452 of the Bill)

Present law.—None.

The bill.—Section 452 would list the exemptions under this title. The section would exempt—

(1) Standards activities engaged in by any Federal or State agencies for the use, including but not limited to, research and development, production, or consumption of that agency or another such agency; and

(2) Any standards activity engaged in by any private person solely for the use in the production or consumption of products by that person.

The second exemption would apply to the purchase of products by a corporation for its own use and standards developed by private organizations for the purpose of rating the quality of consumer goods and of disseminating this information.

Reasons for the provision.—The committee notes that this section simply clarifies the scope of the agreement and is consistent with the committee's understanding of the Parties' intentions.

Report to Congress on Operation of the Agreement (Section 453 of the Bill)

Present law.—None.

The bill.—Section 453 would require the Special Representative to prepare and submit to Congress a report containing an evaluation of the operation of the Agreement, both domestically and internationally as soon as practicable after the close of each succeeding three-year period.

Reasons for the provision.—The report should also contain information regarding the steps taken by the Executive agencies to enhance the ability of the United States to maximize its benefits under the agreement.

Effective Date (Section 454 of the Bill)

The effective date for this title shall be January 1, 1980, if the Agreement enters into force with respect to the United States by that date.

TITLE V—IMPLEMENTATION OF CERTAIN TARIFF NEGOTIATIONS

Introduction

Under section 101 of the Trade Act of 1974 (19 U.S.C. 2111), the President is permitted to negotiate trade agreements changing United States' nondiscriminatory, or "Most-Favored-Nation" (MFN), tariff rates. Non-MFN tariff rates cannot be changed under section 101. The President may proclaim the effectiveness of negotiated changes in MFN tariff rates without congressional action.

The delegated tariff negotiating authority is subject to several limitations. In general, the rate under an item in the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202) cannot be reduced by more than 60 percent of the rate existing under the item on January 1, 1975. Tariff rates which were 5 percent *ad valorem* or less on January 1, 1975, may be reduced to a free rate. No tariff rate under an item can be increased to, or above, a rate higher than the rate which is the higher of (1) 50 percent above the non-MFN tariff rate under that item in effect on January 1, 1975, or (2) 20 percent above the MFN tariff rate under that item existing on January 1, 1975.

In addition to limitations on the size of a negotiated tariff change, the Trade Act imposes limitations on the period during which a negotiated tariff rate reduction can be put into effect. Under section 109 of the Act (19 U.S.C. 2119), a tariff rate reduction must generally be implemented in annual increments which, in any one year, cannot exceed the greater of (1) 3 percentage points, or (2) one-tenth of the total reduction. The staging requirements do not apply to a total reduction which does not exceed 10 percent of the tariff rate existing before the reduction.

Section 604 of the Trade Act of 1974 (19 U.S.C. 2483) permits the President to "embody" in the TSUS actions taken under the Trade Act. Among other things, this authority permits the President to modify tariff item classifications to reflect the obligations in trade agreements entered into under the act.

During the Tokyo Round of Multilateral Trade Negotiations (MTN), the President has agreed to change many United States tariff rates using his section 101 authority. Because these tariff changes will be made under authority already provided by Congress in the Trade Act of 1974, they do not appear in the bill. However, the committee believes that the tariff changes implemented by the President under section 101 of the Trade Act are an important element of the MTN package. For this reason, an evaluation of the tariff negotiations appears below.

In addition to the tariff changes he will implement under section 101, the President has agreed to make a number of tariff changes which exceed the limitations on his delegated authority under section 101 or 109 of the Trade Act. In doing so, the President has exercised his authority to enter into trade agreements under section 102 of the Trade Act of 1974 (19 U.S.C. 2112).

Trade agreements entered into under section 102 of the Trade Act enter into force with respect to the United States only if they are approved by Congress and legislation implementing them is enacted into law. Various agreements relating to tariffs are approved under section 2 of the bill. Title V of the bill includes provisions amending the TSUS which are necessary or appropriate to implement trade agreements entered into under section 102 of the Trade Act of 1974 during the MTN.

Tariff Negotiations

Introduction.—The tariff negotiations during the MTN involved a considerable proportion of United States dutiable imports. The committee requested that the International Trade Commission

(ITC) and an outside consultant provide detailed reports on the effects of the tariff reductions. The consultant's report [1] indicates that the overall effect of the duty reductions will be a small increase in job opportunities in the United States and a slight reduction in the overall cost of living. This conclusion takes into account both the United States and foreign duty reductions and also the effects of exchange rate changes.

Overall, the tariff reductions will probably have little descernible impact on the U.S. economy. However, the economic impact varies by industrial and agricultural sector. The ITC report details the sectoral effects and these will be summarized below.

Summarizing the tariff reductions is a difficult task. The committee believes that simply relying on the overall average depth of cut is misleading. An average depth of cut is extremely sensitive to the weighting system applied to individual tariff items and the base period selected for measurement.

A better indication of the results of the tariff negotiations is obtained by examining the change in the distribution of duties. The table below compares the distribution by value of 1976 United States industrial imports (excluding petroleum and certain items under import relief action) by duty rate intervals using pre-MTN and post-MTN duties (after the total negotiated reductions in all duties are implemented).

DISTRIBUTION OF 1976 U.S. INDUSTRIAL IMPORTS BY TARIFF INTERVALS

[In billions of dollars]

Tariff intervals	Pre-MTN	Post-MTN
Free	16.8	20.0
0.1 to 5 percent	20.8	28.2
5.1 to 20 percent	23.2	14.1
20.1 to 35 percent	2.4	1.9
35.1 to 45 percent	1.0	.1
Over 45 percent	.2	.1
Total	64.4	64.4

Source: Office of the Special Representative for Trade Negotiations.

At the conclusion of the 8-year phasing-in period, the MTN tariff reductions will result in an additional $3 billion of duty-free imports. Of course, this approach has the problem that very high duties will significantly reduce or eliminate trade, and, therefore, the distribution of trade by tariff intervals will give little or no weight to the upper end of the tariff intervals.

A different approach in analyzing the results of the MTN tariff negotiations is to examine the average *ad valorem* equivalent (AVE) before and after the MTN by major tariff schedule category.

[1] MTN Studies, Part 5: An Economic Analysis of the Effects of the Tokyo Round of Trade Negotiations on the United States and the Other Major Industrialized Countries; Committee Print CP 96-15, June 1979.

AVERAGE AD VALOREM EQUIVALENT RATES OF DUTY BY TARIFF SCHEDULE CATEGORIES

[In percent]

Tariff schedule category	Current AVE duty	Post-MTN AVE duty
Animal and vegetable products	3.8	2.9
Wood/paper/printed matter	1.8	.8
Textile fibers and products	22.4	17.8
Chemicals and related products [1]	2.9	1.8
Nonmetallic minerals and products	5.6	2.9
Metals and metal products	3.7	2.5
All others	9.9	6.5

[1] Excluding petroleum and certain products thereof.

Source: International Trade Commission.

Foreign tariff concessions.—The committee has received the tariff reductions which will be made by major foreign countries as the result of the MTN. The following table summarizes the results of the tariff negotiations for the United States, European Communities, Japan, and Canada. The committee again notes that comparisons of the average tariff rates at this aggregate level must be done with caution.

GLOBAL RESULTS OF INDUSTRIAL TARIFF NEGOTIATIONS FOR THE FOUR MAJOR MTN PARTICIPANTS

	Global offers					
			Japan		Canada	
	United States	EEC	Legal rates	Applied rates	Legal rates	Applied rates
Dutiable imports only:						
76 Global imports (millions) [1]	$47,620	$62,711	$14,185	$14,185	$17,007	$17,007
Pre-MTN average tariff levels (percent) [2]	8.2	9.8	10.0	6.9	15.5	13.1
Post-MTN average tariff levels (percent) [2]	5.7	7.2	5.4	4.9	9.4	8.7
Tariff point reduction (percent) [3]	[4] 2.5	[4] 2.6	[4] 5.4	[4] 2.0	[4] 6.1	[4] 4.4
Dutiable plus free imports:						
76 global imports (millions)	$64,420	$97,067	$30,251	$30,351	$22,447	$22,447
Pre-MTN average tariff levels (percent)	6.1	6.3	5.0	3.2	11.7	9.9
Post-MTN average tariff levels (percent)	4.2	4.6	2.5	2.3	7.1	6.6

[1] Industrial MFN imports excluding petroleum and petroleum fuels.
[2] Trade-weighted by MFN imports. In later tables which display bilateral results the average is weighted by bilateral reports.
[3] Difference between the pre- and post-MFN tariff levels.
[4] Pts.

Source: Office of the Special Representative for Trade Negotiations.

Sectoral analysis.—The ITC, at the request of the committee, examined the impact of the MTN tariff concessions on a sectoral basis.[1] This evaluation is summarized below. The sectoral categories correspond to the private advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155).

[1] Agreements Being Negotiated at the Multilateral Trade Negotiations in Geneva, Investigation No. 332–101; United States International Trade Commission (June 1979).

SUMMARY OF ITC SECTOR ANALYSIS

Sector	Impact of tariff concessions
ATAC [1] 01: Raw cotton	No immediate impact.
ATAC 02: Dairy products	No adverse impact.
ATAC 03: Fruit and vegetable	Do.
ATAC 04: Grains and feed	Do.
ATAC 05: Livestock and livestock products	No effect.
ATAC 06: Oilseeds	No immediate effect.
ATAC 07: Poultry and egg	No adverse impact.
ATAC 08: Tobacco	No effect.
ISAC [2] 01: Food and kindred products	No adverse impact.
ISAC 01 (pt.): Miscellaneous food and kindred products	Do.
ISAC 02: Textiles and apparel	No significant effect.
ISAC 03: Lumber and wood products	No adverse impact.
ISAC 04: Paper and paper products	Do.
ISAC 05: Industrial chemicals and fertilizers	Do.
ISAC 06: Drugs, soaps, and related articles	Small positive gain.
ISAC 07: Paints and miscellaneous chemicals	No effect.
ISAC 08: Rubber and plastics materials	Small positive gain.
ISAC 08A: Rubber materials	No effect.
ISAC 08B: Plastics materials	Do.
ISAC 08C: Other rubber and plastics materials	Moderate gains.
ISAC 09: Leather and leather products	No effect.
ISAC 10: Stone, clay, glass and concrete products	Small positive gain.
ISAC 11: Ferrous metals and products	Small adverse impact.
ISAC 12: Nonferrous metals and products	No effect.
ISAC 11A: Copper	Do.
ISAC 12B: Lead	Do.
ISAC 12C: Zinc	Do.
ISAC 12D: Aluminum	Do.
ISAC 12E: Other nonferrous metals	Small adverse effect.
ISAC 13: Cutlery, tableware and hand tools	Do.
ISAC 14: Other fabricated metal products	No effect.
ISAC 15: Construction, mining, agricultural and oilfield machinery and equipment	Do.
ISAC 16: Office and computing equipment	Small positive effect.
ISAC 17: Nonelectrical machinery	Do.
ISAC 18: Heavy electrical machinery	Do.
ISAC 19: Consumer electronics	No effect.
ISAC 20: Scientific instruments	Do.
ISAC 21: Photographic equipment	Small positive effect.
ISAC 22: Nonconsumer electronics	No effect.
ISAC 23: Transportation equipment	Small positive effect.
ISAC 23A: Bicycles and parts	No effect.
ISAC 23B: Motorcycles and parts	Small positive effect.
ISAC 23C: Locomotives, cars, and parts	Do.
ISAC 23D: Railroad materials	Do.
ISAC 23E: Outboard motors	No effect.
ISAC 23F: Boats	Do.
ISAC 23G: Shipbuilding	Small positive effect.
ISAC 23H: Other transport equipment	No effect.
ISAC 24: Aerospace equipment	Do.
ISAC 25: Automotive equipment	Do.
ISAC 26: Miscellaneous manufactures	Do.
ISAC 26A: Small arms and ammunition	Do.
ISAC 26B: Sporting goods	Small positive effect.
ISAC 26C: Toys and games	Do.
ISAC 26D: Jewelry	Do.
ISAC 26E: Musical instruments	Positive effect.
ISAC 26F: Furniture	No effect.
ISAC 26G: Printing and publishing	Do.
ISAC 26H: Writing instruments	Do.
ISAC 26I: Other manufactures	Do.

[1] Agricultural Technical Advisory Committee.
[2] Industrial Sector Advisory Committee.

Effective Dates of Certain Tariff Reductions (Section 502 of the Bill)

Present law.—Section 125 of the Trade Act of 1974 (19 U.S.C. 2135) permits the President to withdraw, suspend, or modify the application of trade agreements obligations of benefit to a foreign country or instrumentality which are substantially equivalent to trade agreement obligations of benefit to the United States which are withdrawn, suspended, or modified by that country or instrumentality without adequate compensation. The percentage limitations on the

President's authority under section 101 of the Trade Act to change tariff rates under trade agreements without Congressional action are applied to the MFN and non-MFN rates of duty existing or in effect on January 1, 1975.

The bill.—Section 502(a) of the bill would make the amendments in Title V of the bill relating to goat and sheep meat (section 505), fresh, chilled or frozen beef (section 506), carrots (section 508), dinnerware (section 509), watches (section 510), brooms (section 511), agricultural and horticultural machinery, equipment, implements, and parts (section 512), and wool (section 513) effective only if the President determines that appropriate concessions with respect to each amendment have been received from foreign countries under trade agreements entered into before January 3, 1980, *i.e.*, during the MTN. If the President determines that the appropriate country or instrumentality has made adequate concessions to the United States, then the relevant amendment is effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after whatever date he prescribes by proclamation.

If any amendment in title V relating to carrots (section 508), brooms (section 511), agricultural and horticultural machinery, equipment, implements, and parts (section 512), or wool (section 513) becomes effective under section 502(a), then section 502(b) would make that amendment a trade agreement obligation of benefit to foreign countries or instrumentalities. This means the President could withdraw, suspend, or modify any of the enumerated amendments under section 125 of the Trade Act (19 U.S.C. 2135) if the relevant country or instrumentality withdraws, suspends, or modifies the application of trade agreement obligations of benefit to the United States without providing adequate compensation. Section 125 would not apply to the column 2, or non-MFN, rates of duty appearing in the amendments relating to carrots and agricultural and horticultural machinery.

If the MFN and non-MFN rates of duty appearing as the result of the amendment relating to goat and sheep meat (section 505), fresh, chilled, or frozen beef (section 506), dinnerware (section 509), watches (section 510), or the conversion to *ad valorem* equivalents of certain compound and specific non-MFN rates (section 514) becomes effective under section 502(a), then section 502(c) would make the rates of duty under that amendment the base rates for purposes of applying the percentage limitations on tariff increases or decreases by the President under section 101 of the Trade Act of 1974.

Reason for the provision.—The purpose of the effective date provision in section 502(a) is to insure that the foreign countries or instrumentalities which are the beneficiaries of the amendments to the TSUS made under section 505, 506, 508, 509, 510, 511, 512, or 513 of the bill actually make and implement appropriate concessions to the United States in exchange for the amendments. Without this provision, the enumerated amendments would become effective whether or not appropriate concessions are made.

Section 507 (yellow dent corn) permits the President to proclaim a specific duty reduction under section 101 of the Trade Act notwithstanding the percentage limitation in that section. Because actions under section 101 must promote the purposes of the Trade Act, includ-

ing substantially equivalent competitive opportunities for the commerce of the United States, section 507 need not be covered by section 502. While section 504 (snapback of textile tariff reductions) and 514 (conversion to *ad valorem* equivalents) are appropriate to implement the MTN trade agreements, they do not benefit foreign countries and need not be covered by section 502.

The purpose of the termination or withdrawal provision in section 502(b) is to insure that the foreign concessions with respect to sections 508, 511, 512, and 513 of the bill, required under section 502(a), continue in effect. Furthermore, the President could terminate, suspend, or modify the enumerated amendments if a country or instrumentality benefiting from the amendments terminates, suspends, or withdraws any trade agreement obligation of benefit to the United States without providing adequate compensation. Sections 505, 506, 509, and 510 are not included in this provision for the reasons set forth in the explanations of these sections appearing below.

The purpose of the Trade Act rate provision in section 502(c) is to permit the President, under section 101 of the Trade Act, to change those MFN rates of duty which are amended by sections 505, 506, 509, 510, 511, and 514 if those sections, other than section 514, become effective under section 502(a). The tariff reductions must be under trade agreements entered into pursuant to section 101 but the percentage limitations under that section would apply to the rates of duty as amended under the specified amendments in title V, rather than to the rates of duty actually existing or in effect on January 1, 1975. This provision is necessary to implement trade agreeemnts reached in the MTN as described below.

Staging of Certain Tariff Reductions (Section 503 of the Bill)

Present law.—Section 109 of the Trade Act of 1974 (19 U.S.C. 2119) imposes limitations on the period during which a negotiated tariff reduction proclaimed by the President under section 101 of the Trade Act can be put into effect. A tariff reduction under section 101 must generally be implemented so that the aggregate reduction in the rate of duty in effect on any day does not exceed the aggregate reduction which would have been in effect on that day if the total reduction had been implemented in annual increments, beginning on the effective date of the first reduction in the rate of duty proclaimed under section 101, each of which did not exceed the greater of (1) 3 percentage points, or (2) one-tenth of the total reduction. This rule does not apply to tariff reductions under section 101 if the total reduction is 10 percent or less of the rate existing before the reduction.

Any negotiated tariff reduction proclaimed under section 101 of the Trade Act must be completely implemented within 10 years after the effective date of the first incremental reduction in that rate of duty proclaimed under section 101. For purposes of this 10 year rule and the annual increment limitation described in the preceding paragraph, any period is excluded during which a rate of duty being reduced under section 101 is frozen or increased by reason of law or action taken thereunder, *e.g.*, a temporary tariff increase imposed under section 203 of the Trade Act of 1974 (19 U.S.C. 2253).

The bill.—Section 503(a) would permit the President to implement certain tariff reductions required under trade agreements entered into under section 101 of the Trade Act more rapidly than the annual increment limitation in section 109(a) of the Trade Act, *i.e.*, the greater of 3 percentage points or one-tenth the total reduction, would otherwise permit. This authority would apply only to the following items in the TSUS:

(1) *Future chemical products.*—Section 503(a)(1) would permit the President to implement tariff reductions under section 101 of the Trade Act, more rapidly than section 109(a) of that act would otherwise allow, on certain benzenoid chemicals and products classified under schedule 4, part 1, subparts B and C of the TSUS, as amended by section 223(d) of the bill. This authority would apply only to chemicals and products which the President determines were not imported into the United States before January 1, 1978, or produced in the United States before May 1, 1978. Section 503(b) of the bill would require the President to make this determination before July 1, 1980, but only after he has provided interested parties an opportunity to comment.

Section 223(d) would increase the rates of duty on certain benzenoid chemicals and products currently subject to the American Selling Price (ASP) method of customs valuation (19 U.S.C., 1401a(e), 1402(g)). The duty increases have been computed to provide for the collection of the same amount of duty on those products as is currently collected under ASP.

Section 224 of the bill would make the MFN rates of duty appearing in amendments in subtitle B of Title II of the bill, including section 223(d), the base rates for purposes of applying the percentage limitations on tariff changes by the President under section 101 of the Trade Act. Section 225 of the bill would permit the President to transfer any chemical or product classified under an item in subparts B and C of part 1, Schedule 4 of the TSUS, as amended by section 223(d) of the bill, to another item under those subparts if (1) another country in the MTN has notified the United States, before August 1, 1979, that the rate of duty for such chemical or product is inappropriate and nonrepresentative and, (2) the International Trade Commission (ITC) has determined (A) that such chemical or product was not valued for customs purposes on the basis of ASP during a recent representative period, and (B) a more appropriate rate of duty for such chemical or product exists under such subparts B or C.

Taken together, the provisions of the bill described above would permit the President to identify and segregate "future products." He could then proclaim, under section 101 of the Trade Act, the negotiated tariff reductions on those products more rapidly by reason of section 503(a)(1) of the bill than section 109(a) of that act would otherwise allow.

(2) *Products of the least developed countries.*—Section 503(a)(2)(A) of the bill would permit the President to implement tariff reductions under section 101 of the Trade Act of 1974, more rapidly than section 109 (a) of that act would otherwise allow, on certain products of the least developed countries. This authority would apply only to products (A) with respect to which the President has agreed to reduce

duties in the MTN, and (B) which the President determines are not import sensitive. Furthermore, the countries producing the products must be (1) on the United National General Assembly list of "Least Developed Countries", and (2) beneficiary developing countries, for purposes of the Generalized System of Preferences, under section 502 of the Trade Act of 1974 (19 U.S.C. 2462). Section 503(b) of the bill would require the President to make the import sensitivity determination before July 1, 1980, but only after he has provided interested parties an opportunity to comment.

Rapid implementation could not apply to identical products produced in countries other than the least developed countries. The country of origin rule applicable under current law would be used to determine the origin of products eligible for special treatment under this provision (see 19 C.F.R. 134.1).

Section 503(a)(2)(B) of the bill would permit the President to suspend at any time and for any reason the rapid implementation of tariff reductions under section 503(a)(2)(A). If the President should suspend rapid implementation of the tariff reduction on a product of the least developed countries under this subparagraph, then the rate of duty applicable to that product would be the MFN rate of duty applicable to that product.

(3) *Magnesium.*—The President has agreed to a total reduction in the rate of duty on unwrought magnesium alloys, classified under TSUS item 628.57, from 12.1 percent *ad valorem* to 6.5 percent *ad valorem.* Section 503(a)(3) of the bill would permit the President to implement part of that reduction, *i.e.*, from 12.1 percent *ad valorem* to 7.3 percent *ad valorem* under section 101 of the Trade Act during the 1-year period beginning on the date of the first reduction in the rate of duty on that item proclaimed under section 101. This provision would permit the first year reduction in the duty under item 628.57 to exceed the annual 3 percentage point limitation in section 109(a) of the Trade Act.

(4) *Certain agricultural products, wrapper tobacco, and certain halogenated hydrocarbons.*—Section 503(a)(4) of the bill would permit the President to implement tariff reductions under section 101 of the Trade Act, more rapidly than section 109(a) of that Act would otherwise allow, on the following items: potato starch (TSUS item 132.50); wrapper tobacco, not stemmed (TSUS item 170.10); wrapper tobacco, stemmed (TSUS 170.15); filler tobacco, mixed with over 35 percent wrapper, not stemmed (TSUS item 170.20); wool grease (TSUS item 177.62); feathers and downs (TSUS item 186.15); and halogenated hydrocarbons which are chlorinated but not otherwise halogenated (TSUS item 429.47).

(5) *Certain wool.*—Section 503(a)(5) of the bill would permit the President to implement the total negotiated duty reductions on certain wool under section 101 of the Trade Act during the 2-year period beginning on the date of the first reduction in the rate of duty on the specified TSUS items proclaimed by the President under section 101. This provision could apply to wool finer than 44s classified under TSUS items 306.31, 306.32, 306.33, and 306.34.

(6) *Products subject to the American Selling Price methods of customs valuation.*—Section 503(a)(6) of the bill would permit the

President to implement on January 1, 1981, the second stage of certain tariff reductions under section 101 of the Trade Act. The provision would permit the aggregate reduction in certain rates of duty during the first year of implementation to exceed the limitations in section 109(a) of the Trade Act. Section 503(a)(6) applies only to items in the TSUS for which the President determines the first reduction in the rate of duty will be effective after June 30, 1980, and before January 1, 1981.

Reasons for the provisions.—Section 503 would permit the President to implement tariff reductions under section 101 of the Trade Act, notwithstanding the timing limitations in section 109(a) of that act, which are required under or appropriate to implement trade agreements entered into during the MTN.

(1) *Future chemical products.*—The provisions of the bill, including section 503(a)(1), will permit the President to implement an agreement by the United States with the European Communities to reduce the ASP equivalent rates of duty imposed by the amendment under section 223(d) of the bill on "future chemical products," *i.e.*, benzenoid chemicals and products classified under Schedule 4, part 1, subparts B and C of the TSUS, as amended by section 223(d), if those chemicals and products were not imported into the United States before January 1, 1978, and were not produced in the United States before May 1, 1978. This agreement requires some reductions in the new rates of duty applicable to future products to be completely implemented with respect to products exported to the United States on or after the effective date of section 223(d), as determined under section 204(a) of the bill. Other reductions must be implemented over five years. In either case, a number of the reductions must be implemented more rapidly than section 109(a) of the Trade Act permits. Section 503(a)(1) of the bill will permit the rapid implementation of the reductions as is required under the agreement.

(2) *Products of the least developed countries.*—Section 503(a)(2) will permit the President to implement on January 1, 1980, the total duty reduction offered in the MTN with respect to products of the least developed countries. This action will result in lower rates of duty for several years on products of the least developed countries than on identical products from other countries. The duration of the differential tariff treatment will depend on the period over which the reduction in the relevant rate of duty is implemented, which could be up to 8 years. The purpose of this provision is to permit the President to carry out for the United States its commitment to give the least developed countries "special attention" and "special treatment in the context of any general or specific measures taken in favor of the developing countries" as is required in the Tokyo Declaration initiating the MTN.

Products of countries which are not least developed countries, as defined in section 503(a)(2), will be subject to the MFN rate of duty in effect under sections 101 and 109 of the Trade Act. If at any time a country subsequently fails to meet the conditions of section 503(a)(2), or the President suspends the rapid staging under that provision for any reason, then the rate of duty applicable to products of that country will be the MFN rate in effect for that product. Because

this special staging of tariff reductions benefiting products of the least developed countries is not a legal commitment under the negotiating rules of the General Agreements on Tariffs and Trade (GATT), termination or suspension of the special treatment under section 503(a)(2) will not give rise to a claim for compensation by the country affected.

(3) *Magnesium.*—The current MFN rate of duty on unwrought magnesium alloys is 8 cents per pound on magnesium content plus 4 percent *ad valorem.* The United States has agreed to convert this compound rate of duty to an *ad valorem* equivalent of 12.1 percent, based on the average value of imported unwrought magnesium alloys from all sources during 1976. Because the price of unwrought magnesium alloys imported from certain countries is significantly above the average price of imported magnesium alloys, the conversion to an *ad valorem* equivalent of 12.1 percent will result in a substantial effective duty increase on imports from the high-cost suppliers. Section 503(a)(3) will permit, on January 1, 1980, an immediate reduction under section 101 of the Trade Act, notwithstanding section 109(a) of that act, in the rate of duty to 7.3 percent. This action would prevent the creation of an obligation on the United States under the GATT to provide compensation to the high-cost suppliers for the effective duty increase. The final rate of duty under item 628.57 negotiated in the MTN will be 6.5 percent *ad valorem.* The reduction from 7.3 percent *ad valorem* to 6.5 percent *ad valorem* will be implemented under sections 101 and 109 of the Trade Act of 1974.

(4) *Certain agricultural products, wrapper tobacco, and certain halogenated hydrocarbons.*—Section 503(a)(4) will permit the President to implement the total reduction in the rates of duty on certain tobacco products on January 1, 1980. This immediate implementation of the tariff reductions is being made at the request of the domestic cigar manufacturing industry. The rates of duty will be implemented as follows:

Item No.	Description	Existing duty	Offer rat
170.10	Wrapper tobacco, not stemmed	90.0¢/lb.	36¢/lb.
170.15	Wrapper tobacco, stemmed	$1.58¢/lb	62¢/lb.
170.20	Filler tobacco mixed with over 35-percent wrapper, not stemmed	90.0¢/lb.	36¢/lb.

Section 503(a)(4) will also permit implementation of an agreement between the United States and the European Communities on the staging of reciprocal concessions on certain agricultural products. Under the agreement, the United States will implement on January 1, 1980, the total duty reduction on the following agricultural items if the Communities implement certain concessions benefiting American agricultural exports on the same basis.

Item No.	Description	Existing duty	Offer rate
177.62	Wool grease	2.65¢/lb.	1.3¢/lb.
186.15	Feather and downs	15 percent	7.5 percent.
132.50	Potato starch	1¢/lb.	0.4¢/lb.

Finally, the current MFN rate of duty on certain halogenated hydrocarbons classified under TSUS item 429.47, 1.5 cents per pound plus 7.5 percent *ad valorem*, will be converted to an *ad valorem* equivalent of 28.6 percent. The President has negotiated a reduction in this rate to 18 percent *ad valorem*. Section 503(a)(4) will permit the total reduction to be implemented on January 1, 1980, under section 101 of the Trade Act, notwithstanding section 109(a) of that Act. Immediate implementation of the duty reduction under item 429.47 will provide compensation to the European Communities for effective duty increases on their products resulting from conversion of certain United States specific and compound rates of duty to *ad valorem* equivalents.

(5) *Certain wool.*—Currently, the MFN and non-MFN duties on wool not finer than 46s classified under TSUS items 306.30 through 306.34 are suspended under TSUS item 905.11 until June 30, 1980. The United States has agreed with Australia and New Zealand to (a) continue the duty suspension under item 905.11 until June 30, 1985 (see section 513 of the bill), and (b) reduce the suspended MFN rates of duty on wool not finer than 46s, classified under TSUS items 306.31 through 306.34, by 60 percent in 3 annual increments beginning January 1, 1980. The MFN duties under those items, which are now suspended as to wool not finer than 44s, range from 25.5 cents per clear pound to 33 cents per pound. Section 503(a)(5) will permit the President to implement under section 101 of the Trade Act, notwithstanding the timing limitations in section 109(a) of that Act, the 60 percent reduction in the rates of duty on wool not finer than 44s in three annual increments. Given the extension of the duty suspension on those products under the amendment in section 513 of the bill, the new rates of duty will not apply until July 1, 1985.

The rates of duty which could be implemented rapidly under this provision are as follows:

TSUS No.	Description	Existing duty	Offer rate
	Wool:		
	Other Wool:		
	Finer than 44's:		
	In the grease or washed:		
306.31	Not sorted	25.5¢/clean pound	10¢/clean pound.
306.32	Sorted	26.25¢/clean pound	10¢/clean pound.
306.33	Scoured	27.75¢/clean pound	11¢/clean pound.
306.34	Carbonize	33¢/pound	13¢/pound.

(6) *Products subject to the American Selling Price (ASP) method of customs valuation.*—Under section 204(a)(1) of the bill, the new rates of duty imposed under the amendments in section 223 of the bill on products currently subject to the ASP method of customs valuation, other than rubber footwear, will be effective when the new Customs Valuation Agreement negotiated in the MTN enters into force with respect to the United States, probably January 1, 1981. However, section 204(a)(2) of the bill will permit the new rates of duty to become effective on any date between June 30, 1980, and January 1, 1981, if the European Communities implements the Customs Valuation Agreement before or during that period.

The United States has agreed to reduce some of the new duties imposed under section 223 of the bill. Under an agreement with the European Communities, the United States will implement the first stage of those reductions on the effective date of section 223. Section 502(a)(6) will permit the President to implement those reductions under section 101 of the Trade Act and to implement a second reduction on January 1, 1981, notwithstanding section 109(a) of that Act. The President's statement of administrative action states that the authority under section 503(a)(6) will be used "only if the European Communities implements certain of its tariff concessions on the same basis."

Snapback of Textile Tariff Reductions (Section 504 of the Bill)

Present law.—During the period when a negotiated tariff reduction is being implemented under sections 101 and 109 of the Trade Act, the staging may be interrupted and the tariff increased to any amount by a later enacted statute or by action under law, *e.g.*, a temporary duty increase under section 203 of the Trade Act. If the duty increase subsequently terminates, section 109(c)(2) of the Trade Act requires implementation of the tariff reduction to continue, subject to suspension, modification, or withdrawal under section 125 of that act, on the original schedule excluding the period of the duty increase for purposes of applying the one year rule under section 109(a)(2) and the 10 year rule under section 109(c)(1).

The Arrangement Regarding International Trade in Textiles, known as the Multifiber Arrangement (MFA), is a general framework or "umbrella" agreement accepted by nearly 50 nations. Originally effective for 3 years beginning January 4, 1974, the MFA was renewed on December 14, 1977, for a 4-year period ending December 31, 1981. Unlike earlier arrangements which applied solely to cotton textiles and apparel, the MFA covers textile and apparel products made of cotton, wool, and man-made fibers. The purpose of the MFA is to liberalize and expand world textile trade while, at the same time, avoiding disruption in individual markets.

Under the provisions of the MFA, a country may restrain imports of textile and apparel products from particular countries through the negotiation of bilateral agreements with exporting countries, or, where no agreement can be reached, through unilateral action. The MFA is an exception to the principles of the GATT in that it permits import restrictions on a discriminatory basis. Without the MFA, such discriminatory restrictions would be justifiable under GATT only under certain conditions.

The original MFA expired December 31, 1977. After more than a year of extremely difficult negotiations, a decision was reached in late December 1977, to extend the MFA for another 4 years, with certain interpretations of the MFA made as part of the protocol extending the MFA. The United States proposed an interpretation, later accepted on behalf of 16 importing and exporting participants, to permit "jointly agreed reasonable departures from particular elements in particular cases." This language was offered basically to recognize and support a practice which has developed within the MFA bilaterals where

particularly hard-hit product lines in the importing countries may be dealt with through agreed upon restraint levels which may not comply with the general provisions of the MFA calling for a 6 percent annual growth in imports. Thus, under the language of the protocol, two countries might agree that sweater trade (a "particular case") would increase at 3 percent per annum (a "reasonable departure") instead of at the MFA's stated growth rate of 6 percent per annum (a "particular element" of the MFA).

While the MFA provides the framework for regulating trade in textiles and apparel, the various bilateral agreements between exporting and importing countries provide the specific details of how much of what kind of product can enter each country. The United States implements MFA bilaterals under section 204 of the Agricultural Act of 1956 (7 U.S.C. 1854).

Under most of the bilaterals, aggregate limits are set on the total imports which can enter the United States from the exporting country. Within the aggregate, there are quota levels for groups of products such as textile products, apparel, and wool products. Within each group, specific import levels may be set for specific items, such as cotton knit shirts. The bilaterals provide for specific ceilings for "sensitive" items in those cases in which the bilateral partner ships products for which the import penetration is high and the market is likely to be disrupted.

The bilaterals provide "consultation levels" for products not subject to specific ceilings. Unlike specific ceilings, consultation levels permit the exporting country to request the United States to establish higher ceilings during the agreement's life.

The bilateral agreements provide that aggregate group and specific ceilings are subject to a number of adjustments which can increase the volume of textile products actually imported in a given year:

Carryover.—The allocation of an unused portion of the previous year's quota to the present year;

Carryforward.—The allocation to the present year of a portion of the next year's quota; any such "borrowing" must be accounted for by an equivalent decrease in the following year's quota.

Generally carryover and carryforward together may be used to increase the aggregate limit and any group or specific limit by up to 11 percent in any given year.

Another adjustment feature, "swing", unlike carryover or carryforward, cannot be used to increase the aggregate ceiling. Swing permits the exporting country to shift or reallocate a portion of the quota from one product "group" or "category" to another. Generally—and this varies enormously from one bilateral to another—the use of swing may increase a restraint level from 1 to 15 percent for "group" levels and from 5 to 10 percent for "specific" ceilings.

The bill.—Section 504 of the bill would amend the headnotes to schedule 3 of the TSUS to require interruption of the implementation of certain negotiated textile tariff reductions and to require the MFN rates of duty existing on January 1, 1975, to become effective under the specified items affected by the interruption, if the Arrangement Regarding International Trade in Textiles, as extended on December 14, 1977 (MFA), or a substitute arrangement determined by the Presi-

dent to be suitable, ceases to be in effect with respect to the United States. The requirement would apply only—

(1) to items in Schedule 3 and Schedule 7 of the TSUS covering cotton, wool, or man-made fiber textile products as defined in the MFA, and

(2) during the period of implementation of the negotiated tariff reduction on each such item.

If a January 1, 1975, rate of duty "snapsback" under section 504, that duty would be effective with respect to articles entered, or withdrawn from warehouse, for consumption within 30 days after the MFA or a substitute arrangement ceases to be in effect. If the MFA or a substitute arrangement subsequently enters into force with respect to the United States, then the President would be required to continue implementation of the negotiated tariff reduction from the date of entry into force, subject to suspension, modification, or withdrawal under section 125 of the Trade Act, on the original schedule excluding the period of the "snapback" for purposes of section 109 (c) (2) of the Trade Act.

The term "existing" is intended to have the same meaning as it has under section 601(7) of the Trade Act (19 U.S.C. 2481). A "substitute arrangement" is intended to mean an international multilateral or bilateral agreement, relating to trade in textiles and textile products to which the United States is a party, or unilateral action by the United States to control imports of textiles and textile products. In determining the suitability of such an agreement or action, it is intended that the President consider whether the effect of imports on the domestic textile industry under the agreement or action will be similar to what would have occurred had the MFA been in effect with respect to the United States.

Reason for the provision.—The amendment under section 504 is intended to provide the domestic textile industry certainty as to the nature of textile import restrictions during the implementation period for negotiated reductions in textile tariffs. The provision will create an incentive for countries supplying textiles and textile products to the United States to continue their participation in the MFA or other international agreements governing trade in textiles. The MFA or a similar agreement benefits both importing and exporting countries by insuring orderly growth in the global textile sector and avoiding damaging international confrontations over trade in textiles.

Goat and Sheep (Except Lamb) Meat (Section 505 of the Bill)

Present law.—Goat meat is currently classified under TSUS item 106.20 and is dutiable at MFN and non-MFN rates of 2.5 cents per pound and 5 cents per pound, respectively. Item 106.20 also covers sheep meat other than lamb. Imports under item 106.20 are subject to quotas under the "Meat Import Act" (Public Law 88-482; 19 U.S.C. 1202) if the conditions requiring quotas under that act are met. Quotas are almost never imposed under the Meat Import Act because of restrictions on meat imports under bilateral agreements between the United States and supplying countries implemented under section 204 of the Agricultural Act of 1956 (7 U.S.C. 1854).

The bill.—If the President determines that appropriate concessions have been received from foreign countries, as is required under section 502(a) of the bill, then section 505 would amend the TSUS by repealing item 106.20 and substituting new items 106.22 and 106.25. Item 106.22 would cover sheep meat other than lamb and item 106.25 would cover goat meat. The MFN and non-MFN rates under both items would be the same as under current item 106.20.

Section 502(c) of the bill would make the new MFN rates under items 106.22 and 106.25 the rates existing on January 1, 1975, for purposes of the sections 101 and 601(7) of the Trade Act. This would permit the President to reduce those rates under section 101 of that act. Section 704(a) of the bill would amend the Meat Import Act to subject imports under items 106.22 and 106.25 to quotas.

Reason for the provision.—The President has agreed to reduce the MFN duty on sheep meat from 2.5 cents per pound to 1.5 cents per pound. In negotiations with Haiti, the United States agreed to reduce the MFN rate of duty on goat meat from 2.5 cents to free. The President could implement this agreement under section 101 and 604 of the Trade Act. However, he cannot include the new TSUS items under the Meat Import Act. Section 505 will merely enact the new TSUS items so that they can be included in the Meat Import Act under the amendment in section 704(a) of the bill. The reductions in the MFN rates of duty under new items 106.22 and 106.25 will be made under section 101 of the Trade Act.

Certain Fresh, Chilled, or Frozen Beef (Section 506 of the Bill)

Present law.—Fresh, chilled, or frozen beef and veal (except for sausages) valued over 30 cents per pound are currently classified under TSUS item 107.60. The MFN and non-MFN rates of duty under that item are 10 percent and 20 percent *ad valorem*, respectively. Imports under item 107.60 are not subject to quotas under the "Meat Import Act" (Public Law 88–482; 19 U.S.C. 1202).

The bill.—If the President determines that appropriate concessions have been received from foreign countries as is required under section 502(a) of the bill, then section 506 would amend the TSUS by repealing item 107.60 and substituting new items 107.61, 107.62, and 107.63. Item 107.61 would cover fresh, chilled, or frozen, but not otherwise prepared, high quality portion control cuts of beef valued over 30 cents per pound which meet Department of Agriculture requirements for Prime or Choice beef. Item 107.62 would cover fresh, chilled, or frozen beef and veal (except sausages), other than items classified under item 107.61, valued over 30 cents per pound. Item 107.63 would cover beef and veal (except sausages), other than items classified under items 107.61 and 107.62, valued over 30 cents per pound. The MFN and non-MFN rates under all three new items would be the same as under current item 107.60.

Section 502(c) of the bill would make the new MFN rates under items 107.61, 107.62, and 107.63 the rates existing on January 1, 1975, for purposes of sections 101 and 601(7) of the Trade Act. This would permit the President to reduce those rates under section 101 of that act.

Section 704(a) of the bill would amend the Meat Import Act to subject imports under item 107.61 to quotas.

Reason for the provision.—In negotiations with Canada, the United States agreed to reduce the MFN duty on high quality portion control cuts of beef from 10 percent to 4 percent *ad valorem* if imports of the product are subject to the Meat Import Act. The rates of duty on other products currently classified under item 107.60 will not be changed.

The President could implement the tariff reduction under section 101 and 604 of the Trade Act. However, he cannot include new TSUS item 107.61 under the Meat Import Act. Section 506 will merely enact the new TSUS items 107.61, 107.62, and 107.63 so that item 107.61 can be included in the Meat Import Act under the amendment in section 704(a) of the bill. The reduction in the MFN rate of duty under item 107.61 will be made under section 101 of the Trade Act.

Yellow Dent Corn (Section 507 of the Bill)

Present law.—Yellow dent corn is currently classified, with other types of corn, under TSUS item 130.35. The MFN duty under that item is 25 cents per bushel of 56 pounds which is equivalent to 7 percent *ad valorem.* Imports of yellow dent corn from beneficiary developing countries are duty-free under the Generalized System of Preferences.

Section 101 of the Trade Act permits the President to negotiate changes in MFN tariffs, without congressional action, under several limitations. Section 101(b)(1) prohibits any reduction in a tariff under that section to a rate which is less than 40 percent of the rate existing on January 1, 1975.

The bill.—Section 507 would permit the President to reduce the duty on yellow dent corn under section 101 of the Trade Act to 5 cents per bushel of 56 pounds which is equivalent to 1.4 percent *ad valorem.*

Reason for the provision.—The United States has agreed to reduce the MFN duty on yellow dent corn in negotiations with Canada. The reduction will result in a duty which is 20 percent of the rate existing on January 1, 1975. Section 507 will permit implementation of this agreement under section 101 of the Trade Act notwithstanding the limitation in subsection (b)(1) of that section. Implementation of this reduction would be subject to the timing limitations in section 109 of the Trade Act. The rates of duty on other types of corn currently classified under item 130.35 will not be reduced.

Carrots (Section 508 of the Bill)

Present law.—Carrots are currently classified under TSUS items 135.41 and 135.42. The MFN and non-MFN rates of duty under both items are 6 percent and 50 percent *ad valorem*, respectively. Section 101 of the Trade Act permits the President to negotiate changes in MFN tariffs, without Congressional action, subject to several limitations. Subsection (c) of that section prohibits the President from increasing a rate of duty on an article to a rate above the greater of (1) 50 percent above the non-MFN rate on that article in

effect on January 1, 1975, or (2) 20 percent *ad valorem* above the MFN rate on that article existing on January 1, 1975. Finally, section 134 of the Trade Act (19 U.S.C. 2154) permits a change in a rate of duty under section 101 of that act only after the President has received (A) a summary of the testimony with respect to that change received in the hearings required under section 133 of the act, and (B) advice from the ITC with respect to the change, as required under section 131 of the act.

The bill.—If the President determines that appropriate concessions have been received from foreign countries as is required under section 502(a) of the bill, then section 508 would amend the TSUS to increase the MFN and non-MFN rates of duty under item 135.41 (relating to carrots under 4 inches long) to 1 cent per pound (31.4 percent *ad valorem* equivalent) and 8 cents per pound, respectively. The MFN and non-MFN rates under item 135.42 (relating to carrots 4 or more inches long) would be increased to 0.5 cents per pound (7.1 percent *ad valorem* equivalent) and 4 cents per pound, respectively.

Reason for the provision.—In negotiations with Canada, the United States agreed that Canadian and American MFN duties on certain vegetable products should be the same. In the case of carrots, Canada will reduce its rates and the United States will increase its rates to the amounts provided in section 508 of the bill. The requirements of section 134 of the Trade Act, which must be met before a tariff change can be made under section 101 of the act, were not met with respect to the proposed MFN tariff increases under items 135.41 and 135.42. Section 508 will increase the MFN tariffs in an amount necessary to implement the agreement with Canada. It will also increase the non-MFN rates, which can only be changed by statute, to maintain the same arithmetic relationship between MFN and non-MFN rates of duty as exists under current law.

The President's statement of proposed administrative action erroneously states that the MFN tariff increase under item 135.41, from 6 percent *ad valorem* to 31.5 percent *ad valorem* equivalent, would exceed the limitations in section 101(c) of the Trade Act. If the requirements of section 134 of that act had been met, the President could have increased the MFN rate of duty under item 135.41 up to 75 percent *ad valorem*. The increase to 31.5 percent *ad valorem* equivalent is well within that ceiling.

Dinnerware (Section 509 of the Bill)

Present law.—Dinnerware is currently classified under TSUS items 533.11 through 533.77. The MFN rates of duty under these articles range from 2.5 percent *ad valorem* (item 533.11) to 48.7 percent ad valorem (item 533.52). The non-MFN rates range from 16 percent *ad valorem* (item 533.11) to over 70 percent *ad valorem* equivalent.

Non-MFN rates of duty can be changed only by statute. Trade agreements requiring changes in MFN duties and changes in tariff classifications can be implemented under section 101 of the Trade Act, subject to limitations, and section 604 of that act.

The bill.—If the President determines that appropriate concessions have been received from foreign countries as is required under section 502(a) of the bill, then section 509 would amend Schedule 5 of the

TSUS as it relates to articles chiefly used for preparing, serving, or storing food or beverages, or food and beverage ingredients, *i.e.*, "dinnerware". The revision of the dinnerware provisions of the TSUS proposed in section 509 would result in the same or higher duties than those currently in effect. However, section 502(c) of the bill would permit the President to change the MFN duties, as amended under section 509, under section 101 of the Trade Act.

The current TSUS nomenclature for dinnerware contains 18 provisions based on price levels. In the new nomenclature proposed under section 509, product distinctions based on price would be reduced to eight, four each for earthenware and chinaware. In order to close a tariff loophole, a new provision for earthenware hotel and restaurant ware would be established so that all imports of hotel and restaurant ware would be dutiable at the same rate.

The rates of duty under the new nomenclature applicable to imported earthenware tableware articles most directly competitive with the bulk of domestic production would be higher than the current rates. For the higher valued earthenware articles and most chinaware articles, the current effective rates would be maintained.

Reason for the provision.—In 1976, while considering continuation of import relief for certain tableware under Title II of the Trade Act, the President requested the ITC to revise the dinnerware nomenclature "so as to close tariff loopholes, eliminate provisions based on price levels that no longer exist, and generally bring the nomenclature into conformance with commercial conditions . . ." During the MTN, the United States agreed to reduce the MFN tariffs on a number of dinnerware items in negotiations with several countries, *e.g.*, Japan and the European Communities.

The amendments under section 509 reflect the recommendations of the ITC to the President for revision of the dinnerware nomenclature. The MFN rates of duty imposed under section 509 on certain higher valued earthenware, hotel and restaurant tableware, higher-valued non-bone chinaware, and bone chinaware will be reduced by the President under section 101 of the Trade Act to implement MTN agreements. Section 509 is in the bill because the nomenclature revision collapses several TSUS items existing under current law and, therefore, requires changes in non-MFN duties which can only be made by statute.

Watches (Section 510 of the Bill)

Present law.—Watch movements are currently classified under TSUS items 716.08 through 719.—. The TSUS classifications are generally based on the number of jewels in and width of the movement. The MFN rates of duty under these items range from 3.9 percent *ad valorem* equivalent (item 716.23) to 30 percent *ad valorem* equivalent (item 716.20). The non-MFN rates range from 75 cents (item 716.16) to over $10.75 (item 716.08).

Rate column numbered 1, containing the MFN rates of duty, for TSUS items 716.10 through 716.26 is divided into columns 1–a and 1–b. The purpose of this division is to prevent tariff avoidance by means of substituting a bushing for a jewel only during importation.

Headnote 4 of schedule 7, part 2, subpart E of the TSUS requires watch movements to be marked in Arabic numerals and in words with the number of adjustments and the number of jewels they contain. Headnote 4 also requires dials classified under subpart E to be marked with the name of the country of manufacture of the dial placed so that it will not be obscured by the case.

The bill.—If the President determines that appropriate concessions have been received from foreign countries as is required under section 502(a) of the bill, then section 510 would amend Schedule 7 of the TSUS as it relates to watch movements, to change watch movement marking requirements, simplify the tariff nomenclature, and change non-MFN rates of duty. Section 502(c) of the bill would permit the President to reduce the MFN duties on watch movements, as amended under section 510, under section 101 of the Trade Act.

The marking requirements under headnote 4 would be changed to permit marking in words only of the number of jewels and adjustments in a movement. The country of manufacture mark on the dial would not have to be visible on the face of the dial.

The column 1–b rates under TSUS items 716.10 through 716.26 would be abolished. Item 719.—would be amended to cover watch movements currently classified under items 717.— through 719.—. The MFN rate of duty under item 720.75 (relating to certain assemblies and subassemblies for watch movements) would be changed from a compound rate to 22.5 percent *ad valorem*. Finally, the non-MFN rates for items 716.10 through 716.16, 716.20 through 716.26, and 716.30 through 716.36 would be changed so that the rate applicable to each item equals the highest non-MFN rate currently applicable to any item in each group under current law.

Reason for the provision.—In negotiations with the European Communities, Switzerland, and Japan, the United States agreed to simplify the complex and archaic tariff nomenclature for watch movements and to reduce certain duties on watch movements. The change in the dial marking requirement as to the country of manufacture of the dial would not affect the general requirement under section 304 of the Tariff Act of 1930 (19 U.S.C. 1304) that every imported article be marked in a conspicuous place with the country of origin.

As far as can be determined, the column 1–b rates under items 716.10 through 716.26 have not been used since the TSUS went into effect in August 1963. The tariff avoidance benefits afforded by deleting the column 1–b rates would be minimal and transitory at best. It is unlikely that importers would now materially benefit from such a tariff avoidance scheme considering the prevailing labor rates in the United States, the competition from low-priced digital watches, and the changes that would be required in the watch movement assembly opertions to implement such a scheme. Further, these potential benefits would only exist during the implementation period for negotiated tariff reductions because the new final rates proclaimed by the President will be so low as to remove any real advantage that might be gained by the use of such a tariff avoidance scheme.

On January 1, 1980, the President will eliminate items 717.—and 718.—leaving item 719.—, as amended by section 510, under section 604 of the Trade Act. The distinctions between adjusted and selfwind-

ing watches under current law are no longer necessary because no jeweled watches are produced in the United States.

As noted above, the President will simplify the watch nomenclature on January 1, 1980. This simplification will require a reduction in the number of TSUS items. The changes in non-MFN rates under section 510 of the bill will permit this simplification without any loss of tariff protection against watch movements subject to non-MFN rates which can be changed only by statute. The President's statement of administrative action describes the action to be taken on January 1 as follows:

"After harmonizing as part of the tariff offer the rates of duty on all watch movements with 0–1 jewel (TSUS items 716.10, 716.11, 716.12, 716.13, 716.14, 716.15, and 716.16), these 7 five-digit items will be collapsed into one new five-digit item. This will simplify the tariff schedule, by eliminating width distinctions which are no longer necessary. Originally, the width distinctions and their accompanying rates of duty were based on the precision of and labor intensity required for the timepiece and were intended to protect the domestic industry. Generally, the smaller the width, the greater the precision and the higher the rate of duty.

"A similar collapsing into one new TSUS item will be made for watch movements having 2–7 jewels (TSUS items 716.20, 716.21, 716.22, 716.23, 716.24, 716.25, and 716.26) and for watch movements having 8–17 jewels and valued over $15. New column 2 rates of duty are also provided for the three new TSUS items.

"TSUS items 716.31 and 716.32 will be collapsed into a new five digit TSUS number. The two items have the same column 1 rates of duty but different column 2 rates. A new column 2 rate of duty is provided for the new category. Similarly, TSUS items 716.34, 716.35, and 716.36 will be collapsed into one new five digit item. All three have the same column 1 rate of duty but different column 2 rates. A new column 2 rate is also assigned to this item. These changes are suggested for reasons of tariff nomenclature simplification."

The 0 to 7 jewel watch movement MFN duty reduction on January 1, 1980, under section 502(c) of the bill and section 101 of the Trade Act will be 20 to 60 percent. The duties on jeweled lever and 8 to 17 jewel watches will not be changed. The duties on 8 to 17 jewel watches and watches with over 17 jewels will be reduced 40 to 60 percent.

Brooms (Section 511 of the Bill)

Present law.—Whiskbrooms made wholly or in part of broom corn are currently classifiable under TSUS items 750.26, 750.27, or 750.28. During each calendar year, whiskbrooms valued not over 32 cents each are classifiable under item 750.26 and are subject to MFN and non-MFN duties of 20 percent *ad valorem* until 91,885 dozen whiskbrooms classifiable under items 750.26, 750.27, and 750.28 enter the country. After 91,885 dozen whiskbrooms enter the country, whiskbrooms valued not over 32 cents are classified under item 750.27 for the remainder of the year at MFN and non-MFN duties of 12 cents each. Whiskbrooms valued over 32 cents each are classified under item 750.28 and are subject to MFN and non-MFN duties of 32 percent *ad valorem.*

Section 134 of the Trade Act (19 U.S.C. 2154) permits a change in a rate of duty under section 101 of that act only after the President has received (A) a summary of the testimony with respect to that change received in the hearings required under section 133 of the act, and (B) advice from the ITC with respect to the change, as required under section 131 of the act. Non-MFN duties can be changed only by statute.

The bill.—If the President determines that appropriate concessions have been received from foreign countries as is required under section 502(a) of the bill, then section 511 would amend the TSUS to make the change provided for in section 511. This will offset the 45 cents. Items 750.28 would apply to whiskbrooms valued over 45 cents. This would reduce the MFN and non-MFN duties applicable to whiskbrooms valued between 32 and 45 cents.

Reason for the provision.—In negotiations with Hungary, the products of which are subject to MFN duties, the United States agreed to make the change provided for in section 511. This will offset the effects of inflation in the price of whiskbrooms by applying the lower duties under items 750.26 and 750.27 to whiskbrooms valued not over 45 cents. The quantitative trigger for the tariff rate quota under item 750.26 will not be changed.

The requirements of section 134 of the Trade Act, which must be met before a tariff change can be made under section 101 of the Act, were not met with respect to the proposed MFN tariff changes affecting items 750.26, 750.27, and 750.28. Section 511 will change the tariff treatment of whiskbrooms to implement the agreement with Hungary. Insofar as the effective non-MFN duty treatment is changed, the change must be made by statute.

Agricultural and Horticultural Machinery, Equipment, Implements, and Parts (Section 512 of the Bill)

Present law.—Certain agricultural machinery and equipment, *e.g.*, "machinery for soil preparation and cultivation", agricultural and horticultural implements not specifically provided for under another TSUS item, and parts of such machinery, equipment, or implements, are classified under TSUS item 666.00. The MFN and non-MFN duties under item 666.00 are both free. Headnote 1 to subpart C of part 4, Schedule 6 of the TSUS excludes certain articles from item 666.00, *e.g.*, metals, their alloys, and their basic shapes and forms classified under Part 2 of Schedule 6.

Headnote 10(ij) of the General Headnotes to the TSUS provides that "a provision for 'parts' of an article [in the TSUS] covers a product solely or chiefly used as a part of such article, but does not prevail over a specific provision [in the TSUS] for such part."

The bill.—If the President determines that appropriate concessions have been received from foreign countries as is required under section 502(a) of the bill, then section 512 would amend Schedule 8 of the TSUS (relating to special classification provisions) to permit duty-free entry of machinery, equipment, and implements to be used for agricultural or horticultural purposes (TSUS item 870.40). Parts of

articles provided under TSUS item 660.00, whether or not covered by specific TSUS provisions within the meaning of general headnote 10(ij), would also be free of MFN duties (TSUS item 870.45). Specific articles would be excluded from duty-free treatment under the section 512 amendments, *e.g.*, articles classified under TSUS item 666.00, metals, their alloys, and their basic shapes and forms classified under part 2 of Schedule 6, textile materials, and ball bearings.

Reason for the provision.—In negotiations with Canada, the United States agreed to permit duty-free entry of certain machinery, equipment, and implements which are used in agriculture or horticulture. This concession is contingent upon several Canadian concessions. The most important Canadian concession is the elimination of the "Made in Canada" provisions of the Canadian tariff which subject imported products similar to products made in Canada to higher duties than the duties on products not made in Canada.

New item 870.40 will permit duty-free entry of articles described in item 666.00 which are not classified thereunder because their chief use is not in agriculture or horticulture. Item 870.40 will, therefore, permit duty-free entry of articles described in TSUS item 666.00 the actual use of which is in agriculture or horticulture.

The actual use requirements of general headnote 10(e)(ii) will apply to item 870.40. The President's statement of administrative action notes that the requirements of headnote 10(e)(ii) will be implemented by the Customs Service through "a certification system for confirming the actual use of the item. This may involve actual use certificates which will be obtained upon entry and returned within a specified period of time." The Committee is concerned about the potential for use of new item 870.40 as a tariff loophole and expects the Customs Service to enforce rigorously the requirements of headnote 10 (e)(ii) to protect the revenues.

New item 870.45 will permit duty-free entry of parts of articles which would be classified under item 666.00 but for the existence of a TSUS provision covering those parts which is more specific than item 666.00. This amendment will override headnote 10 (ij) to the extent it excludes from the term "parts" in a TSUS provision parts which are specifically provided for in another TSUS provision.

Wool (Section 513 of the Bill)

Present law.—Wool is currently classified under TSUS items 306.00 through 306.34. The MFN rates of duty range from free to 33 cents per pound. The non-MFN rates of duty range from free to 44 cents per pound. All MFN and non-MFN wool classified under items 306.00 through 306.24 is currently entered free of duty under a duty suspension under TSUS item 905.10. This suspension terminates on June 30, 1980.

MFN and non-MFN wool not finer than 46s classified under TSUS items 306.30 through 306.34 is also duty free under a duty suspension in TSUS item 905.11. This suspension terminates on June 30, 1980. Wool finer than 46s is subject to the rates of duty provided under TSUS items 306.30 through 306.34.

The bill.—If the President determines that appropriate concessions have been received from foreign countries as is required under section 502(a) of the bill, then section 513 would amend TSUS items 905.10 and 905.11 to continue the duty suspensions under those items until June 30, 1985. As is described above in the explanation of 503(a)(5) of the bill, the President intends to reduce certain MFN duties on wool effective with respect to entries made after June 30, 1985.

Reason for the provision.—Section 513 will implement an agreement between the United States and New Zealand. The provision is in the bill because the President may not continue under section 101 and 601 (7) of the Trade Act the suspension of a duty under Schedule 9 of the TSUS.

The committee notes that this provision should not affect the incomes of farmers and ranchers under the National Wool Act of 1954. That act provides a price support mechanism for wool producers. It will terminate in 1981 unless extended by law. Total program payments from the date of enactment of the act, May 1954, may not exceed 70 percent of the aggregate receipts from import duties on wool and wool products collected after December 31, 1952. By foregoing duty collections, section 513 could limit price support payments. This will, however, be unlikely to happen because annual program costs between 1955 and 1974 averaged $54 million, while 70 percent of total receipts from duty collections averaged $75 million.

Conversion to Ad Valorem Equivalents of Certain Column 2 Tariff Rates (Section 514 of the Bill)

Present law.—The current TSUS contains numerous nondiscriminatory (column 1 or "MFN") duties and discriminatory (column 2 or "non-MFN") duties which are not expressed solely in percentage terms. Some duties are "specific", *e.g.*, 10 cents per unit, while others are "compound", *e.g.*, 10 cents per unit plus 10 percent *ad valorem.* Specific and compound tariff rates do not compensate for inflation in the prices of imports and are often difficult to administer as compared to pure *ad valorem* duties. During the MTN, the United States agreed to convert some MFN specific and compound duties to *ad valorem* equivalents which will be reduced under section 101 of the Trade Act. Other MFN duties will be converted without change. Non-MFN duties cannot be changed under section 101.

The bill.—Section 514 of the bill would amend certain non-MFN duties under the TSUS to convert specific and compound duties to *ad valorem* equivalents for each TSUS item under which a similar conversion will be made in the MFN duties under sections 101 and 604 of the Trade Act. The conversions are based on the ITC recommendations contained in the report of ITC investigation 332–99 (June 1978).

Reason for the provision.—Section 514 will maintain the same arithmetic relationship between MFN and non-MFN duties, on an *ad valorem* basis, as exists between the MFN and non-MFN specific or compound duties currently in effect. No effective reduction in non-MFN duties will result from the amendments under section 514.

TITLE VI—CIVIL AIRCRAFT AGREEMENT

Introduction

Title VI of the bill will implement the Agreement on Trade in Civil Aircraft, approved under section 2(a) of the bill, as it relates to the tariff treatment by the United States of imported aircraft and parts thereof. Sections 303 and 308 of the bill will implement other aspects of the Agreement for the United States. Title VI will permit the President to proclaim duty-free entry of aircraft and aircraft parts classified under specified TSUS items. Parts will be eligible for duty-free entry under the amendments in title VI only if they are certified for use in civil aircraft at the time of entry. The precise coverage of the duty-free provision under title VI will depend on the implementation of the Agreement by other parties, *e.g.*, Japan and the European Communities, of the obligations relating to both tariff and nontariff barriers to trade in civil aircraft and parts.

Summary of the Agreement

The Agreement on Trade in Civil Aircraft provides for elimination of certain tariffs relating to civil aircraft and parts and provides a discipline over other actions by governments that might distort aircraft trade. Tariff and non-tariff issues are linked to address problems peculiar to the aerospace industry. The special focus and broad scope of this agreement differentiate it from most of the other agreements negotiated in the Tokyo Round of Multilateral Trade Negotiations.

Among the policy objectives of the agreement are the encouragement of the continued worldwide development of the aeronautical industry, the provision of fair and equal competitive opportunities for all producers, the operation of civil aircraft activities on a commercially competitive basis, and the elimination of adverse trade effects resulting from governmental support of civil aircraft development, production, and marketing. The United States, Canada, the European Communities, on behalf of its nine member states, Japan, Norway, and Sweden have initialled the agreement. It will be open for signature by other members of the General Agreement on Tariffs and Trade.

Customs duties and other charges.—The agreement requires the elimination, effective January 1, 1980, of all normal customs duties on civil aircraft, engines, and ground flight simulators for civil aircraft. Parts, components, or subassemblies of civil aircraft must also be free of normal customs duties if they are (1) for use in civil aircraft, and (2) classified for customs purposes under one of the specific tariff headings listed in the Annex to the Agreement. In addition, duties on foreign repairs of civil aircraft will be eliminated.

Technical standards.—While the Agreement on Technical Barriers to Trade (Standards) covers most technical standards in the civil aircraft sector, the Aircraft Agreement extends the coverage of that agreement by providing that civil aircraft certification requirements and specifications for operational and maintenance procedures shall also be governed by the provisions of the Standards Agreement.

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Government-directed procurement actions and mandatory subcontracts.—The Aircraft Agreement specifies that "purchasers of civil aircraft (and of civil aircraft engines, parts and subassemblies) should be free to select suppliers on the basis of commercial and technological factors." In particular, signatories "shall not require airlines, aircraft manufacturers, or other entities engaged in the purchase of civil aircraft" engines, and parts to purchase from any particular source, in a way that would adversely affect the trade interests of any signatory. Nor may any unreasonable governmental pressure be exerted on airlines and aircraft manufacturers to influence their purchase decisions.

In conjunction with the approval or awarding of civil aircraft procurement contracts, a government may require that qualified domestic firms have an opportunity to bid for available subcontracts on a competitive price, quality, delivery basis. However, a government may not require that offset production or support contracts be let to domestic firms as a condition for acceptance for foreign bids.

Sales-related inducements.—Governments are to avoid attaching political or economic inducements or sanctions to the sales of civil aircraft, engines, or parts.

Trade restrictions.—Civil aircraft imports may not be subject to quotas or to restrictive licensing requirements. Import monitoring or licensing systems, consistent with the GATT, are not precluded. Export restrictions may not be applied for commercial or competitive reasons on exports of civil aircraft or parts to other parties to the agreement. Export licensing procedures for reasons of national security or foreign policy are not affected.

Government support and civil aircraft marketing.—The Civil Aircraft Agreement notes explicitly that the provisions of the Agreement on Subsidies and Countervailing Measures apply to trade in civil aircraft. It further provides that signatories "in their participation in, or support of, civil aircraft programs . . . shall seek to avoid adverse effects on trade in civil aircraft." As used here, "adverse effects" include:

Injury to the domestic industry of another signatory;

Nullification or impairment of the benefits accruing directly or indirectly to another signatory under the GATT; or

Serious prejudice, including the threat of it, to the interests of another signatory.

It is further recognized that these adverse effects may arise through:

The effects of the subsidized imports in the domestic market of the importing signatory;

The effects of the subsidy in displacing or impeding imports of similar aircraft into the market of the subsidizing country; or

The effects of the subsidized exports in displacing the exports of similar aircraft of another signatory from a market in a third country.

In addition to specific tariff and nontariff provisions, the agreement is intended to promote cooperative international development of civil aircraft trade policies to preclude serious future confrontations. A Committee on Trade in Civil Aircraft is established under the auspices of the GATT to consult on potential disputes.

The agreement does not deal with the problems of government export financing. The committee expects the United States negotiators to address these problems in the near future.

Civil Aircraft and Parts (Section 601 of the Bill)

Present law.—Airplanes, and parts thereof, are currently classified under TSUS items 694.40 and 694.60. They are subject to an MFN duty of 5 percent *ad valorem.* Airplanes and parts thereof may enter duty-free under the Generalized System of Preferences if they are produced in a beneficiary developing country (19 U.S.C. 2461 *et seq.*) General Headnote 10 (ij) of the TSUS limits the application of item 694.60 to airplane parts solely or chiefly used as parts of airplanes if those parts are not specifically provided for elsewhere in the TSUS. Numerous parts of aircraft, such as engines, avionics, tires, et cetera, are more specifically provided for elsewhere in the TSUS.

As discussed in the Introduction to Title V of the bill, the President's authority to change MFN tariffs to implement trade agreements is subject to several limitations under sections 101 and 109 of the Trade Act of 1974 (19 U.S.C. 2111, 2119).

The bill.—If the President determines that the conditions under section 2 (b) (2) and (3) of the bill have been met with respect to the Civil Aircraft Agreement and he accepts that agreement for the United States, then he may proclaim changes in the TSUS provided under the amendments in section 601 of the bill. With respect to the conditions under section 2 (b) of the bill, the committee intends that "adequate benefits" under the Civil Aircraft Agreement include continuing implementation of all the obligations of the agreement benefiting the United States, including article 4 (relating to government directed procurement) and article 6 (relating to government support). Should these obligations not be fulfilled in the future, the committee expects the President to take appropriate action under section 601 (b) of the bill and section 125 of the Trade Act.

Upon acceptance of the agreement, the President could proclaim an MFN duty of free on parts certified for use in civil aircraft if they are classified under the TSUS items listed in section 601(a)(2). The precise coverage of duty-free treatment under this provision would be determined by the nature of implementation of the agreement by other signatories.

The term "certified for use in civil aircraft" would be defined under a new headnote 3 to schedule 6, part 6, of the TSUS. This definition, which would be applicable to the entire TSUS, would require the filing of a written statement, at the time of entry, that (1) the article has been imported for use in civil aircraft, (2) that it will be so used, and (3) that the article has been approved for such use by, or application for approval for such use has been accepted by, the Administrator of the Federal Aviation Administration. Approval by a foreign airworthiness authority for use in civil aircraft could be cited in lieu of F.A.A. approval if that approval is recognized by the Administrator of the F.A.A. as an acceptable substitute for F.A.A. approval.

The certification requirement imposed under the amendment in section 601(a)(2) is a certification of use provision rather than an end use

provision. The committee expects the Customs Service to monitor closely entries under the amendments under section 601 and, where necessary to protect the revenues, take appropriate action to insure the continuing validity of statements supplied to Customs under the certification requirements.

Section 601(a)(3) would amend section 466 of the Tariff Act of 1930 (19 U.S.C. 1466) to exempt the cost of repair parts, materials, and expenses of repairs, purchased or performed in a foreign country on a United States civil aircraft from the 50 percent *ad valorem* duty otherwise applicable under that section. The requirement under section 466 that the purchase of repair parts and materials and the expenses of repairs incurred abroad be entered upon return of the aircraft would continue.

Reason for the provision.—Title VI will implement Article 2 of the Agreement on Civil Aircraft for the United States. The provision is included in the bill because the elimination of certain duties on January 1, 1980, as required under the agreement, will exceed the limitation on duty reductions and the timing requirements under sections 101 and 109 of the Trade Act. The President's statement of administrative action states that the President will, on January 1, 1980, proclaim, under section 601(a) of the bill, duty-free entry of aircraft and parts thereof classified under new five digit TSUS items which will apply only to products covered by the Agreement. These new items will be limited to articles currently classified under the items listed in the amendment in section 601(a)(2).

Views of the Committee on Commerce, Science, and Transportation on the Agreement on Trade in Civil Aircraft

All trade agreements are within the jurisdiction of the Committee on Finance. However, the Agreement on Trade in Civil Aircraft affects matters of concern to the Committee on Commerce, Science, and Transportation. For this reason, the Finance Committee includes in its report the views of the Commerce Committee on that Agreement:

Although the Civil Aircraft Agreement, if implemented, should instill greater discipline into the trade in civil aircraft, it nevertheless represents a compromise between strongly divergent attitudes and practices in this trade. The agreement does not outlaw the extension of government subsidies to manufacturers for research and development, marketing or manufacture—a practice which many European countries and Japan follow but to which the United States objects.

Government intervention into the market in the form of subsidies, offsets, inducements, procurement, etc., interferes with free and fair trade and negates the benefits of "comparative advantage." These practices have been rationalized as necessary to gain a "fair" share of the aircraft market, to modernize industry, and to balance the "assistance" U.S. manufacturers obtain from military research and development and procurement. However it should be noted that the Department of Defense and the other Executive agencies require compensation to the government for government-funded development of products sold commercially. The Civil Aircraft Agreement attempts to reconcile these widely differing views by obligating signatories to

follow practices designed to mitigate the effect of government support for industry on the trade in aircraft and parts.

The Committee on Commerce, Science, and Transportation remains greatly concerned about this overt government intervention into the marketplace and its effect on the favorable U.S. trade balance in this sector. Accordingly, while it approves the agreement, it believes that strong domestic followthrough must occur if the full benefits of the agreement are to be gained and if U.S. aircraft policy is to protect the competitiveness of U.S. manufacturers who must compete with state-backed enterprises. Furthermore, the committee notes that the negotiators did not cover or could not reach agreement on several related issues.

The Trade Agreements Act of 1979 proposes to retain the industrial sector advisory committees established pursuant to the Trade Act of 1974 although the precise structure of the new committees has not yet been determined. The committee believes a separate aircraft committee consisting of industry and labor should be established to monitor the agreement. It should consider policy issues raised by the intervention of foreign governments in this sector with a view, if necessary and appropriate, to recommending changes regarding the role of the United States Government with respect to civil aircraft marketing in export markets. The Executive may also wish to consider, as part of its trade reorganization, establishing a sectoral office to deal specifically with aircraft issues.

With respect to outstanding issues not covered by the agreement, the committee strongly urges the administration to pursue an agreement on export financing either in the OECD or among the signatories. Furthermore, several nonsignatories are developing significant general aviation industries or aircraft parts manufacturing capability. It is the hope of the committee that these countries will become signatories since they will be able to avail themselves of the tariff reduction benefits without subjecting themselves to the discipline of the agreement.

The committee is also cognizant of certain cases in which there have been disincentives to American aircraft exports. It believes that except in a limited number of instances these disincentives operate to the detriment of the industry and the national interest since they act in such a way as to effectively deny our own companies opportunities to compete fairly in foreign markets. It recommends that this issue be considered by the industrial sector advisory committee, the interagency trade policy committee, and any aircraft office which might be established by the Executive. Decisions to discourage exports should bear the burden of proof that they will not injure U.S. export prospects.

The agreement does not cover air transportation services. However, a Committee on Trade in Civil Aircraft is established by article 8.1 and is authorized to consider broadening coverage. The committee notes that efforts are already underway to consider reducing nontariff trade barriers to services generally and that air services may be discussed in various international forums.

TITLE VII—CERTAIN AGRICULTURAL MEASURES

Introduction

Title VII implements bilateral agreements negotiated in the Tokyo Round of Multilateral Trade Negotiations (MTN) relating to imports of cheese, chocolate crumb, and meat. These agreements, and the provisions of this title, embody concessions granted to foreign countries in return for concessions granted by those countries on other agricultural and industrial products of the United States.

With respect to cheese, the basic concession made by the United States in the MTN is to increase the level of the quotas on cheese imports imposed under section 22 of the Agricultural Adjustment Act (7 U.S.C. 624) to as much as 111,000 metric tons. The effect will be to permit an increase in United States cheese imports of 15,000 metric tons over 1978 imports. Countries which subsidize cheese exports to the United States agree not to undercut U.S. prices for cheese through such subsidization, while the United States agrees not to apply countervailing duties or other countermeasures so long as there is no price undercutting.

The agreements with Australia and New Zealand on chocolate crumb (a mixture of chocolate and milk solids) also entail an increase in section 22 quotas imposed on the product.

The basic commitment implemented in this title with respect to the bilateral agreements on meat is that the United States will not limit imports of meats subject to our meat import law to a level below 1.2 billion pounds. This minimum access commitment is below our annual imports for the past 3 years.

Summary of the Agreements

Cheese Agreement

Negotiating Background.—The United States has long maintained import quotas on cheeses under the authority of section 22. In 1955, the United States obtained a general waiver of its obligations under the General Agreement on Tariffs and Trade for actions taken under section 22 the Agricultural Adjustment Act of 1933 (7 U.S.C. 624). In the MTN, several foreign countries, most notably European countries, Australia, and New Zealand, requested an increase in the current level of the section 22 quotas.

The European countries also sought assurance that their cheese exports would not be subject to United States countervailing duties under section 303 of the Tariff Act of 1930. Most European cheese could not compete in United States markets without the substantial subsidies granted by European governments. U.S. producers in most cases are considerably more efficient than their European counterparts. Massive dairy subsidies as part of the Common Agricultural Policy and other European domestic support programs have led to vast dairy product surpluses in many of those countries. These surpluses, through further subsidization, are partially exported to the U.S. and other markets. Those cheeses are subject to countervailing duty orders issued for the most part in 1975, but collection of duties has been waived pur-

suant to section 303(d) of the Tariff Act of 1930 (19 U.S.C. 1303(d)), as added in the Trade Act of 1974.

U.S. negotiators sought concessions on a number of other agricultural and industrial products in return for the cheese concession. The cheese agreements with Austria, Portugal, and Iceland refer to specific concessions received in return for, or conditioned or, an increase in their cheese quota. In other cases, the increase in a country's cheese quota is part of a more general MTN settlement, involving other concessions by the United States and a series of concessions to U.S. trade interests by the foreign country concerned.

Major Features of the Cheese Agreements.—The basic provision in each agreement is a commitment by the United States to allow a specified minimum quantity of certain types of cheeses to be imported under section 22 quotas from the country concerned (the European Communities are treated as one country). This quantity is allocated by types of cheese for each country. The cheeses are subject to quotas regardless of their price, unlike the current U.S. quota which does not cover certain cheeses imported above a certain price. The United States is also obligated, in some of the agreements, not to impose quotas on certain other types of cheeses, *i.e.*, sheep's and goat's milk cheeses, soft-ripened cow's milk cheeses, and certain other specialty cheeses.

The agreements with various European countries and with Iceland contain additional commitments relating to subsidization and price undercutting. These commitments vary in form, but each country essentially agrees not to grant subsidies on cheeses subject to quotas in a manner which results in undercutting of U.S. domestic cheese prices on the U.S. wholesale market. In the event of such price undercutting, the United States may take countermeasures. However, the agreements implicitly or explicitly prohibit the United States from taking countermeasures or imposing countervailing duties on cheeses subject to quotas so long as there is no such price undercutting. The obligations described in this paragraph are not included in the agreements with Australia, New Zealand, Israel, and Argentina.

One additional feature of the cheese agreements merits attention. Most of these agreements require the United States to administer quotas so as to maximize utilization by the agreeing country, though the United States has the right to reallocate unused amounts of a country's quota to other countries. The agreement with Switzerland specifically provides that the allocation of import licenses between traditional and new importers shall not hamper the utilization of the quota. This bill imposes no requirements concerning allocation of import licenses. As in the past, this allocation is subject to the administrative discretion of the Secretary of Agriculture. However, the committee expects the Department of Agriculture, in devising any import licensing system, to take due account of the international obligations and the interests of traditional holders of import licenses, importers of cheeses not now subject to quotas, and possible new entrants into the cheese-importing business.

Chocolate Crumb Agreements

Both Australia and New Zealand sought in the MTN a right to export chocolate crumb to the United States. Because of its high dairy product content, chocolate crumb is an attractive export opportunity

for dairy producers. The corollary is that chocolate crumb imports, if unrestrained, could interfere with our dairy support program. Imports of chocolate crumb are subject to section 22 quotas, which currently allow imports only from Ireland, the United Kingdom, and the Netherlands. The current global quota is 21,680,000 pounds, allocated among those three countries. The amount of any shortfall in one country's exports may only be redistributed among the other two.

The agreement with Australia accords a right to export 4,400,000 pounds of chocolate crumb annually to the United States. The agreement with New Zealand guarantees only a nominal right to export to the United States (2 kilograms as implemented in this bill), but New Zealand will thereby be entitled to export to the United States amounts of quotas unused by the other four countries, within the new overall quota of 26,080,004 pounds. As imports in recent years have fallen well short of the quota levels, New Zealand and Australia may benefit substantially more than the nominal amount of their quotas.

Meat Agreements

Since 1969, with the exception of the years 1973 and 1974, the United States has limited imports of certain meats (chiefly beef) either by international agreement with major supplying countries entered into and enforced under section 204 of the Agricultural Act of 1956 (7 U.S.C. 1854) or, in the case of a brief period in 1976, through unilateral quotas imposed under the U.S. meat import law (P.L. 88–482, sec. 2; 19 U.S.C. 1202 note). The level of the imports restraints has generally varied in direct proportion to the level of domestic production of similar meats. The President has used his statutory authority to suspend or increase levels of import quotas during several periods when he determined this to be in the national interest.

Bilateral agreements negotiated in the MTN with Australia, New Zealand, and Canada require two basic changes in the U.S. meat import law. In the agreements with Australia and New Zealand, the United States undertakes not to limit meat imports subject to the law below a total level of 1.2 billion pounds for all suppliers. This minimum global access commitment will be bound in the U.S. schedule of GATT concessions. In the agreement with Canada, the United States is committed to reduce the duty on certain high quality beef cuts, but only on the condition that these products are made subject to the meat import law, without an increase in the permitted level of imports.

There are additional commitments in the above agreements concerning our meat imports which do not require changes in the meat import law. The bilateral agreements with Australia and New Zealand require allocation of import restraints among suppliers, taking account of traditional shares of U.S. imports. Allocation to new suppliers is subject to prior consultation with Australia and New Zealand. Furthermore, the agreements with Australia and New Zealand require prompt reallocation of quota amounts not used by one supplying country to other countries able to export this "shortfall" amount to the United States.[1]

[1] The United States also undertakes in the Australian and New Zealand bilateral agreements to permit access of at least 1.3 billion pounds if (1) imports are restrained by agreements with supplying countries and (2) the base quota level under the meat import law exceeds 1.2 billion pounds.

Finally, the bilateral meat agreement with Australia contains provisions which will apply if the Congress subsequently passes legislation limiting meat imports on the basis of a "countercyclical" formula. A countercyclical formula permits imports in reverse proportion to domestic production, thus requiring lower imports when domestic production—and hence domestic supplies—are higher, and permitting higher imports when domestic production is lower and domestic supplies decreased. This provision applies only to Australia, although the United States "notes" New Zealand's concern on this matter. In the event such a law is passed, the agreement with Australia provides that a level of total U.S. imports below 1.3 billion pounds, or an Australian share of total U.S. imports below its traditional share (taking account of new entrants to the U.S. market), could affect the balance of trade concessions between the United States and Australia negotiated in the MTN. Under most legislative proposals for a countercyclical formula, including the bill recently reported by the House Ways and Means Committee, actual trade damage to Australia would likely be very small as a result of a reduction of import levels below 1.3 billion pounds. Therefore, the committee believes that little, if any, adjustment of MTN concessions with Australia should be expected or justified. The committee does not believe this commitment precludes continuation of a 1.2 billion pound import floor in any new legislation.

A separate agreement with the EC, also approved under section 2 (a) of this bill, assures the EC of an annual right to export 11 million pounds of meat to the United States. This amount will be allocated from within the global level of imports, and will require no increase in that global level and no amendment to the meat import law. As part of that agreement with the EC, however, and as provided for in section 104 of this bill, the United States agrees to expedited reconsideration of the outstanding countervailing duty order against EC beef.

Limitation on Cheese Imports (Section 701 of the Bill)

Present law.—Section 22 of the Agricultural Adjustment Act of 1933 (7 U.S.C. 624) directs the President, upon advice of the Secretary of Agriculture and the International Trade Commission (ITC), to impose quotas or fees on imports of agricultural products to the extent he finds necessary to prevent such imports from materially interfering with a government price support program. The President may take provisional action under this section before an investigation and report by the ITC, but only if the Secretary of Agriculture finds the situation requires "emergency treatment."

The President may modify or terminate fees or quotas imposed under section 22 pursuant to the same authority, standards, and procedures. In practice, the President has tended to use the "emergency treatment" authority often in section 22 actions and modifications.

Under the authority of section 22, there is now a quota of 58,000 metric tons on imports of certain cheeses. Most of the quota operates on a "price-break" system, whereby imported cheeses which are priced below the sum of domestic support price for cheddar (currently $1.16 per pound) plus seven cents are subject to quantitative limitations.

The same cheeses, if imported above this "price-break" level, are not subject to quantitative limitations. Some cheeses are subject to quotas regardless of price. Still other cheeses, primarily speciality types, are not subject to any quotas.

The bill.—Section 701(a) of the bill would direct the President to proclaim a quota on "quota cheese" not in excess of 111,000 metric tons for each year after 1979, and would provide that any proclamation issued under this subsection shall be considered to be a proclamation under, and to meet the requirements of, section 22. The President would not be required to follow the procedural requirements of section 22, including the requirements for findings, investigations, reports, or recommendations by the Secretary of Agriculture or the International Trade Commission, so long as the total quota proclaimed or modified does not exceed 111,000 metric tons.

Section 701(b) would provide that the quota may not be increased above 111,000 metric tons except in accordance with provisions of section 22, and subject to an additional limitation on that authority. The President could not use the authority to take immediate action prior to an investigation and report by the ITC, unless the Secretary of Agriculture determines and reports to the President that "extraordinary circumstances" warrant such action. This additional limitation on section 22 authority would expire January 1, 1983.

Section 701(c) would list "quota cheeses" subject to this section. These items would cover about 85 percent of the cheeses currently imported into the United States. The exceptions would be certain specialty cheeses not generally produced in the United States, sheep's and goat's milk cheeses, and soft-ripened cow's milk cheeses falling within a specified definition. It should be noted that these tariff items, and the quotas, are intended to cover imitation cheeses, as well as blue mold cheeses other than authentic Roquefort, produced in France, and Stilton, produced in the United Kingdom.

Reasons for the provision.—These provisions of section 701 implement bilateral cheese agreements negotiated in the MTN. The 111,000 metric ton global limitation will enable fulfillment of our commitments to each country. The quota will be allocated by countries and products under administrative authority.

The committee would have preferred not to make this quota increase, but realizes that this concession is integral to the MTN trade agreements, including concessions received by the United States. Only this realization, and certain protections which will become effective under section 702 of this bill, justify this departure from normal section 22 procedures. Although the Executive Branch and some independent analysts believe the negative effect of the agreements on the U.S. dairy industry and the dairy suport program will be fairly small and relatively short term, the committee believes that the effect of these agreements must be carefully monitored.

Aside from the quota level itself, the committee does believe it is advantageous to bring cheeses imported at prices above the "price-break" within the coverage of the quotas. Such imports have increased since the price-break system began in 1968, and are projected to

increase still further if the price-break system is maintained, as illustrated in the following chart:

UNITED STATES: IMPORTS OF CHEESE BY QUOTA STATUS, 1966-77 AND UNOFFICIAL FORECASTS[1] FOR 1978-84

[In thousands of metric tons]

Year	Under quota[2]	Above "pricebreak"[3]	Miscellaneous nonquota[4]	Total
1966	45.4	7.4	8.6	61.4
1967	53.2	7.4	8.2	68.8
1968	58.4	9.8	9.1	77.3
1969	38.0	17.4	9.9	65.3
1970	36.5	25.5	11.0	73.0
1971	29.9	22.5	9.2	61.6
1972	36.4	32.7	12.3	81.4
1973	71.4	23.4	9.4	104.2
1974	90.5	43.6	9.0	143.1
1975	41.6	30.7	9.1	81.3
1976	44.1	40.7	9.2	94.0
1977	48.2	37.8	8.9	94.9
Unofficial forecasts:				
1978	50.0	42.8	9.2	102.0
1979	46.0	46.8	9.2	102.0
1980	50.0	49.8	9.2	109.0
1981	46.0	53.8	9.2	109.0
1982	50.0	56.8	9.2	116.0
1983	46.0	60.8	9.2	116.0
1984	50.0	62.8	9.2	122.0

[1] Assuming current quota system is maintained as is.
[2] Some quotas currently in force were established during the period covered. Figures show what would have been subject to quota if all current quotas had been in place.
[3] "Pricebreak" did not come into actual use until 1968. Figures show amounts that would have been priced at or above pricebreak if pricebreak had existed.

Source: U.S. Department of Agriculture.

In addition, the U.S. Department of Agriculture has prepared the following chart comparing estimated cheese imports under a continued price-break system and the cheese agreements.

ESTIMATES OF U.S. CHEESE IMPORTS[1]

[In thousands of metric tons]

Calendar year	Pricebreak system	Under the cheese agreements
1980	109	124
1981	109	124
1982	116	124
1983	116	124
1984	122	124
1985	122	124
1986	127	124

[1] All estimates include quota and nonquota imports.

These projections, of course, assume that the quota will not in fact be raised over 111,000 metric tons, and that the price-break system would not have been revised under normal section 22 procedures to take care of the increasing problem of imports of cheeses above price-break.

Subsection (b) does not prohibit an increase in the quota, but is intended to assure that such an increase will not take place before a full independent investigation and report by the ITC. In that investigation, the Secretary of Agriculture must set out on the record his findings, including the period for which an increase would be justified, and his reasons therefor. All interested parties, notably including the

U.S. dairy industry, will have the opportunity to be heard before the ITC. Only in truly extraordinary circumstances may the President act before the ITC procedures are completed. The President and the Secretary of Agriculture have used the authority in section 22 to take immediate action in an "emergency" so frequently in the past that emergencies have appeared to be the norm. The restriction on use of the immediate action authority to extraordinary circumstances is intended to preclude any casual use of this authority. The type of situation in which the emergency authority has been invoked in the past will not meet the extraordinary circumstances criterion. An abrupt catastrophic reduction in dairy supplies, through disease or contamination, will justify emergency adjustments of the quota, but the committee does not in any sense intend "extraordinary circumstances" to become a usual case. Furthermore, although the limitation on the emergency authority expires January 1, 1983, the committee believes that in subsequent years the Executive Branch should ensure that the emergency authority is invoked rarely and only when there are indeed emergencies.

Enforcement (Section 702 of the Bill)

Present law.—Under the countervailing duty law (section 303 of the Tariff Act of 1930; 19 U.S. C. 1303), imported products benefitting from foreign subsidies are subject to countervailing duties, in addition to normal duties, to offset the amount of the subsidy. The European Communities and other countries subsidize cheese exports to the United States, and those cheeses are subject to countervailing duties.

However, pursuant to section 303(d) of the Tariff Act of 1930, the Secretary of the Treasury has waived assessment of countervailing duties on certain cheeses from the EC, Switzerland, Norway, Finland, and Sweden, upon a finding that (1) the government concerned had substantially reduced or eliminated the adverse effect of the subsidy, (2) negotiation of a subsidy agreement in the MTN was likely, and (3) imposition of countervailing duties would seriously jeopardize conclusion of the negotiation. This waiver authority expires September 30, 1979.

The bill.—Section 702 of the bill would require imposition of additional quotas or special fees to the extent necessary to prevent imports of subsidized quota cheese from undercutting wholesale prices of U.S. domestic cheeses. Procedures would be established to ensure that action is taken against price undercutting in most cases within 58 days of a complaint but in any event within 68 days. The relief available under this section would be in lieu of countervailing duties, which could not be imposed on quota cheese from countries which have undertaken, in an approved cheese agreement, not to use subsidies to undercut U.S. prices.

Section 702(a) of the bill would require the "administering authority" (the Secretary of Treasury or the official to whom administration of the countervailing duty law may be transferred by law) to determine whether any foreign government is granting a subsidy on quota cheese and to publish a list of the type and amount of each such subsidy. The list would be published annually beginning not later than

January 1, 1980, and modifications of the list would be determined and published quarterly. Furthermore, at any other time, any person could request the administering authority to make a determination with respect to particular products or alleged subsidies. The administering authority would be required to make such a determination within 30 days and to modify the list according to his findings. The administering authority could require that a request include pertinent information reasonably available to the requesting party. The administering authority would be required to consult with the Secretary of Agriculture in determining the list.

Section 702(b) would provide that, upon written complaint by any person, the Secretary of Agriculture shall determine, within 30 days, whether an article of quota cheese is—

(1) offered for sale in the United States on a duty-paid wholesale basis at a price less than the domestic wholesale market price of similar United States cheeses and

(2) subsidized by a foreign government.

The second element would be determined by reference to the list of subsidy practices, unless the person making the complaint alleges a new type or degree of subsidization which is not embodied in the list. In the latter case, the administering authority would make a redetermination and report the result to the Secretary of Agriculture.

If the Secretary of Agriculture finds both price undercutting and subsidization, then the Special Representative for Trade Negotiations (STR) would be required, within 3 days, to notify the foreign government concerned. That government would have fifteen days after the notification to eliminate the subsidy or take steps to prevent price undercutting. If neither action is taken in the 15-day period, the Secretary of Agriculture would report to the President his determination of subsidization and price undercutting and recommend imposition of a special fee or additional quota, possibly including an import ban, as he determines necessary.

Section 702(d) would provide rules for Presidential action. Within seven days of receipt of the Secretary's determination and recommendations, the President normally would be required to impose either a fee or a total or partial ban on imports of the cheeses subject to the determination. The fee would be in the amount the President determines is necessary to prevent price undercutting, except that the fee may not exceed the amount of the subsidy.

The exception to this rule is that the President could request a redetermination and report by the Secretary, if the President believes the Secretary's determination is "unsubstantiated by fact." The President would be required to request this redetermination within seven days of receipt of the original determination and report, and the Secretary of Agriculture would then have a further seven days to investigate and report his determinations and recommendations, as they may be modified. Unless the new report is that there is no subsidization or price undercutting, the President would, within three days, proclaim the special fees or quotas as described above.

Section 702(e) would establish technical rules: the imposition or modification of fees or import quotas would apply three days after the President makes a proclamation (thus enabling public notice prior to

the effective date), and fees would be treated administratively as normal duties, except for purposes of tariff preferences, *e.g.* there would be no exemption for a beneficiary of the Generalized System of Preferences.

Section 702(f) would exempt from countervailing duties quota cheeses which are the product of countries specifically agreeing not to undercut U.S. prices through subsidization. If a country does not so undertake in an agreement approved under section 2(a) of this bill, then its quota cheeses would be subject both to section 702 and the countervailing duty law. All non-quota cheeses are subject to the countervailing duty law.

Section 702(g) would provide that, if the Secretary of Agriculture receives evidence and assurance that either subsidization or price undercutting with respect to future entries of cheese subject to fees or special quotas will be eliminated, the President would terminate the fee or special quota. The President would also be required to modify existing fees or special quotas to the extent the Secretary of Agriculture finds such modifications necessary to prevent price undercutting. Modifications could be increases or decreases in the special quotas or fees, but no fee may exceed the amount of the subsidy.

Reasons for the provision.—Section 702 of the bill both implements obligations of the cheese agreements and establishes procedures intended to minimize the potential harm of increased imports of subsidized cheeses. Most of the bilateral agreements prohibit imposition of countervailing duties on quota cheeses which do not undercut domestic cheese prices, but permit countermeasures if there is such undercutting through subsidies. The exceptions are the agreements with Australia, New Zealand, Israel, and Argentina. Quota cheese from these countries will be subject to both the provisions of section 702 and the countervailing duty law, should they export subsidized cheese to the United States.

The provisions of section 702 have two major advantages for the dairy industry compared to the countervailing duty law as revised in title I of this bill. The primary advantages are speed (about 2 months for relief, as compared to about 13 months for actions under current countervailing duty law and up to 8½ months for a countervailing duty action under title I) and assurance of relief without the need to demonstrate injury (which will be required for countervailing duties under title I of this bill).

There is the disadvantage that section 702 only will prevent price undercutting while the countervailing duty law results in duties equal to the net amount of the subsidy. Countervailing duties could thus effectively drive from our market some foreign cheese benefiting from very large foreign subsidies which will probably remain in the market if price undercutting alone is eliminated. It is problematical whether cheese from countries, such as New Zealand and Australia, which are able to underprice our cheeses without subsidies, would soon replace the European cheese in our market, and thereby eliminate the original benefit of the countervailing duties. The committee concludes, in any event, that given the commitments not to impose countervailing duties against quota cheese which is not undercutting our prices, the expedited procedures in this section are preferable to the countervailing duty provisions.

It is recognized that demonstrating price undercutting may be difficult. The committee expects the Department of Agriculture promptly to devise and propose regulations for determining U.S. wholesale prices, and to take account of public comments during a 60-day period before issuing final regulations. The requirement that regulations be issued by January 1, 1980, is not intended to preclude modification of those regulations if experience and advice from the private sector show this to be desirable.

The committee expects that any undercutting which does arise will be promptly eliminated by the foreign government concerned, without requiring imposition of fees or special quotas. However, the committee expects that the Department of Agriculture and the President will be attentive to the risk of sporadic price undercutting which is eliminated during periods of investigation, foreign consultation, or reinvestigation by the Secretary of Agriculture, but resumed later if no action is taken. If such behavior is repeated, the committee expects vigorous action, including close monitoring of prices and assurances, and possibly an import prohibition, to prevent such abuse.

Finally, the committee emphasizes that the time limits are outside limits. Many cases should be handled in less time, and very seldom, if ever, should the President ask for a reinvestigation by the Department of Agriculture after the Secretary's first report.

The following are letters received by Senator Nelson from the Special Representative for Negotiations with respect to the MTN cheese agreements and the cheese import program which will be established under the provisions of this bill:

THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS
Washington, D.C., May 2, 1979.

HON. GAYLORD NELSON,
U.S. Senate, Committee on Finance,
Washington, D.C.

DEAR SENATOR NELSON: This is in response to your letter of April 15 raising a number of specific questions with respect to the possible effects of the Multilateral Trade Negotiations (MTN) on the U.S. dairy industry.

1. With respect to the MTN Cheese Agreement the answers to the points that you raised are as follows:

A. How long will the new quotas remain in effect?

The new quotas on cheese imports will remain in effect indefinitely. No further quota increases were either promised to our trading partners or implied in any way during the negotiations. There are effectively only two ways that these quotas could be modified in the future. One is through trade negotiations. Most observers believe it is extremely unlikely that there would be any further negotiations along the lines of the MTN in this century. However, should there be any further negotiated change in the quotas, the proposed changes would have to be submitted to the Congress for approval. Quotas could also be changed under section 22 of the Agricultural Adjustment Act if the President finds that a different level of imports is necessary to ensure that imports do not materially interfere with the price sup-

port program for milk or substantially reduce the amount of milk produced in the United States.

B. Under what circumstances, and by what procedures may the President modify the quotas?

Currently section 22 specifies procedures which must be followed when the President acts to raise or lower dairy quotas. Under the normal section 22 procedures, the U.S. International Trade Commission (USITC) makes an investigation in response to a request from the Secretary of Agriculture to determine whether imports of a given product are interfering with the domestic support program or (in the case of a proposed increase) whether a higher level of imports could be accommodated without interfering with the domestic support program. The report and recommendations of the USITC are forwarded to the President who makes the final determination with respect to any action which might be appropriate. Section 22 also provides emergency procedures which allow the President to act first upon the recommendation of the Secretary of Agriculture, with a subsequent investigation by the USITC.

C. How does the definition of "extraordinary" differ from the emergency standard already found in section 22:

The administration has proposed that for the next 3 years, except in extraordinary circumstances, the normal selection 22 procedures would be used with respect to any proposed increases in section 22 quotas. The term extraordinary is intended to define and limit the emergency standard already found in section 22 in such a way that the normal section 22 procedures would be utilized in all but truly extraordinary circumstances. The type of situation which has led to emergency actions in the past would not be considered extraordinary. This would mean the use of the emergency provisions during the next three years would be extremely unlikely.

D. What happens after the end of the 3-year period:

At the expiration of the 3-year period, actions under section 22 would revert to the previous practice and could be taken either under the normal provisions of section 22 or under the emergency provisions. Modifications in section 22 quotas are made solely on the determination of the President that the new level of imports (whether higher or lower) is at levels which would not "materially interfere with the price support program for milk or substantially reduce the amount of milk produced in the United States."

E. What steps in this process are subject to appeal, and in which courts:

With respect to Judicial review under section 22, there are two points at which a procedure could be challenged.

First, when the USITC gives its report and recommendations, there could be a challenge in the Federal District Court relating to whether or not the USITC conformed to the procedural requirements of section 22. Second, there could be a challenge when the President takes action, on the question of whether procedural requirements had been met. This could be in the Federal District Court, or in the Customs Court if the action took the form of a protest of an actual entry into the United States of the product under quota.

F. Are quota actions under section 22 permanent or temporary:

Actions under section 22 can be permanent, as in the case of the implementation of the MTN Cheese Arrangement, or temporary. Most of the past section 22 actions have been in the form of temporary increases for a specific time-frame.

2. With respect to Judicial review under the new price undercutting enforcement statute, a challenge could be made at two points. First, where the USDA makes its determination, the action could be challenged in the Federal District Court on procedural grounds. It is likely that the Court would also review the factual finding since the statute will be non-discretionary in that regard. There could also be a challenge when a final action is taken, on the same grounds as above, also with a probable review of the factual basis for the action. This last challenge could take place in the Federal District Court, or if there is an actual entry of the product, in the Customs Court. (NOTE.—The provisions of the Customs Court Act now before Congress would assure that all of these challenges could go to the Custom Court, by providing that court with equity jurisdiction).

There is always, of course, the possibility of challenge on the grounds of arbitrary and capricious action either with respect to section 22 or the price undercutting enforcement mechanism.

I hope that this information is helpful to you.

Sincerely,

ROBERT S. STRAUSS.

THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS,
Washington, July 11, 1979.

Hon. GAYLORD NELSON,
United States Senate,
Washington, D.C.

DEAR SENATOR NELSON: This is in response to your July 9 letter requesting additional clarification with respect to the cheese import program as proposed under the Trade Agreements Act of 1979. Jim Starkey, Assistant Special Trade Representative for Agricultural Affairs, responded briefly to a number of these questions during the hearings this morning. The following additional comments are intended to provide a more detailed response to your questions:

1. Under the new cheese quota, "grinder" cheese—cheese for further processing—is still subject to total quota. However, dairy farmers are worried that a good deal more grinder cheese might come into the U.S. market, because of the abolition of the price-break system. What assurance is there that this will not happen?

Under the proposed cheese import program, all competitive cheese imports will be under fixed quota. Since each supplying country will have a specific quota by type of cheese, there will be a built-in incentive to maximize returns by exporting as much high-quality, high-priced specialty type cheeses to the United States as possible as opposed to lower-quality, lower-priced "grinder" cheese. Therefore, we anticipate that the new arrangement will result in increased imports of high-quality cheeses rather than "grinder" cheeses.

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2a. If, in the future, the President believes there is a specific need to increase cheese imports for a specific time, what will be the procedure under section 22 of the Agricultural Adjustment Act?

The procedure will be the same as currently exists under section 22, with the exception that the President cannot use the emergency authority under section 22 for the next 3 years unless "extraordinary" circumstances require immediate action. The normal section 22 procedures require that the President direct the U.S. International Trade Commission to do an investigation and to report to him its findings and recommendations before any action is taken to increase the quotas. This normal procedure will be followed under all except "extraordinary" circumstances.

2b. Is my understanding correct that the President must make his case on record and must specify the period in which he proposes increased imports?

The Secretary of Agriculture is the initiator of action under section 22. If the Secretary has reason to believe that any article is being or is practically certain to be imported into the United States under conditions and in quantities so as to render or tend to render ineffective or materially interfere with the domestic price support program, he shall so advise the President. If the President agrees, under the normal section 22 procedures, he would direct the U.S. International Trade Commission to undertake an investigation of the facts. During the USITC investigation the Secretary of Agriculture must make a case on record and specify the period during which he proposes to increase imports. Other interested parties, including of course representatives of the domestic dairy industry, would also have an opportunity to make their views known with respect to the proposed action.

2c. For the first 3 years of the new Trade Agreement, the President may not use his emergency authority under section 22. Please elaborate on this restriction.

As indicated in 2a above, the administration has proposed that for the next 3 years, except in extraordinary circumstances, the normal section 22 procedures under which representatives of the domestic dairy industry could make their views known would be used with respect to any proposed increases in section 22 quotas. The term extraordinary is intended to define and limit the emergency standard already found in section 22 in such a way that the normal section 22 procedures would be utilized in any but truly extraordinary circumstances. The type of situation that has led to emergency action in the past would not be considered extraordinary. This would mean that the use of emergency provisions during the next 3 years would be extremely unlikely.

3. . . . what assurances can you provide that the Agriculture Department will have a strong voice in cheese classification if a dispute arises?

As a result of difficulties encountered in the past in the classification of cheese, an interagency committee has been established to resolve differences with respect to cheese classification. Under current procedures, an industry representative can request that the Department of Agriculture, along with the other agencies in the committee, review the classification of a type of cheese. The interagency committee

then examines the classification to independently determine the proper classification of the cheese. Members of the interagency committee include USDA, Customs, FDA, and the U.S. International Trade Commission. In addition, we anticipate that classification problems will not be as significant under the new cheese import program as has been the case in the past. Under the new program essentially all cheese except sheep's milk, goat's milk and soft ripened cow's milk cheeses packaged for retail sale will be under quota. The three remaining categories of nonquota cheeses are much more readily identifiable than is currently the case.

4. In enforcing the price-undercutting mechanism in S. 1376, how will the United States take account of the "tied-products" situation, where an importer deals with a single supplier for cheese and other products, agreeing to import the cheese at an artificially high price and the other products at artificially low ones to compensate?

The "tied-products" problem should be eliminated under the new cheese import program. Under the existing program, exporters on some occasions circumvented the quotas by pricing cheese at the border above the price break. In this way, the cheese entered the United States outside of quota. Importers were then compensated by price discounts on other products. Under the new program the price break will be eliminated and since all cheeses except sheep's milk, goat's milk and soft ripened cow's milk cheeses packaged for retail sale will be under quota, the incentive to invoice cheese at a higher price should be eliminated.

5. . . . how will the United States deal with the situation where private concerns are giving assistance to U.S. importers—by way of "free" advertising, promotional services and so on—as a form of subsidizing their purchases?

The Trade Agreements Act of 1979 (S. 1376) offers a broad enough definition of subsidy to encompass the payment of advertising and promotional services by governments. Consequently, any such payment which results in the sale of imported cheese below the domestic wholesale price for like U.S. products will be subject to countermeasures under title VII of the proposed law.

Thank you for bringing your concerns and questions to my attention.

Sincerely,

ROBERT S. STRAUSS.

Limitation on Imports of Chocolate Crumb (Section 703 of the Bill)

Present law.—Chocolate crumb, divided into two categories depending upon butterfat content, is subject to a quota of 21,680,000 pounds under section 22 of the Agricultural Adjustment Act (7 U.S.C. 624), allocated among Ireland, the United Kingdom, and The Netherlands.

Imports of these articles have been at least 10 million pounds less than the quotas for each of the last 4 years. Under the headnotes of the Appendix to the Tariff Schedules of the United States, part 3, unused amounts of quotas may be reallocated only among the countries having an initial quota allocation.

The bill.—Section 703 of the bill would grant Australia a quota of 2,000 metric tons (4,400,000 pounds) of chocolate crumb having over 5.5 percent butterfat content. New Zealand would receive a quota of one kilogram (2.2 pounds) of such chocolate crumb, and one kilogram of chocolate crumb with a butterfat content of 5.5 percent or less. These quota rights would be in addition to the quota now allocated.

Reason for the provisions.—Agreements with Australia and New Zealand require these changes. The addition of these major dairy-producing countries to the group now permitted to ship to the United States may lead to much greater utilization of quotas.

Amendments to the Meat Import Law (Section 704 of the Bill)

Present law.—The meat import law (P.L. 88–482, § 2; 19 U.S.C. 1202 note) provides that, if the Secretary of Agriculture estimates that imports of certain meats will exceed 110 percent of an adjusted base quantity, then the President must impose quotas at the level of the adjusted base quantity. The meats subject to the law are fresh, chilled, or frozen beef, veal, goat, and sheep (except lamb) classified under items 106.10 and 106.20 of the Tariff Scehdules of the United States. The adjusted base quantity is determined by a statutory formula which is intended to preserve the ratio of imports to domestic production of these meats that existed in the period 1959–63.

The President is empowered to increase or suspend quotas if he makes certain findings. In the entire history of the meat import law (enacted in 1964), the President has maintained quotas under this law for only one brief period in 1976, and those quotas were at a level equal to 110 percent of the adjusted base quantity. However, since 1969, the President has negotiated import restraint agreements with foreign suppliers, except for the years 1973 and 1974, when quotas were suspended during a period of relatively high beef prices. The President has generally sought through these agreements to keep imports slightly below 110 percent of the adjusted base quantity (the trigger level) thus avoiding the need to proclaim quotas. In some years, however, including 1978 and 1979, the President has permitted imports under the agreements in excess of the trigger level, after first proclaiming, then suspending, quotas under the meat import law.

The agreements are negotiated under section 204 of the Agricultural Act of 1956, which also permits the President to prohibit imports of meat in excess of the quantities specified in the agreements.

Imports since 1970 have been as follows:

[In billions of pounds]

Year	Actual imports	Trigger levels
1970	1,170	1,098
1971	1,132	1,127
1972	1,355	1,146
1973	1,355	1,151
1974	1,079	1,130–1,200
1975	1,209	1,182
1976	1,232	1,233
1977	1,250	1,281
1978	1,485	1,302
1979	[1] 1,570	1,245

[1] Estimate.

Source: U.S. Department of Agriculture.

The bill.—Section 704(a) of the bill would amend the meat import law in two respects. First, a conforming change would be made to reflect the division of existing tariff item 106.20 of the TSUS into two items, 106.22 and 106.25 under section 505 of this bill. This change would not affect the substance of the meat import law in any way. Second, the meat import law would be amended to make new tariff item 107.61, covering certain high quality beef cuts, subject to restriction under the meat import law, without increasing the total level of imports under the law. For example, if a quota would have been required at a level of 1.3 billion pounds under current law, that level would be required by this provision, but the imports under item 107.61 would count against the quota in addition to the articles counted under current law.

Section 704(b) would provide that the President may not proclaim an annual quota of less than 1.2 billion pounds for any calendar year after 1979 under the meat import law, regardless of the level of the adjusted base quantity.

Reasons for the provision.—These changes implement agreements with Australia, New Zealand, Canada, and Haiti. As noted, some changes are purely technical. The addition of item 107.61 to the meats covered in the meat import law reflects a condition of the U.S. concession to Canada to reduce the duty on this new TSUS item, as set out in section 506 of this bill. In fact, only a small amount of imports from Canada is expected under this item, and there will be no increase in the level of imports under the meat import law.

The 1.2 billion pound minimum access requirement is not expected to permit more meat imports than would be the case without the requirement. A quota level below 1.2 billion pounds could only result under the meat import law in situations where domestic meat production is very low in relation to demand. In those situations, history shows that the President would very likely permit a much higher level of imports or suspend limitations totally.

Views of the Committee on Agriculture, Nutrition and Forestry on Agriculture and the Multilateral Trade Negotiations

The Committee on Agriculture, Nutrition and Forestry has carried on extensive discussions with the Administration on the Multilateral Trade Negotiations as they relate to agriculture. The Committee on Finance includes in its report on the bill the following views of the Agriculture Committee on the MTN as it relates to agriculture:

Introduction

The difficulty of reducing barriers to agricultural trade has been reemphasized with each successive round of Multilateral Trade Negotiations (MTN) since World War II. Major participants in the MTN have argued that agriculture presents special problems that cannot be solved within the framework of the General Agreement on Tariffs and Trade (GATT) because trade barriers on major agricultural products are often linked directly to domestic agricultural policies. Any change in the form or level of trade protection may be tantamount to a change in domestic agricultural policy. Such domestic

policies reflect complex economic, social, and political forces in each country, and most countries feel that these are sovereign matters to be determined in national legislatures and not in international trade negotiations.

In actuality, most agricultural trade barriers take the form of quotas, variable levies, and discriminatory standards designed to achieve domestic policy objectives. GATT has had little success in dealing with such nontariff barriers (NTB's). Furthermore, because most major agricultural trading countries are almost exclusively either exporters or importers of major temperate zone commodities, it becomes very difficult to reach agreements on balanced reductions in trade barriers within the agricultual sector.

Previous MTN Negotiations

The Dillon round.—The Dillon round of trade negotiations, concluded in 1962, represented a turning point with respect to agricultural trade negotiations. The European Community (EC) began to formulate its Common Agricultural Policy (CAP) during the course of the Dillon round. While there was little specific information about the CAP at that time, it was clear that it would inevitably raise the level of protection for some members of the EC. Furthermore, the United States and others were concerned that the level of protection eventually afforded by the CAP would be higher than the average that then existed in the EC. (This did turn out to be the case.) Because the EC was in the early stages of formulating its CAP, it was unable to negotiate a broad range of agricultural trade issues. As a consequence, there were relatively small gains in agricultural trade liberalization, and almost all of them dealt with tariffs.

The Kennedy round.—The Kennedy round of negotiations began in 1963 and ended in 1967, and during this time the United States continuously insisted that concessions on agriculture had to be an integral part of a successful trade negotiation.

As the structure of the CAP emerged, it became increasingly clear that it would insulate the EC market from outside suppliers. The EC's policy achieved a harmonization of agricultural prices among the member countries. This inevitably meant that surplus producing countries within the EC (such as France) would receive large price increases, their production would be stimulated, and the FC would become progressively more self-sufficient in major products like grains, meats, and dairy products. The United States viewed the Kennedy round as a vehicle for moderating the growth of agricultural trade barriers in the EC and for maintaining an export market for key U.S. agricultural products.

While agreeing that agriculture should be included in the trade talks, the EC argued that its CAP was in the process of being formulated and, therefore, could not be negotiated. Furthermore, the evolving CAP was the only major common policy of the EC. Members of the EC viewed attempts to negotiate agricultural policy as a threat to the EC itself. Consequently, the results of the Kennedy round fell far short of the agricultural sector's expectations.

The Tokyo round.—The most recent round of multilateral trade negotiations under the GATT began in Tokyo in the fall of 1973 and was largely carried out in Geneva.

The negotiations took place during three U.S. administrations amid growing concern over our trade deficit. In agriculture, the United States has had an increasingly favorable trade balance which is expected to reach $16 billion in the current year against total agricultural exports of $32 billion.

Agriculture was given a high priority in these negotiations, and the reduction of nontariff barriers was seen as the key to expanded agricultural trade. In agricultural matters, the Department of Agriculture worked closely with the Office of the Special Representative for Trade Negotiations, which was responsible for the negotiations.

A package of priorities for agriculture was developed under the guidance of the Department of Agriculture with the Office of the Special Representative for Trade Negotiations. The U.S. negotiators also drew on the expertise of the agricultural sector through the Agricultural Technical Advisory Committees (ATAC's), which were established to provide information on livestock, dairy, grains and feed, tobacco, poultry and eggs, fruits and vegetables, oilseeds, and cotton. An Agricultural Policy Advisory Committee (APAC), composed of private agricultural sector representatives, was set up to provide guidance regarding the trade negotiations in relation to U.S. agricultural policy. These groups met frequently and gave advice during the negotiations and as the implementing legislation was being drafted.

The objective of the Tokyo round was to continue the rapid growth in U.S. agricultural exports which have expanded from $6.7 billion in 1970 to $32 billion this year. Other major aims included reducing the trade restrictions of the Japanese and European Community markets.

During the negotiations, the United States was also concerned over the possibility of expanding trade in newer product areas and encouraging increased export opportunities for developing countries.

The U.S. Agricultural MTN Package

There are three basic elements of the U.S. agricultural MTN package: (1) codes related to agriculture, especially the codes on Subsidies and Countervailing Duties, Technical Barriers to Trade (Standards), and Government Procurement; (2) commodity agreements; and (3) tariff and nontariff consessions.

Codes

Code on subsidies and countervailing duties.—The code would impose four significant obligations with respect to subsidies:

(1) *Notification.*—In addition to existing GATT obligations, a subsidizing country would have to provide to another country, upon request, information about the nature and extent of any subsidy. If a subsidizing country does not notify GATT of a subsidy it maintains, then any other country adhering to the agreement may notify the Committee of Signatories to the agreement about that subsidy.

(2) *Certain primary products.*—Countries adhering to the agreement would not grant export subsidies on farm, forest, or fishery products (not including primary mineral products) in a manner that re-

sults in the subsidizing country having "more than an equitable share of world export trade" including the displacement of exports from another country that adheres to the agreement. Furthermore, countries would not subsidize exports to a "particular market in a manner that results in prices materially below those of other suppliers to the same market."

(3) *Other products.*—In perhaps the strongest and clearest obligation of the code, countries adhering to the agreement "shall not grant export subsidies" on products other than "certain primary products," i.e., farm, forest, or fishery products.

(4) *Determination of injury.*—Before a signatory could impose countervailing duties on imports from countries adhering to the code, it would be required to find not only the existence of a subsidy but also the existence of material injury or the threat of material injury to domestic industry caused by the subsidy.

The Committee on Agriculture has two primary concerns regarding possible interpretations of certain provisions of the code.

First, the committee is troubled by the potential for abuse in the determination of a signatory's equitable share of world export trade in a given commodity. In order to make such determination, the code states that consideration will be given to the signatory's market share during a representative period. The representative period is defined by the code as "the three most recent calendar years in which normal market conditions exisited". The committee is concerned that these provisions could be interpreted so that a signatory who had established its market share by means of export subsidies during the three most recent calendar years would be able to capture unwarranted benefits. It is the sense of the committee in proceedings before the GATT on export subsidies that market shares acquired during the "representative period" as the result of export subsidies should not be considered "equitable shares" for purposes of determining whether a violation of the code has transpired.

Second, the committee is concerned about the criteria to be used in making a determination of material injury to the agricultural sector.

The legislation establishes special rules for agricultural products; however, the committee wishes to amplify and strengthen the language of the legislation accordingly.

Special rules are set out for agricultural products, including that a finding of no material injury or threat of material injury with respect to producers of an agricultural product may not be based solely on the fact that the prevailing market price is at or above a minimum support price, and that the International Trade Commission should consider whether any increased burden on a Government income or price support program exists in investigations involving agricultural products. Government income or price-support programs are aimed at guaranteeing that farmers receive a fair and reasonable market price. If the market price falls to or below this level and the farmers take advantage of the program, the government must intervene in the market. The necessity of such Government intervention could be sufficient for a showing of material injury.

The committee also wishes to acknowledge that wheat producer groups are very concerned that the Code on Subsidies and Counter-

vailing Duties would serve to prevent them from competing with the EC's subsidized wheat exports to third country markets.

Great Plains Wheat, Inc., initiated a section 301 complaint late in 1978 against the European Community alleging that subsidized wheat sales had undercut U.S. third country markets. The Office of the Special Representative for Trade Negotiations agreed that the complaint had merit and has undertaken consultations with the European Community regarding this matter. The committee has been assured that the Subsidies and Countervailing Duties code will strengthen the hand of the United States in dealing with such complaints in the future.

Code on technical barriers to trade (standards).—The purpose of the code is to discourage signatories from setting up product standards, product testing, and product certification systems that create unnecessary obstacles to international trade. To achieve this purpose, the code establishes obligations including among others the following:

(1) Signatories shall attempt to harmonize technical standards and certification systems insofar as possible, provided that such harmonization is not inappropriate for reasons such as national security, prevention of deceptive practices, protection of human health or safety, animal or plant life or health, or the environment.

(2) Signatories shall provide timely notice and adequate information regarding technical standards and certification systems that do not correspond to international guidelines.

(3) Signatories shall equally apply technical standards and certification systems to all like products of national and foreign origin.

(4) Signatories shall ensure that central government bodies comply with provisions of the code.

(5) With respect to regional, State, local, and private entities, signatories shall use all reasonable means within their power to promote the observance of the code by such entities.

The Standards Code does not require the United States to change, on its own initiative, any U.S. standards, test methods, or certification systems. Existing practices of all code signatories would, however, be subject to the code's procedures for international complaints.

Concerns have been raised over the role of the Office of the Special Representative for Trade Negotiations in the implementation of the Code on Technical Barriers to Trade (Standards). The Special Representative is charged with coordinating the consideration of international trade policy issues, and discussions and negotiations with foreign countries regarding standards-related activities.

It is the sense of the committee that as a coordinator, rather than an expert in any particular standards-related activity, the Special Representative should seek the advice of the Federal agencies, departments, and offices having expertise in the particular area under consideration. It is not the role of the Special Representative to negotiate international standards arrangements or to formulate independently the United States international trade policy, but rather to aid the various government agencies and departments having statutory responsibilities for standards in the development and execution of a consistent international trade policy.

The committee also is of the view that, in consultations regarding standards violations by the United States, the views of the agency or

person alleged to be engaging in the violations should be sought and the issue worked out with those agencies and representatives directly involved in the matter.

Code on Government Procurement.—The code obligates the signatories to publish their procurement laws and regulations and have those laws and regulations reflect the rules embraced in the code.

Purchasing entities are obligated to publish all bid opportunities. They have discretion in their choice of purchasing procedures, provided they observe the requirement of providing the maximum degree of competition possible.

Code rules are designed to discourage discrimination against foreign supplies and suppliers at all stages of the procurement process. Specific rules are prescribed on the drafting of specifications for goods to be purchased, advertising of prospective purchases (including the details for inclusion in the notice and tender document), time allotted for the preparation and submission of bids, awareness of contracts, and hearing and reviewing of protests.

The thrust of the code is that it will be largely self-policing. Rules and procedures are structured so as to provide the fullest opportunities for any problems that may arise during any phase of the procurement process to be resolved between the potential supplier and the procuring agency.

Obligations under the code will not apply to those procurements for which there are national security considerations. The code rules will also not apply to procurements under a tied-aid agreement. The code would not initially apply to Government purchasing of services except those services that are incidental to the purchase of goods. Department of Agriculture purchases of agricultural products under farm support programs and for human feeding programs are similarly not subject to code rules. Nor are Department of Defense food purchases included in the code.

The committee sought and received assurances from the administration that the code would not affect the purchase of agricultural commodities by the U.S. Government.

Commodity Agreements

Efforts were made to negotiate commodity agreements for wheat, beef, and dairy. The negotiations were successful for beef and dairy but unsuccessful for wheat.

In spite of extensive efforts, the negotiations to establish a new International Wheat Agreement were not successful. The United States had proposed a new wheat agreement which would have included establishing internationally coordinated, nationally held wheat reserves and a new food aid convention with a target of 10 million tons of food assistance per year for the developing countries.

The proposed new wheat agreement also provided for a series of steps to be taken cooperatively in adjusting reserve stocks during periods of surplus and short supply. There were significant differences among the exporting, importing, and developing countries over the size of the proposed reserve and the price levels at which various corrective steps would be undertaken.

In February 1979, the negotiations ended in failure. However, the United States and other countries agreed to increase their food assist-

ance commitment under the Food Aid Convention. The total level of food assistance provided in recent years has been well above the 4.47 million ton commitment in the 1971 Food Aid Convention. With the failure of the negotiations for a new wheat agreement, it was agreed to extend the existing consultative and information-sharing International Wheat Agreement and the Food Aid Convention for 2 years through June 1981.

Some administration spokesmen still hope that the discussions on a new International Wheat Agreement may resume at some time in the future. The major wheat exporting nations—the United States, Canada, Australia, and Argentina—met recently and agreed to hold regular sessions to exchange information and avoid undercutting each other's market.

The Arrangement on Bovine Meat provides a mechanism to exchange information on meat among countries. An International Meat Council will be established under the auspices of the GATT, and participating countries are to provide the Council with information on production, consumption, stocks, prices, and trade. The Council can make recommendations. The governments are, however, under no obligation to accept recommendations that require unanimous consent of participating governments.

The International Dairy Arrangement is also designed to enhance cooperation and exchange of information. In addition, it contains economic provisions specifying minimum export prices for milk powder, milk fat, and certain cheeses. These pricing provisions will not affect U.S. trade in these products since the minimum prices fall well below U.S. market and support prices. An International Dairy Council will be able to make recommendations but such recommendations are not binding and can be made only with the unanimous consent of the signatories.

Tariff and Nontariff Concessions

The trade concessions received by the United States under the MTN are difficult to determine with precision although various estimates place the expected increase in U.S. agricultural exports at around $500 million. This figure relates to 1976 exports worth about $2.4 billion. The total value of U.S. agricultural exports covered by concessions received is nearly $4 billion, but many concessions are designed to protect our markets more than to expand them. The administration ha s argued that, in spite of the modesty of the concessions, the agreement will not only increase trade but also stem the rise of protectionism which would be very harmful to agriculture. (The estimate of increased trade is based on full implementation of all the concessions, which is expected to occur no later than 1987.)

ESTIMATED VALUE OF REDUCTIONS IN NONTARIFF BARRIERS AND DUTIES

[In thousands of dollars]

Commodity	NTB	Duty reductions	Total
Livestock	199, 800	52, 203	252, 003
Grains	23, 600	2, 680	26, 280
Oilseeds	55, 200	27, 548	82, 748
Fruits/vegetables	42, 450	20, 664	63, 114
Tobacco	84, 600	1, 000	85, 600
Total	405, 650	104, 905	509, 745

Concessions from Japan.—The trade negotiations with Japan were carried out in a strained atmosphere. As in the case of most agricultural negotiations, the discussions were carried out bilaterally and then added to the total package when completed.

The U.S. negotiators and the Agricultural Technical Advisory Committees were impatient with Japan's unwillingness to allow freer trade and its insistence on protecting its agricultural system for reasons of national security and self-sufficiency.

The United States insisted that additional agricultural exports were needed to help reduce the trade imbalance between the two countries, but the Japanese responded they were already heavily dependent on the United States for food imports. The Japanese also pointed out that the United States had established an embargo on soybean exports in 1973; therefore, they could not afford to become even more dependent on the United States for food imports.

In addition, several of the most important U.S. requests—especially beef and citrus products—related to extremely sensitive and heavily protected Japanese industries.

After extensive negotiations, the Japanese finally agreed to expand their imports of 150 agricultural products. High quality beef, orange and grapefruit juices, and oranges represented the main increases. The quota increases for these commodities do not represent a change in the Japanese import system. The Japanese also agreed to fix or bind the existing duty on soybeans, which is zero. The zero binding on soybeans is an insurance policy to meet possible future competition. It is estimated that the concessions from Japan could approach $200 million in increased trade when fully implemented.

Concessions from the EEC.—The European Economic Community's Common Agricultural Policy has created serious concern among U.S. agricultural producers because of its restrictions on trade and its subsidization of exports to third-country markets. The United States does not have a trade imbalance with the European Community, and, therefore, the atmosphere of the EC negotiations was less strained than those with Japan. In addition, the United States was faced with having to grant agricultural concessions to the EC.

The major concessions granted by the European Community were in the area of high quality beef, poultry, rice, tobacco, and speciality products. These concessions are expected to be worth over $150 million annually when fully implemented.

Concessions from Mexico and other countries.—The trade negotiations with Mexico became involved with other issues, such as the migration of illegal aliens to the United States, the possible sale of petroleum to the United States, and the sale of Mexican winter vegetables to the United States. Nonetheless, the Mexican Government has made a tentative offer to allow unlimited imports of soybean meal, a concession which is expected to be worth $55 million in additional trade.

Concessions were received from other countries on a variety of commodities such as almonds, canned peaches and fruit cocktail, rice, vegetable protein concentrates and isolates, raisins, prunes, and certain fresh fruit.

Trade Concessions Granted by the United States.—Concessions were offered by the United States on approximately $2.6 billion of agricultural imports. These concessions by the United States are expected to

increase annual agricultural imports by about $156 million annually by 1987.

Most of the increase in agricultural imports is accounted for by the expanded cheese import quotas. This increase has been estimated, based on 1976 statistics, at approximately $120 million. However, looking at 1978 import statistics, the additional trade value of the cheese concession when instituted is expected to be approximately $56 million. This is a result of substantial increases in imports of above price-break cheeses (cheese not now covered by quota) during the past 2 years.

The new quota on cheese is 111,000 metric tons. This quota brings under it a number of cheeses not now covered by quotas. Thus, it is expected that the agreement, in effect, will provide a limit on the growth of cheese imports not now covered by quota. The coverage of cheese under quota is expected to increase from about 50 percent of the present cheese imports to about 85 percent when the concession is implemented.

Total cheese imports, both quota and nonquota, for recent years are as follows: for 1976, 93,913 metric tons; for 1977, 95,015 metric tons; for 1978, 109,878 metric tons. The level of cheese imports for 1980 will be no more than the 111,000 metric tons provided under the bill with an estimated additional 15,000 metric tons outside the quota.

In light of the debate over the increased quota for cheese, it is the sense of the committee that the Department of Agriculture be required to monitor the cheese imports closely. This was the only major U.S. concession in agriculture, and it will be essential to make certain that the increased imports do not undermine the milk price support program.

The other concessions granted by the United States would appear to be of rather limited value in terms of increased trade. The duty on imported meat was lowered from 3 cents to 2 cents per pound. However, since the quantity of meat is controlled by quota, this decrease should have no impact on the volume of meat imported.

If negotiations with Mexico are completed, U.S. live cattle duties will be equalized at 1 cent per pound for all imports from Mexico and Canada. These changes are expected to result in additional imports of just over $2.7 million, primarily from Canada and Mexico.

The duty on two grades of high quality wool were reduced from 25.5 cents per pound to 10 cents per pound and from 27.7 cents per pound to 11 cents per pound. These duty reductions are expected to yield an additional $8 million in imports.

There were a number of other concessions in the area of processed foods and vegetables.

The concessions by the United States are expected to result in additional imports as follows:

ESTIMATED VALUE OF REDUCTIONS IN NONTARIFF BARRIERS AND DUTIES

[In thousands of dollars]

Commodity	NTB	Duty reductions	Total
Livestock	540	13,175	13,715
Grains	75	3,493	3,568
Oilseed		1,110	1,110
Fruits/vegetables	300	6,255	6,555
Tobacco/cotton	165	1,515	1,680
Dairy	121,414	200	121,614
Other		7,906	7,906
Total	122,494	33,654	156,148

The estimate of increased imports is based on full implementation of all the concessions which is expected to occur at latest by 1987.

Legislative Changes

The major changes in the legislation under the trade bill relate to the increase in the cheese quota.

In 1975, the United States countervailed against the EC's subsidized cheese imports. Collection of countervailing duties on these imports has been waived under the authority of the Trade Act of 1974 pending the conclusion of the MTN. The EC indicated that it would not negotiate on any agricultural matter until the United States agreed to waive the countervailing duty on cheese. The United States consented to this provision, but it demanded in return the EC's agreement to a new arrangement which placed most competitive cheeses under quota and created a new mechanism designed to prevent subsidies from undercutting the prices of comparable domestic cheeses at the wholesale level. The new quota system will be promulgated by the President under section 22 of the Agricultural Adjustment Act. The legislation stipulates that the President may not proclaim an increase in the 111,000 metric ton cheese quota for any year at any time before January 1, 1983, unless warranted by extraordinary circumstances. It is the committee's understanding that in any such case, the procedures under section 22 would be followed.

Under the proposed legislation, an exporting country that utilizes subsidies for cheese would be subject not only to the new quotas but also to a commitment not to undercut U.S. domestic wholesale cheese prices. Any subsidy applied in a manner inconsistent with this commitment would be subject to countermeasures by the United States in the form of tightened quotas or increased import fees.

The proposed legislation provides that at the beginning of each year, the Secretary of the Treasury would determine and publish a list of the existence, type, and amount of foreign government subsidies on cheese subject to quotas. Upon request, the Secretary of the Treasury will determine the existence, type, and amount of a subsidy within 30 days.

Upon receipt of an allegation that subsidized quota cheese is entering at prices below the domestic wholesale price for similar products, the Secretary of Agriculture would determine whether the allegation is correct within 30 days. If it is correct, within 3 days the Special Trade Representative shall notify the foreign country involved.

If the subsidized price undercutting is not eliminated within 15 days, the President shall impose within 7 days a fee or quota on the imports. If the President concludes that the Secretary of Agriculture has erred as to the facts, he may require the Secretary to review the case for an additional 7 days; if after the review the Secretary of Agriculture concludes he has not erred as to the facts, the President shall impose a fee or quota on the imports.

As part of the cheese agreement with Australia, the United States has agreed to establish a 2,000 metric ton quota for chocolate crumb imports from Australia. At present, Australia does not have a quota for chocolate crumb. (Chocolate crumb is subject to section 22 quotas.)

The new legislation would direct the President to impose the new quota level on cheese and chocolate crumb through a proclamation under section 22 of the Agricultural Adjustment Act. Hearings, findings and recommendations by the International Trade Commission would be waived by the legislation.

MTN Effects on Agricultural Employment

While it is extremely difficult to make an estimate of the employment impact of the trade agreements, Prof. James Houck of the University of Minnesota, who was a witness at the committee's June 28 hearing, has made such an estimate. These figures relate not only to direct agricultural employment but to the entire agribusiness sector.

Professor Houck's estimates are that there would be an increase in agricultural employment of 22,000 jobs and an additional 12,000 jobs in marketing, processing, and other related employment. As a result of increased imports, there would be losses in agricultural employment of 5,000 jobs and a further loss of 3,000 jobs in marketing, processing, and related employment. The estimated effect of these employment changes would be an increase of 26,000 jobs, of which 17,000 would be in agricultural employment and 9,000 in marketing, processing and other employment.

Agricultural Sector Reaction to the MTN

Since the trade package has been completed, various farm organizations have indicated their support of the trade agreement. The American Farm Bureau Federation and the National Council of Farmer Cooperatives have strongly endorsed the agreement, while other groups, such as the National Grange, the National Cattlemen's Association, and the National Farmers Union, have indicated their support with qualifications. The National Federation of Milk Producers has indicated its opposition to the agreement.

The trade advisory groups were mixed in their reaction to the trade agreement. A majority of the Agricultural Policy Advisory Committee supported the agreement, but the Agricultural Technical Advisory Committees were split in their positions. The cotton, fruit and vegetables, oilseeds and products, and tobacco ATAC's were generally favorable. The grain and feed and poultry and egg ATAC's were somewhat neutral, while the dairy and livestock ATAC's were negative.

Committee on Agriculture, Nutrition and Forestry's Conclusions

It would appear that the net benefits received by the United States from specific agricultural product concessiosn will be rather modest given the time and effort spent on the negotiations. However, as one hearing witness pointed out, U.S. agricultural exports are currently in a strong competitive position and the trade package should be looked at in terms of helping achieve further gains in the years ahead. The nontariff barrier "codes", in particular, should strengthen the U.S. position considerably.

One of the main points expressed by administration witnesses and agricultural groups is that a more concentrated followup is required if the full benefits of the negotiations are to be realized. Officials charged with enforcing U.S. rights under the trade agreements will have to actively pursue those countries who violate the provisions of the codes. Failure to do so will generate adverse effects on U.S. agricultural trade.

In addition, much consideration will have to be given to proposals for reorganizing the Federal bureaucracy so that it will be better suited to rectify our trade imbalance and to promote exports of American goods and services.

Agricultural groups have recommended that the Foreign Agricultural Service and its functions remain within the Department of Agriculture and not be moved to some new agency. While assurances have been received by the committee regarding this matter, it is important that this recommendation not be overlooked in developing any reorganization plan.

It is hoped that U.S. agricultural groups will continue to play a meaningful role in the implementation of the new trade legislation. The success of the trade package will depend upon the further efforts of these groups to expand U.S. exports. The committee is insistent that they be permitted to participate to the fullest extent possible in the follow-up work still to be done on agricultural trade.

TITLE VIII—TREATMENT OF DISTILLED SPIRITS

Title VIII of the bill implements Certain Bilateral Agreements to Eliminate the Wine-Gallon Method of Tax and Duty Assessment approved by the Congress under section 2(a) of the bill.

Subtitle A—Tax Treatment of Distilled Spirits

Present Law

Wine gallon and proof gallon methods of taxing distilled spirits

Under present law an excise tax is imposed upon all distilled spirits produced in or imported into the United States. This distilled

spirits tax is imposed at a rate $10.50 per gallon or a proportionate amount of tax on a fractional part of a gallon (Code section 5001(a)).[1]

The distilled spirits tax is imposed, i.e., the distilled spirits become subject to tax, when the spirits come into existence (Code section 5001 (b)).[2] However, the amount of the tax is not determined until the spirits are removed from the bonded premises in which they are held (Code section 5006(a)).[3]

One of two alternative methods is used for computing the tax, depending upon alcohol content of the spirits at the time the tax is determined.[4] Under the first of these methods, the proof-gallon method, the distilled spirits tax is based both upon the volume of spirits and its alcohol content at the time when the tax is determined. The alcohol content, or "proof," of spirits is measured on an arithmetic scale of zero to 200. (For example, 150 proof spirits are 75 percent alcohol.) Spirits are considered to be "at proof" when they are 100 proof, i.e., contain 50 percent alcohol. The volume of the spirits is measured in standard U.S. liquid gallons.[5] A proof gallon is consequently one gallon of spirits at 100 proof.[6] As the proof gallon method applies, the tax is computed at a rate of $10.50 per proof gallon. For example, one gallon of 150 proof spirits is equal to 1.5 proof gallons and is subject to a tax of 1.5 times the $10.50 per gallon tax, or $15.75.

The second method of determining the distilled spirits tax is the wine-gallon method, which is based solely upon the volume of liquid, measured in wine gallons, and is not based upon alcohol content. (As noted above, *footnote 5*, a wine gallon is equal to one U.S. gallon of liquid measure.) This method applies when the spirits are below 100 proof at the time the tax is determined. For example, one gallon of 80 or 86 proof spirits would be subject to a tax of $10.50.

As these two methods apply in practice, domestic producers of distilled spirits usually withdraw the spirits from bond before the spirits are bottled, (*i.e.*, while they are in bulk, contained in tanks or barrels), at a time when they are above 100 proof, and subsequently reduce the spirits to the proof at which they are bottled for consumption (for example, 80 or 86 proof) by the addition of water and other ingredients. Because these domestic spirits are usually at or above 100 proof when the tax determination is made, the tax is computed on the basis of proof gallons. Similarly, some foreign produced spirits are imported in bulk at or above 100 proof, so that these spirits are also taxed on a proof-gallon basis when removed from bond. In contrast, most foreign produced spirits which are bottled in the country of origin are imported at below 100 proof and are taxed at $10.50 on each wine gallon when removed from bond. This results in a higher effective rate of tax on these bottled imported spirits than on spirits taxed on a proof-

[1] Unless otherwise indicated, references to Code sections in the explanation of subtitle A of title VIII are to the Internal Revenue Code of 1954 (26 U.S.C.), as amended.

[2] Distilled spirits generally come into existence when they are recovered from the still.

[3] In addition, actual payment of the tax is not ordinarily required until a later time. The payment provisions are discussed in more detail, *infra, Tax Payment Provisions.*

[4] Customs duties on imported distilled spirits are also determined under these alternative methods (19 U.S.C. 1202; Tariff Schedules, Part 12, Schedule 1, Headnote).

[5] The standard U.S. liquid gallon equals 231 cubic inches. For purposes of the distilled spirits tax, it is also called a wine gallon (Code section 5041(c)).

[6] Technically, a proof gallon is defined as "a United States gallon of proof spirits, or the alcoholic equivalent thereof" (Code section 5002(a)(8)). Proof spirits means a liquid which contains one-half of its volume of ethyl alcohol at a temperature of 60 degrees Fahrenheit (Code section 5002(a)(7)).

gallon basis. For example, if a gallon of domestically produced or bulk imported spirits is at 160 proof at the time of tax determination, the tax is $16.80 (1.6 proof gallons × $10.50 tax per proof gallon.) Where this gallon of distilled spirits is subsequently diluted with one gallon of water to make two gallons of 80 proof spirits, the effective rate of tax for each gallon of these spirits is $8.40 ($16.80÷2). In comparison, a gallon of foreign produced and bottled spirits, which has been reduced to 80 proof before it is bottled and imported, is subject to the distilled spirits tax on a wine gallon basis, so that this gallon of distilled spirits is subject to tax of $10.50 (which is $2.10 per gallon more than the tax paid on 80 proof spirits bottled in the United States).

Rectification taxes

In addition to the $10.50 per gallon distilled spirits tax, present law imposes an occupational tax upon persons who blend, purify, refine, process or otherwise rectify distilled spirits or wine in the United States. The occupational tax is imposed at a rate of $110 per year for a rectifier of less than 20,000 proof gallons, and at a rate of $220 per year for a rectifier of 20,000 proof gallons or more (Code sections 5081 and 5082).

A gallonage tax is also imposed on rectified distilled spirits or wines at a rate of $.30 per proof gallon (or proportionate part thereof). Rectified distilled spirits or wines are those which have been blended, purified, refined, processed or otherwise changed from their original state (Code sections 5021 and 5082). This tax is subject to numerous complicated statutory exceptions (under Code section 5025). It applies only to spirits rectified in the United States and does not apply to imported products (either bottled or in bulk) which have been rectified abroad but have not been further rectified in the United States. In addition, a complementary rectification tax of $1.92 per wine gallon is imposed on cordials, liqueurs and similar compounds of distilled spirits which contain more than 2.5 percent, by volume, of wine which has an alcohol content of more than 14 percent; and a complementary rectification tax of $.30 per proof gallon is imposed on mixed or blended rums or fruit brandies which have not been aged in wood for at least two years (Code sections 5022 and 5023).

Government supervision of distilled spirits operations

Under existing law, the Secretary of the Treasury has strict control of distilled spirits, including both liquors for beverage purposes and alcohol for industrial purposes, from the beginning of the production process to the point where the spirits are removed from bond. This control has been maintained through a rigid system of separate premises, permits, inspections, investigations and on-site supervision, under a complicated system of statutory and regulatory provisions which date back to the Civil War.

The production and processing of distilled spirits involves a number of separate operations, beginning with the storage and preparation of grain and other raw materials, through fermentation of these materials to create alcohol, recovery of the alcohol through distillation of the fermented mash or wort, storage or aging the distilled spirits in bulk warehouses, blending, processing or otherwise rectifying the spirits before bottling, bottling the spirits in containers for retail sale, and storage of bottled goods. All of these operations occur at a distilled spirits

plant. However, under present law only some of these operations are conducted on the bonded premises portion of the distilled spirits plant, which is the part of the plant where distilled spirits may be held before tax determination. Under these provisions, operations on bonded premises include fermentation, distillation and storage of the distilled spirits in bulk for storage or aging purposes.[7] Subsequent operations of processing, rectifying, bottling, and storage of bottled spirits are presently conducted on nonbonded premises.

Other aspects of the separation of a distilled spirits plant into bonded and nonbonded premises under present law are the requirements that tax-determined spirits may not be comingled with non-tax-determined spirits in the bonded portion of a distilled spirits plant and that tax-determined spirits may not be present on the bonded portion of the plant premises (Code section 5612). Existing law also limits the permissible activities that may be performed within the bonded premises of a facility to the extent of requiring segregated facilities for separate operations of production, denaturation, bottling in bond, export storage, and warehousing.

In addition to segregation of facilities, present law requires the physical presence of a Treasury officer before certain operations on bonded premises may be performed (Code sections 5221 and 5202). Currently, distilled spirits may be produced only in a closed distilling system, under which the spirits in the system are required to be kept under Government lock or seal until the production gauge is made (i.e., the quantity and alcohol content are measured) and either the spirits have been entered for deposit, denatured (i.e., made unfit for beverage purposes), the tax has been determined, or the spirits have been removed for a legitimate tax-exempt or tax-free purpose, such as use for testing or experimental purposes (Code sections 5178(a) and 5211). Rooms and buildings in which undenatured distilled spirits are stored also may not be unlocked or remain open except when a Treasury officer is on the plant premises. (These bonded spirits are under the joint custody of the warehouseman and the Treasury officer assigned to the distilled spirits plant). In addition, the production gauge for spirits produced, transferred, tax determined, or removed tax-free, must be either made or supervised by a Treasury officer. Also, bottling-in-bond and denaturation operations are required to be supervised by a Treasury officer.

With the physical separation required under existing law between bonded premises and bottling premises (the premises where tax-determined or tax-paid spirits are rectified or bottled), tax determination for domestic spirits occurs in almost all cases when they are removed from bond for bottling or rectification at the same plant. Although the tax is determined when spirits are removed from bond, payment may be deferred (Code section 5174(a); Treas. Regs. § 170.50). As a result of this deferral procedure, existing law has established a system of crediting the proprietor with the amount of tax lia-

[7] Bottling-in-bond and denaturing are two additional operations that are allowed to take place in bonded premises. "Bottling-in-bond" is the bottling of a restricted class of spirits at 100 proof or more for domestic consumption and the tax determination is deferred for these spirits. Bottled-in-bond is a distinctive type of spirits and is denoted both on the label (under nontax rules) and by a different color (green) tax stamp attached to the bottle. Denaturing involves the addition of ingredients to make distilled spirits unfit for beverage purposes, so that they may be withdrawn from the bonded premises free of tax, generally for use in industrial products.

bility outstanding on spirits lost during rectifying and bottling operations. However, if losses exceed specific statutory allowances, the tax is required to be paid on the excess losses (Code section 5008(c)).[8]

Under existing regulations, distilled spirits products for beverage use, which have been bottled as finished case goods, may be stored by a proprietor on the nonbonded premises of a distilled spirits plant (designated as "control premises") as part of the proprietor's controlled stock. A rather complex procedure to account for the distilled spirits tax liability on such controlled stock assures payment of the tax at the appropriate time. The effect of this procedure essentially is to require the tax to be paid upon shipment from the control premises, or, if the spirits are kept in controlled stock inventory, payment of the tax can be delayed for not more than six months.

Present law also includes a complicated system of requirements to insure that the liability of the plant proprietor (or importer) for distilled spirits taxes is adequately secured from the time these taxes are imposed until they are finally paid. This security is provided through a series of liens and surety bonds during this period, at some points with overlapping coverage. For example, the taxes are a first lien upon the spirits from the time they are created and also upon the bonded premises (including land, buildings and equipment) of the distilled spirit plant (Code section 5004). Generally, the lien on the spirits ends when they are withdrawn from the bonded premises upon tax determination, or for a nontaxable use or exportation. The lien on the premises and equipment ceases when any tax liability which these assets secure has been extinguished or where the proprietor has given an indemnification bond of up to $300,000 for release of this lien.

Collection of the tax is further secured by a series of surety bonds to cover different operations or combinations of operations within a distilled spirits plant. For example, separate bonds are available for distilling, warehousing, and rectification operations (Code section 5173). In addition, other bonds may be used for combined operations at a distilled spirits plant (or with an adjacent bonded wine cellar) and to cover operations at more than one distilled spirits plant located in a single geographical area. Finally, a withdrawal bond is required in order to defer payment of the tax between the time the tax is determined and the actual payment of the tax (Code section 5174). Each of these bonds is subject to differing maximum and minimum amounts. (Code section 5173).[9]

Tax payment provisions

The taxes on distilled spirits are generally required under statutory provisions to be collected when the spirits are withdrawn, for rectification or bottling, from the bonded premises of a distilled spirits plant, in the case of spirits bottled in the United States; or, in the case of imported bottled spirits, when removed from the custody of customs officers (Code section 5007(a)). However, the payment of taxes on U.S. bottled spirits may be deferred for up to six

[8] The maximum loss allowances range from 2 percent of bottled completions for small distillers to 0.2 percent of bottled completions for large distillers.

[9] The total amount of bond coverage depends upon the combination of operations performed by a proprietor. A proprietor who conducts all possible combinations of operations would be required to provide bond coverage in a maximum amount of $1.6 million. A proprietor who conducts only distilling and warehousing operations would be required to furnish only $200,000 in bond coverage. Maximum and minimum amounts for the bonds are prescribed either by the statute or under regulations.

months while they remain on the control premises of the plant, if a withdrawal bond has been posted (Code section 5174(a); Treas. Regs. § 170.50).

The taxes, including both the distilled spirits gallonage tax and the rectification gallonage tax, are collected on the basis of returns under regulations prescribed by the Secretary of Treasury (Code section 5061; Treas. Regs. § 170.49). These regulations provide semi-monthly return periods, which run from the 1st day through the 15th day of the month, and from the 16th day through the last day of the month. Where tax becomes payable during one return period, the liability must be reported and the tax paid by the end of the following return period. For example, if the distilled spirits tax becomes payable on January 10, during the January 1–15 return period, the liability must be reported and the tax paid by January 31, the last day of the succeeding return period which runs from January 16 through January 31.[10]

Reasons for Change

Repeal of wine-gallon method of determining distilled spirits taxes

In bilateral agreements in return for reciprocal concessions from the major supplying countries of imported distilled spirits, the United States agreed as part of the Multilateral Trade Negotiations (MTN) to remove the "wine-gallon" method of imposing the distilled spirits excise taxes (and tariffs). As indicated above in the discussion of the present law method of imposing the excise taxes on distilled spirits, the wine-gallon method is used for spirits of under 100 proof; and since spirits imported in bottles generally are below 100 proof, this has resulted in a higher effective tax (and tariff) rate per actual gallon of alcohol content on imported bottled spirits than on U.S. bottled spirits, which are generally taxed under the proof-gallon method.

The bill includes the repeal of the wine-gallon method of imposing the excise taxes (and tariffs) on distilled spirits. This will remove any differential tax (and tariff) on imported bottled distilled spirits based on the contents of the spirits after bottling—i.e., the tax (and tariff) determination will be based solely on the alcohol content.

Repeal of rectification taxes

With the repeal of the wine-gallon method of determining tax, the distilled spirits tax on imported and domestically bottled spirits will be determined on an equal basis. Domestically bottled spirits, however, are subject to rectification taxes which bottled imports do not incur since any rectification activities takes place outside the United States. Therefore, to achieve the parity in tax treatment intended by the Committee it is necessary to repeal the rectification taxes imposed on distilled spirits rectified in the United States.

Adoption of all in bond system

As noted above, the repeal of the wine-gallon method of determining distilled spirits tax and the repeal of rectification taxes are intended to eliminate discriminatory differences between the tax treatment of

[10] Although the taxes on domestic bottled spirits are collected by the Internal Revenue Service, and the taxes on foreign bottled imported spirits are collected by the Bureau of Customs, the same periods for tax payment are used.

domestic and imported distilled spirits products. The elimination of these differences has the further result of obviating the need for tax determination of domestic distilled spirits prior to processing and bottling. Consequently, this bill makes certain changes in the existing system so that distilled spirits taxes will be determined after bottling for both imported and domestic spirits. Under these changes, which are categorized as the "all-in-bond" system, all distilled spirits operations (including processing and bottling) will occur in bond prior to determination of tax. This establishment of the all-in-bond system is a logical adjunct to the elimination of tax differentials. In addition, the existing system has been reviewed and criticized as outmoded and archaic by Federal tax administration officials and others in recent years. The Treasury Department, including the Bureau of Alcohol, Tobacco and Firearms (ATF), the agency responsible for administering and enforcing the distilled spirits excise tax provisions, has conducted various studies and concluded in 1963 and 1978 reports that the present method of imposing and enforcing distilled spirits taxes needed modernization.[11] In addition, the U.S. General Accounting Office (GAO) conducted a comprehensive review of ATF's administration of alcohol excise taxes and concluded that the all-in-bond method of imposing and administering excise tax on distilled spirits should be adopted.[12]

The Committee agrees with the Treasury Department and the GAO that the all-in-bond method will improve the administration of the distilled spirits tax both from the standpoint of the Government and the distilled spirits industry, and finds that the implementation of all-in-bond at this time follows logically from the changes made in the taxing provisions as outlined above. Thus, all operations of a distilled spirits plant will be conducted under bond and the tax determination will be made after the spirits are bottled.

Control and supervision of distilled spirits operations

The excise tax treatment of distilled spirits generally dates back to the Civil War and the years following when Congress passed statutory requirements to provide strict regulation of the distilled spirits industry by requiring that Treasury personnel be located on the premises of any distillery or facility where distilled spirits were produced or stored prior to payment of tax. The statutory provisions include requirements for Government locks, seals or other devices on the distilling facilities so that authorized operations of such facilities can be accomplished only under the physical control and supervision of Treasury personnel.

This system, known as "joint custody" of distilled spirits plant facilities, has also been reviewed and criticized as outmoded and archaic by the Treasury Department and GAO—in the studies mentioned above. These studies recommended that the "joint custody" requirements of the law be simultaneously eliminated with the implementa-

[11] A 1963 Treasury staff report entitled "Proposed Program for Modernized Liquor Tax Administration," was made to the Director, Alcohol & Tobacco Tax Division. Also, a 1978 report was submitted by ATF's Distilled Spirits Tax System Review Committee of the Treasury Department, entitled "Possible Distilled Spirits Tax System Modification" (April 12, 1978).

[12] Report of the Comptroller General to the Joint Committee on Taxation, entitled "Alcohol and Tobacco Excise Taxes: Laws and Audits Need Modernizing" (Report GGD-76-91, April 8, 1977)).

tion of all-in-bond. The Committee agrees with these recommendations and the conclusion that the elimination of joint custody will improve the administration of the distilled spirits tax from the standpoint of the Government and the distilled spirits industry. Accordingly, the Committee has also included this administrative change in implementing the legislation to the trade agreement.

Time period for payment of distilled spirits tax

The Committee understands that there is a significant period (of up to 60 days) between the time the distilled spirits tax is required to be paid by the domestic bottler and the time the tax amount is collected by the bottler from the vender when payment is received for the goods. On the other hand, the time period for the imported bottled spirits to carry the tax is significantly less (generally, less than 30 days). In addition, the removal of the wine gallon method of imposing the tax on below-100 proof spirits will primarily benefit imported bottled spirits by reducing the tax on such spirits. Therefore, the bill includes an extension of the time period for payment of the distilled spirits tax for domestic bottlers. After a three-year phase-in of an additional 5 days per year (beginning in 1980), the time period for payment of the tax by domestic bottlers will be an additional one-half month than under present regulations.

Explanation of Provisions

In general

The provisions of the implementing legislation will significantly revise the existing statutory framework concerning the taxation of distilled spirits and the control of distilled spirits production. These revisions will result in a more uniform system of taxation by eliminating discriminatory differences in the determination of the excise tax on distilled spirits. In addition, the bonded premises of a distilled spirits plant have been redefined to encompass all operations of a plant, from original production of the spirits through bottling, and the mechanism for government supervision and bonding for distilled spirits operations is substantially simplified. Finally, amendments have been made to the provisions which deal with the timing of distilled spirits excise tax payments, in order to address disparities which have arisen under present law.

Repeal of wine gallon method of taxing distilled spirits

Under section 802 of the bill, the wine-gallon method for determining the $10.50 per gallon excise tax on distilled spirits (under Code section 5001) is repealed. Consequently, the basis for determination of the distilled spirits tax will be the proof-gallon method.[13] Under this method as it applies under the bill, the tax will be computed on the basis of alcohol content (including that which is derived from wine or an alcoholic flavor, etc.), of a distilled spirit or distilled spirit product when withdrawn from bond (Code sections 5001 (a) (1) and (a) (2)). The uniform determination of tax on this basis eliminates the discrimination under present law against distilled spirits and distilled spirit products which are below 100 proof at the time of tax determination.[14]

[13] The only exception is that imported perfumes containing distilled spirits will continue to be taxed on a wine gallon basis. (Code section 5001 (a) (3)).

[14] The definition of "distilled spirits" has been amended to clarify that the terms include distilled spirits in whatever form, i.e., solid, liquid or gaseous.

Repeal of rectification taxes

The gallonage taxes on rectified distilled spirits and wines, as well as the taxes on cordials and liqueurs which contain wine, and on certain rums or blended fruit brandies, are repealed under section 803 of the bill. The repeal of these taxing provisions and related administrative rules under present law (Code sections 5021–5026) will eliminate the disparity in tax treatment which exists between rectified distilled spirits products and similar products of foreign origin. Based on the repeal of the gallonage taxes, and because all acts of rectification will now be performed on bonded premises, the present occupational tax on rectifiers is unnecessary and these occupational taxes and related rules (under Code sections 5081–5084) are also repealed.

All-in-bond system

In general.—The result of adopting the all-in-bond system is that domestic products as well as imported products will now be taxed on the basis of the alcohol content of the finished product after it has been diluted and bottled and will include the part of the alcohol content which is derived from wine or other alcoholic ingredients added to a distilled spirits product before it is bottled.[15] Since the distilled spirits tax will be imposed on the basis of the alcohol content of the finished product, section 805 of the bill provides that the bonded premises of a distilled spirits plant will be expanded to include all distilled spirits operations, including rectification and bottling. This all-in-bond system will simplify the operations of a distilled spirits plant by eliminating the distinction between bonded and non-bonded operations and premises. It will also serve to eliminate claim procedures for voluntary destruction and bottling losses of distilled spirits which presently must be used to relieve a proprietor from the tax where tax-determined spirits are destroyed or lost during processing and bottling (under Code section 5008(b) and (c)).

The bill also eliminates the statutory provisions relating to distilled spirits bottled in bond, the 20-year statutory forceout rule for spirits in storage, and the lien provision applicable to the bonded premises of a distilled spirits plant producing distilled spirits. (Code sections 5233, 5006(a)(2) and 5004(b)(2).)

It is recognized that repeal of the existing bottling in bond provisions would eliminate the distinct status of "bottled in bond" products for tax purposes since all spirits will now literally be bottled in bond. However, "bottled-in-bond" whiskey has, for example, achieved recognition as a specific type of whiskey. It is intended that the Treasury Department continue "bottled in bond" as a distinctive product designation under the labeling regulations of the Federal Alcohol Administration Act, and that it will establish specific standards of identity for this product so that "bottled in bond" as a labeling term will continue to have the same meaning as before.

The repeal, under the bill, of Code section 5205(a)(1) will also eliminate the requirement for a distinctive strip stamp for "bottled-in-

[15] Under existing law, wines and nonbeverage alcoholic flavoring materials may be used in rectified distilled spirits products without incurring the distilled spirits tax since they are incorporated after tax determination. Under the all-in-bond system these ingredients will be added before tax determination. Consequently, the bill clarifies that any alcohol added to the product by these ingredients will be subject to the distilled spirits tax (Code section 5001(a)(2)).

bond" spirits. The existing strip stamp for these spirits for domestic consumption is green, while a red stamp is used on other domestic products. Although for tax purposes it will no longer be necessary to have a distinctive strip stamp for these goods, the green stamp has gained considerable consumer recognition as a distinctive mark of the "bottled-in-bond" spirits. In view of this fact, and consistent with the retention of "bottled in bond" as a labeling designation, it is also intended that the Treasury Department continue the use of a green strip stamp as a distinctive feature for these products.

Establishment and operations of distilled spirits plants.—In order to implement the all-in-bond system, section 805 of the bill also requires that the business and operations of a distiller, warehouseman,[16] or processor [17] of distilled spirits may be conducted only on the bonded premises of a distilled spirits plant by a person qualified to carry on these operations. The purpose of this provision is to clarify that persons may not engage in these operations except on a qualified distilled spirits plant or as otherwise provided by law. (This latter phrase recognizes that such activities, such as those of customs bonded warehouses, manufacturers of non-beverage products and users of specially denatured alcohol, may continue to be carried on outside a distilled spirits plant.) The provision will also preclude the establishment of a distilled spirits plant for the processing and storage in bulk of taxpaid distilled spirits, because permitting these activities to take place outside the regulatory controls would pose a serious threat to the revenue.

The establishment of a distilled spirits plant will be restricted to persons who intend to conduct at such plant operations as either a distiller, or a warehouseman, or both. Any person so qualified may also, upon application and after approval, rectify, bottle or otherwise process distilled spirits. No operation in addition to those set forth in the application may be conducted at such plant unless further registration has been submitted and approved by the Secretary of the Treasury. In addition, the Secretary of the Treasury is vested with authority to prescribe, for each type of operation, minimum capacity and level of activity requirements for distilled spirits plants. This provision is designed to enable the Secretary to prevent the establishment of token distilled spirits plants which would jeopardize revenue collections and cause excessive administrative and supervisory costs.

Section 805 of the bill will also continue the requirement under existing law that each person required to file an application for registration and whose distilled spirits operations (or any part thereof) are not required to be covered by a basic permit under the Federal Alcohol Administration Act, are required to obtain a permit from the Secretary of the Treasury before engaging in such operations (or part thereof). However, it is noted that the term "processor" is a new term under this legislation and does not appear in the Federal Alcohol Administration

[16] The term warehouseman is defined to mean persons warehousing bulk distilled spirits.
[17] The term processor is defined under the bill to include a rectifier, bottler, denaturer, or a manufacturer of a product which is made with specially denatured alcohol. This term will not include bartenders or apothecaries.

Act. This term includes a person who is a rectifier. A rectifier who is not also engaged in either denaturing distilled spirits or the manufacturing of articles will not be required to obtain a second permit under this section.[18]

The new all-in-bond system will also substantially simplify the qualification and use of distilled spirits plant premises, by eliminating the requirement that separate facilities for the various distilling operations be established and maintained within a plant. Since the tax under the all-in-bond system will be determined at the conclusion of the distilled spirits operations, there is no longer any need for these physical delineation and separation requirements. Under the all-in-bond system, these separate activities will be accounted for only by recordkeeping accounts such as for production, storage, processing and finished goods. Tanks, vats, rooms or buildings may be used for multiple purposes, with the type and identification of the spirits being maintained by appropriate records. However, operations on the bonded premises of a distilled spirits plant would be restricted to those with respect to distilled spirits, denatured distilled spirits or articles.[19] Wines, while no longer permitted to be either rectified or bottled on a distilled spirits plant premises, may be received on such premises only for use in the manufacture of a distilled spirits product. Code section 5362(b) is amended to authorize the transfer of wine in bond between a bonded wine cellar and a distilled spirits plant or between distilled spirits plants. However, such wine must be used solely in the maufacture of a distilled spirits product and may not be removed from a distilled spirits plant for consumption or sale as wine. In addition, the liability for tax on such wine will continue until the wine is used in a distilled spirits product or the tax is relieved under any other provision of law (destruction in bond). All other operations involving the rectification or bottling of wines formerly done on the premises of a distilled spirits plant will be required to be conducted on the premises of a bonded wine cellar or taxpaid wine bottling house.

Code sections 5362, 5381 and 5043(a)(1)(A) have been amended and code section 5364 (has been repealed) to permit these activities on bonded wine cellar premises and the Secretary is given authority to insure that rectified wine products are not mingled with standard wines. Under existing law, no proprietor of a bonded wine cellar or taxpaid wine bottling house engaged in producing, receiving, storing or using any standard wine, may produce, receive, store or use any wine other than standard wine, except to the extent it is statutorily allowed on such premises. With the establishment of the all-in-bond system for distilled spirits plants, and the termination of the use of the bottling premises of a distilled spirits plant for the bottling of rectified wines, it is necessary that either a bonded wine cellar or a taxpaid wine bottling house be permitted to bottle such wine products on standard wine premises. While existing law prohibits the use of standard wine premises for such products in an effort to preclude the substitution of standard wine, such safeguards may continue under regulations prescribed by the Secretary without requiring a proprietor of the bonded wine cellar to separately qualify his premises.

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[18] A technical amendment is also made to Code section 5171(d) to delete the incorporation by reference of Code section 5274, since that section already applies to such permit actions.

[19] This bill will permit the manufacture of articles on bonded premises and provides that these articles can be withdrawn free of tax (Code section 5214(a)(11)).

In addition, the bill does not authorize the transfer of bottled distilled spirits in bond. Under present law, bulk distilled spirits and distilled spirits which have been bottled in bond may be transferred in bond. This bill authorizes the transfer only of bulk spirits, and does not authorize the transfer of bottled distilled spirits in bond. Consistent with this restriction, Code section 5215 is amended to authorize the return of distilled spirits to the bonded premises of the distilled spirits plant for certain enumerated purposes except mere storage.

Simplification of bonding requirements.—Another significant change made with the adoption of the all-in-bond system under the bill involves the treatment of surety bonds to secure unpaid liabilities for the distilled spirits tax. While the present law requirement of surety bonds is continued, the bond system is simplified to reflect the expansion of bonded premises under the all-in-bond system.

Under Section 805(c) of the bill, the bonding requirements (Code section 5173) have been completely revised, and the provisions relating to liens on distillery property and the furnishing of indemnity bonds as methods of securing tax payment are repealed. The bonds required under 5173 will now be the primary source ensuring payment of taxes. As amended, these rules will continue to require a bond from the proprietor in order to engage in distilled spirits operations and a withdrawal bond for removal of spirits from bonded premises before the tax has been paid. Similarly, a proprietor is allowed to provide one bond to cover all operations and a separate withdrawal bond for removal of spirits from bonded premises before the tax has been paid. In addition, the one plant operations bond will, where applicable, cover the operations at a bonded wine cellar which is adjacent to the distilled spirits plant and operated by the same person, and also operations at two or more distilled spirits plants (and adjacent bonded wine cellars), where these plants are located in the same geographical area (as designated in regulations prescribed by the Secretary,[21] and are operated by the same person. For purposes of the provisions relating to operation of related facilities by the same person, a corporation and its controlled subsidiaries are considered to be the same person.

Withdrawal bonds will, as provided in present law, cover withdrawals from one or more bonded premises where the operations on these multiple premises could be covered under the same operations bond. More importantly, there is provision for a new category of bond, called a unit bond, which will cover both operations and withdrawals in connection with one or more premises which could be covered by the same operations bond.

Under the bill, no maximum or minimum amounts for these surety bonds will be prescribed by statute. The Secretary of the Treasury is authorized to set minimum and maximum amounts for each type of bond under these provisions after there has been an opportunity to study the effect of the all-in-bond system on the necessity to secure

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[20] The term bulk distilled spirits means distilled spirits in a container having a capacity in excess of one wine gallon.

[21] Under the existing provisions of section 5173, a single blanket bond is also allowed for certain distilled spirits operations at different plants in the same geographical area, which is presently defined to be one of the seven regions designated by the Bureau of Alcohol, Tobacco and Firearms for purposes of its administrative operations.

payment of the tax by the proprietors of distilled spirits plants. In addition, where a single bond covers more than one operation, activity, or facility, the total amount of bond furnished by the proprietor under these revised rules may be used to satisfy any liability arising under the terms of the bond. Also, where a proprietor chooses to furnish separate operations and withdrawal bonds, the coverage under these bonds is separate and exclusive, as is provided under existing law.

Controls and supervision.—Another important revision is set forth in section 806 of the bill. These provisions will eliminate the joint custody concept whereby bonded warehouses are required to be kept under government locks and certain activities on the bonded premises are required to be conducted only under government supervision. This section will make on-site supervision and the use of government locks and seals optional at the discretion of the Secretary of the Treasury. This discretionary authority provides the Secretary with flexibility to continue to assign Treasury officers and require government locks at plants where necessary, but to eliminate this supervision where it is unnecessary.

In addition, the bill eliminates the requirement for a closed distilling system and vests in the Secretary the authority to prescribe regulations to require such controls over the distilling system as he deems necessary to adequately protect the revenue. This authority will extend to the entire distilling system regardless of whether the spirits are in a potable or readily recoverable state.

Extension of time for payment of tax on distilled spirits bottled in the United States

The Committee understands there is presently a significant period (generally, 15–60 days) between the time the distilled spirits tax is paid on spirits bottled in the United States (included bottled spirits produced in the United States and those imported in bulk) and the time this tax is recouped by the bottler from the wholesaler or other purchaser through payment for the goods which are sold. By comparison, it has been indicated that the delay in passing through the tax on imported bottled spirits by the importer to his purchaser is significantly less (on the average 0–15 days), and in some situations the importer may be able to sell and receive payment for these imported spirits (thereby, in effect, being reimbursed for the tax) before the tax payment has actually been sent to the Treasury Department.[22]

The disparity in timing creates significantly greater working capital requirements for domestic distillers than for importers because the tax comprises a large percentage of the selling price of the distilled spirits sold by the distiller or importer. In order to deal with this disparity in timing and working capital requirements, the bill extends the period for payment of the tax on distilled spirits bottled in the United States.

Under section 804(b) of the bill an additional semi-monthly period is provided for the payment of the distilled spirits tax on spirits (both

[22] This difference arises from a number of factors, including credit practices in the distilling industry, the application of certain state liquor control laws, and the ability of imported bottled spirits to be transferred in bond (i.e., before determination and payment of tax) between customs bonded warehouses and thereby achieve placement nearer to their ultimate markets than is possible for spirits bottled in the United States.

domestic production and bulk imports) bottled in the United States.[23] The additional period will be phased-in over three years at 5 additional days for 1980, 10 additional days for 1981, and an entire semi-monthly period (of, on the average, 15 days) for 1982 and subsequent years, beginning with the first return period in each of these calendar years. For example, if the distilled spirits tax becomes payable during the January 1–15 return period, which is the first semi-monthly return period in 1980, the taxpayer would have until February 5 of that year (which is the January 31 end of the next return period plus 5 days) to report and pay the tax. Similarly, after this provision is fully phased-in for 1982 and later years, the taxpayer will have until February 15 to report and pay the tax for the January 1–15 period.[24]

The Administration has indicated that it included this semi-monthly additional deferral period in the implementing legislation to provide a measure of relief for domestic distillers and bottlers who may be adversely affected by the concession made in favor of foreign distillers and bottlers through the repeal of the wine-gallon method. The Administration indicated very strongly that this proposal was a quid pro quo as a result of the unique circumstances in this area and that it does not favor the use of the deferral in this case as a precedent for any other area. The Committee supports the Administration position in this regard and agreed that this provision will not be treated as a precedent for purposes of deferring the payment periods of other excise taxes.

Effective date

The amendments under these provisions will take effect on January 1, 1980.[25] Transitional rules are also provided to facilitate an orderly change-over to the all-in-bond system on January 1, 1980, so that taxable distilled spirits will neither escape tax nor be subjected to double taxation.

Transitional rules.—The change, under the all-in-bond system, of nonbonded premises to bonded premises means that the status of of bottled spirits in controlled stock on January 1, 1980 must be converted from tax-determined to non-tax-determined spirits. This conversion is necessary to avoid the double taxation of these products when they are later removed from bond under the new system.

Under the transitional rules, the tax on all bottled distilled spirits in controlled stock will become immediately due. At this time, the proprietor can elect to extinguish this liability either by paying the tax or by converting the products to bonded stock. Converting the spirits to bonded stock will relieve the proprietor of the previously determined tax liability. The election to pay the tax is intended to permit proprietors to elect to pay the tax under the old system if it is more advantageous to them. Similar provisions are also made for the conversion of bulk wine and wine in controlled stock.

The bill also permits distilled spirits to be returned to bond for certain purposes and the tax on such products to be credited or

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[23] The extension in time for payment will also apply to payments of the distilled spirits tax imposed on spirits produced in Puerto Rico and U.S. possessions, including the Virgin Islands (Code sections 7651(2)(B) and 7652(a)(2)).

[24] The present law rules under Code section 7503 will also continue to apply to this extended payment period so that where the due date for return and payment falls on a Saturday, Sunday or legal holiday, it is extended to the first succeeding day which is not a Saturday, Sunday or legal holiday.

[25] However, none of the changes made by these provisions are intended to affect any right, duty, proceeding or liability arising under laws in effect before January 1, 1980.

refunded. Under the transitional rules, products containing alcoholic ingredients, other than distilled spirits which were tax-paid under the old system, will be permitted to be returned only to the plant from which they were withdrawn so that the amount of tax paid on such products can be determined from records at that plant.

Finally, the provisions under the bill which require existing distilled spirits plants to file new applications for registration (Code section 5171) and new bonds (Code section 5173) to reflect the change to the all-in-bond system, will not be interpreted so that plants which were qualified as of May 1, 1979, will be denied new qualification by reason of the new conditions placed on qualification under the bill. However, all proprietors will be required to have a new bond to cover all of their distilled spirits plant operations as of the effective date of this bill.

Revenue effect

Repeal of the wine-gallon method of taxing distilled spirits is estimated to reduce budget receipts by $66 million in fiscal year 1980, and by $100 million annually during each of the next four fiscal years.

Adoption of an all-in-bond system and repeal of rectification taxes are estimated to reduce budget receipts by $3 million in fiscal year 1980 and by $2 million annually during each of the next four fiscal years.

Extension of time for payment of taxes on distilled spirits bottled in the United States is estimated to reduce budget receipts by $40 million in fiscal year 1981, by $100 million in fiscal year 1982, and by $3 million in fiscal years 1983 and 1984.

The overall revenue effect of the above-mentioned distilled spirits provisions will be to reduce revenues by $69 million in fiscal year 1980, by $142 million in fiscal year 1981, by $202 million in fiscal year 1982, and by $105 million in fiscal years 1983 and 1984.

Subtitle B—Tariff Treatment

Section 851 to 856 of the bill repeals the wine-gallon method for assessing customs duties on imports of distilled spirits. As with excise taxes, the wine-gallon method of duty assessment has the effect of increasing the duty on most liquor imported in bottles because the duty is assessed as though the liquor were 100° proof, even though its actual proofage is less. For example, the duty on a bottle of Scotch imported at 86° proof is 14 percent higher on a wine-gallon basis than if it had been assessed on a proof-gallon basis.

Section 851 repeals the provision that each wine gallon is to be counted as at least one proof gallon by amending headnote 2 to part 12 of schedule 1 of the Tariff Schedules of the United States (TSUS) to state that the standard for determining the proof for distilled spirits when imported is the same as that defined in the laws relating to internal revenue. Section 852 replaces the rates of duty in rate columns numbered 1 and 2 of the TSUS with rates equivalent to the protection afforded by the wine-gallon method of assessment of *both* the excise taxes and the duties. These new rates of duty have the effect of denying imports any of the benefits otherwise available from the elimination of wine-gallon. Thus, for example, the rate of duty on whiskey in containers under 1 gallon under TSUS item 168.69 will increase from 51 cents per wine gallon to $2.30 per proof gallon.

Of this increase of $1.79, approximately $1.70 is attributable to the excise tax and $0.08 to the duty.

Rates of duty reflecting the wine-gallon equivalent level of protection will apply to articles entered, or withdrawn from warehouse, for consumption after December 31, 1979, as provided under section 853, unless the President exercises the authority provided in section 855. Section 855(a) authorizes the President to proclaim the column 1 rates of duty in effect on January 1, 1979, i.e., prior to the elimination of wine-gallon, but determined on a proof-gallon rather than a wine-gallon basis if he determines that adequate reciprocal concessions have been received under a trade agreement entered into under the Trade Act of 1974. For example, the rate of duty of 51 cents per proof gallon may be proclaimed on whiskey under TSUS item 168.69 if this condition is met. Furthermore, if any rates are so proclaimed, these new rates will be deemed to be the rates of duty existing on January 1, 1975. These rates would, in turn, become the base rates to which reductions negotiated under the authority under section 101 of the Trade Act would be applied. These duty reductions would not take effect unless the President makes the determination that reciprocal concessions have been received.

The Committee understands that at the present time the items for which reciprocal concessions have not yet been received in the MTN include arrack, bitters, brandy (not valued over $9 per gallon), tequila, vodka (valued not over $7.75 per gallon) and imitations of brandy. These items will not be subject to the authority under section 855(a) unless trade agreements are entered into under the Trade Act with the countries supplying those products.

Section 855(b) provides that any rate of duty proclaimed under subsection (a) shall be deemed to be a trade agreement obligation entered into under the Trade Act of benefit to foreign countries, for purposes of the authority of the President to withdraw, suspend, or modify such obligations under section 125 of the Trade Act. If the President proclaims a lower rate of duty on an item as authorized under subsection (a), subsection (b) authorizes the President to terminate that rate of duty under section 125(c) of the Trade Act and to revert to rates up to the column 1 wine gallon equivalent rates of duty provided under section 852 of the bill, as an alternative to reverting to the wine gallon method of duty assessment.

Section 854 requires the President to review foreign tariff and nontariff barriers affecting U.S. exports of alcoholic beverages, and to report the results of his review to the Congress no later than January 1, 1982. If, as a result of the review, the President determines that a foreign country has not implemented concessions to the United States affecting alcoholic beverages negotiated in trade agreements entered into under Title I of the Trade Act before January 3, 1980, then the President must withdraw, suspend, or modify the application of substantially equivalent trade agreement obligations of benefit to that country under the authority of section 125 of the Trade Act. If the President determines, as a result of his review, that foreign tariff or nontariff barriers are unduly burdening or restricting U.S. exports of alcoholic beverages, then he must enter into negotiations under the Trade Act to eliminate or reduce such barriers. For purposes of this

section the term "alcoholic beverages" is intended to include wine and beer as well as distilled spirits.

Section 856 amends section 311 of the Tariff Act of 1930 to permit transfers of certain liquor products between Customs bonded warehouses, regardless of their location, notwithstanding repeal of section 5522(a) of the Internal Revenue Code. This amendment is necessary because section 5522(a) explicitly permitted such transfers but section 311 arguably permits such transfers only to "exterior ports". Section 856 also makes a conforming amendment to repeal the reference to rectification taxes in section 311 of the Tariff Act of 1930 as of January 1, 1980.

TITLE IX—ENFORCEMENT OF UNITED STATES RIGHTS

Introduction

In the Texts Concerning a Framework for the Conduct of World Trade (Framework Agreement), agreed to in the Multilateral Trade Negotiations (MTN) and approved in section 2(a) of this bill, a number of provisions are contained affecting the procedures by which signatories to that agreement may seek resolution of disputes involving rights and obligations under the General Agreements on Tariffs and Trade (GATT). Additionally, many of the other agreements involving particular aspects of trade (*e.g.*, subsidies/countervailing duties, customs valuation) negotiated in the MTN and approved in section 2(a) of this bill contain specific procedures for resolution of disputes involving the rights and obligations under the agreement of signatories to the agreement. The results of these dispute settlement processes will be an evolving set of decisions providing significant guidance in the conduct of international trade among signatories to the agreements, and perhaps providing guidance for non-signatories as well. Absent effective use of the dispute settlement processes by the United States, adherence to some of the agreements by the United States could lead to minimal, uncertain, or perhaps harmful results.

Title IX of the bill would amend existing law to provide a means for the effective use of the dispute settlement processes agreed to in the MTN, and to reflect U.S. determination to make vigorous use of such processes as well as to eenforce its rights under all trade agreements. Additionally, it would provide a useful and effective means for responding to unresolved disputes under trade agreements and to unjustifiable, unreasonable, or discriminatory activities not covered by the dispute settlement provisions of the international trade agreements or the GATT but which, in fact, burden or restrict U.S. commerce. Section 301 of the Trade Act of 1974 would be amended to provide new, time-limited procedures for a private party to seek to have the President use his existing authority under section 301 to respond to unjustifiable, unreasonable, or discriminatory acts, policies, or practices of foreign countries which burden or restrict U.S. commerce. In addition, this authority would be expanded so that the President would have clear authority to pursue U.S. rights under any trade agreement and to respond to any act, policy, or practice which

is inconsistent with, or otherwise denies benefits to the United States under, any trade agreement.

Multilateral Trade Negotiations

A major U.S. objective in the MTN was to devise rules and procedures to insure timely and fair enforcement of U.S. rights under the GATT and under the agreements negotiated in the MTN. This objective arose from the many concerns which have been expressed with respect to the efficacy of the procedures of the GATT relating to the settlement of disputes regarding the application and interpretation of GATT Articles. Most of the disputes of this type are covered by the central dispute resolution mechanism provided in articles XXII and XXIII of the GATT. Concerns which have been expressed include the inordinate delays associated with the process and a lack of faith in the process because there is a perception that political and power relationships influence the results more than the merits of the dispute.

In the MTN, negotiations on rules and procedures regarding dispute settlement took two basic forms. In the negotiating group established to examine the GATT and possible changes thereto, agreement was achieved among signatories to the Framework Agreement for some modest changes to the way the central dispute resolution mechanism would operate. Additionally, a number of agreements were reached interpreting GATT articles or respecting particular aspects of trade, and these agreements contain specific provisions on dispute settlement.

For disputes which will be considered under the central dispute settlement mechanism, the Framework Agreement provides for the establishment, upon approval of the GATT Council, of panels to review disputes, and details the size and composition of panels, the powers of panels, the general timing requirements for panel review, and the general procedure for resolution of disputes in the context of the consultation and dispute settlement provisions of GATT Articles XXII and XXIII. The panels are to be composed of 3 to 5 impartial members from countries which are not involved in the dispute. Each panel generally has the authority to review the case at hand using its own working procedures and consulting regularly with parties to the dispute and any technical experts which may provide assistance. A general guideline of 3 months for panel determinations is provided to insure more rapid resolution of the dispute. Panel recomendations of fact and law are to be submitted to the Council, which will review the panel decision and either provide guidance to the parties to the dispute or make a ruling on the dispute. The Council may also authorize retaliation.

For disputes which will be considered under the specific dispute settlement procedures contained in the MTN agreements other than the Framework Agreement, certain common principles exist in these procedures among the agreements:

(1) Timing guidelines for the dispute settlement process to prevent parties to a dispute from delaying decisions by a panel or a committee of signatories.

(2) Consultation provisions which outline principles for bilateral and multilateral consultation prior to establishment of an impartial dispute panel.

(3) Right to a panel is provided in each of the agreements. Panels are to be composed of experts who act in their individual capacities.

(4) Panels are to review the dispute and make findings of fact and law.

(5) Panel findings are sent to the committee of signatories for final decision, which may include authorization to retaliate if a party refuses to change the practice found to be in violation of the agreement or the agreement otherwise permits it.

Dispute settlement mechanisms and time limits vary under each agreement. The agreement relating to subsidies and countervailing measures contains the most stringent time limits, providing for completion of the dispute process within about 120 days after the consultation and conciliation period. Other agreements, however, provide for completion of the process within about 3 to 6 months after the consultation and conciliation period. Each agreement may also vary slightly with respect to the composition and powers of the panel, the process for panel review, use of additional technical experts to advise panels on details outside their areas of expertise, and the relationship of the panel to the respective committees of signatories. With respect to voting by signatories to each of the agreements on matters under the dispute settlement provisions of each agreement, the Chief of the U.S. Delegation to the MTN has assured the committee that the European Communities will have one vote on such matters, and that the member states of the European Communities will not be able to vote on such matters.

The changes made in the MTN with respect to dispute settlement procedures offer possibilities of significantly improving the process and the results of international dispute settlement with respect to international trade issues. However, the results merely offer the possibility of improvement. The U.S. Government must take responsible and forceful action in the use of these procedures, and other countries must adhere to their spirit as well as their letter, if in fact they are to be of benefit to the United States and international trade. Further, much remains to be done to make the dispute settlement provisions of the GATT and the MTN agreements reliable instruments for the resolution of international trade disputes. This area demands much more attention. The committee intends to keep under review the continued efforts in improving dispute settlement procedures internationally.

Enforcement of United States Rights Under Trade Agreements and Response to Certain Foreign Practices (Section 901 of the Bill)

Presidential Authority (New Section 301 of the Trade Act of 1974)

Present law.—Under section 301 of the Trade Act of 1974, the President is given broad authority to retaliate against unjustifiable, unreasonable, or discriminatory acts, policies, or practices which affect U.S. commerce. In section 301, "unjustifiable" refers to restrictions which are inconsistent with international trade agreements. "Unreasonable" refers to restrictions which are not necessarily inconsistent with trade agreements, but which nullify or impair benefits ac-

cruing to the United States under trade agreements or which otherwise restrict or burden U.S. commerce. When the President determines that a foreign country or instrumentality:

(1) maintains unjustifiable or unreasonable tariff or other import restrictions which impair the value of trade commitments made to the United States or which burden, restrict, or discriminate against U.S. commerce;

(2) engages in discriminatory or other acts or policies which are unjustifiable or unreasonable and which burden or restrict U.S. commerce;

(3) provides subsidies (or other incentives having the effect of subsidies) on its exports of one or more products to the United States or to other foreign markets which have the effect of substantially reducing sales of the competitive U.S. product or products in the United States or in those other foreign markets; or

(4) imposes unjustifiable or unreasonable restrictions on access to supplies of food, raw materials, or manufactured or semimanufactured products which burden or restrict U.S. commerce;

he must take all appropriate and feasible steps to obtain the elimination of such restrictions or subsidies and he may—

(A) suspend, withdraw or prevent the application of, or may refrain from proclaiming benefits of, trade agreement concessions; and

(B) impose duties or other import restrictions on the products of such foreign country or instrumentality and fees or restrictions on the services of such foreign country or instrumentality.

Any action by the President may be directed against only the country or instrumentality concerned, or may be taken on a nondiscriminatory (MFN) basis. If an action is taken on an MFN basis, then under section 302 of the Trade Act, if both Houses of Congress adopt a resolution disapproving such action, the action would apply only to those countries or instrumentalities concerned.

The bill.—Under new sections 301 (a) and (b) of the Trade Act, as would be amended by section 901 of the bill, if the President determines that action is appropriate:

(1) To enforce U.S. rights under any trade agreement; or

(2) to respond to any act, policy, or practice of a foreign country or instrumentality that (a) is inconsistent with the provisions of, or otherwise denies U.S. benefits under, any trade agreement, or (b) is unjustifiable, unreasonable, or discriminatory and burdens or restricts U.S. commerce,

then the President:

(A) Would have to take all appropriate and feasible action within his power to enforce such rights or to obtain the elimination of such act, policy, or practice; and

(B) could (1) suspend, withdraw, or prevent the application of, or refrain from proclaiming, benefits of trade agreement concessions to carry out a trade agreement with the foreign country or instrumentality involved; and (2) impose duties or other import restrictions on the products of, and fees or restrictions on the services of, the foreign country or instrumentality for such time as he deems appropriate.

The President would apply the action on a nondiscriminatory (MFN) basis or solely against the products or services of the foreign country or instrumentality concerned. Section 302 of existing law would be repealed.

New section 301(c)(1), as amended by the bill, would provide for Presidential action in the absence of a petition when he determines it to be warranted. Such action would be preceded by publication by the President of a notice of determination to take action and, unless the President determines expeditious action is required, by an opportunity for the presentation of views concerning the taking of such action. When views were not presented prior to taking action, it is expected that the President would provide an opportunity for the presentation of views after the taking of the action.

New section 301(c)(2) would require the President to determine what action, if any, he will take under section 301 within 21 days after the date on which he receives a recommendation from the Special Representative for Trade Negotiations (STR) concerning appropriate action to take as a result of an investigation instituted by a petition filed by an interested person. Prompt action would follow any determination to take action, and publication would be required in the Federal Register of all determinations to take or not take action, including the reasons for the determination and any action taken or to be taken.

New section 301(d) would define "commerce" to include, but not be limited to, services associated with international trade, whether or not such services are related to specific products. Further, this section would provide that the provision of subsidies on the construction of vessels used in the commercial transportation by water of goods between the United States and foreign countries is within the purview of section 301.

Reason for the provision.—The amendments to section 301 detailed above specifically will include within section 301 authority to enforce U.S. rights under trade agreements and to respond to actions by foreign countries inconsistent with, or otherwise denying United States benefits under, the agreements approved by the Congress under section 2(a) or any other trade agreement. It will not limit any other authority the President may have in this respect. The benefits to the United States from the various nontariff agreements negotiated in the MTN depend very heavily on the vigorous insistence by the United States that its rights be secured and that other countries carry out their obligations under the agreements. Absent such insistence, including the use of dispute settlement procedures, agreements such as have been negotiated on subsidies and countervailing duties, antidumping, customs valuation, aircraft, government procurement, and product standards will become largely one-way streets whereby the United States assumes obligations without reciprocity, and whereby the benefits for international trade are substantially reduced, especially as the United States responds to the non-implementation of others.

All acts, policies, or practices covered by existing section 301 are also covered by section 301 as revised. In particular, the specific provisions under existing section 301 relating to foreign export subsidies are covered under new section 301 because of the application of revised sec-

tion 301 to practices under the agrement relating to subsidies and countervailing measures approved by the Congress under section 2(a) of the bill, and because of the broad, inclusive nature of the language of section 301 which also covers acts or practices, and applies to countries, not subject to a trade agreement.

New section 301(d) clarifies, without changing the substance of existing section 301, that the coverage of services within the term "commerce" in section 301 includes all services associated with international trade, not just the provision of those services with respect to international trade in merchandise. What is comprehended in the term commerce includes international trade in services, as, for example, the provision of broadcasting, banking, and insurance services across national boundaries. The service component of U.S. trade in merchandise and services has become far more significant than serving as an aid to merchandise transactions alone. In 1974, total U.S. service trade accounted for over 30 percent of U.S. trade in merchandise and services, and the services account produced a $10 billion surplus. By 1978, total U.S. services trade was $129 billion, an increase of 90 percent over the 1974 level. In 1978, it again accounted for about 30 percent of total U.S. trade in merchandise and services, and the services account produced a $23 billion surplus in that year, to be contrasted with a U.S. deficit in the merchandise account of about $30 billion.

New section 301(d) also clarifies that an act, policy, or practice of a foreign country or instrumentality that burdens or restricts U.S. commerce may include the provision, directly, or indirectly, of subsidies by that country or instrumentality for the construction of merchant sea-going vessels. The provision of such subsidies has become increasingly prevalent, and appears to have had a significant impact on the ability of countries to successfully compete for sales of such ships. It is hoped that some accommodation of all the interests in this important area of trade can be achieved before matters deteriorate into the need to take offsetting measures to restore some semblance of market competition in this area.

Petitions for Presidential Action (New Section 302 of the Trade Act of 1974)

Present law.—Under section 301 of the Trade Act of 1974, provisions are made for private persons to petition in order to seek recourse against foreign acts, policies, or practices covered by section 301 that adversely affect their interests. Interested parties may file complaints with the STR alleging the existence of a particular act, policy, or practice covered by section 301. Upon receipt of any such complaint, the STR is required to conduct a review of the alleged act, policy, or practice. Upon request by the complainant, such review would also include public hearings. The President may issue regulations concerning the conduct of such review and hearings. No time limits are established for a decision on whether to initiate a review.

The bill.—Any interested person would be able to file a petition under new section 302(a) with the STR requesting the President to take action under revised section 301 and setting forth allegations in support of the request. The STR would be required to review the allegations and determine within 45 days after receipt of the petition whether to initiate an investigation.

If the STR decides not to initiate an investigation, he would inform the petitioner of his reasons and publish notice of the determination and a summary of the reasons in the Federal Register. If the STR decides to initiate an investigation, he would publish the text of the petition in the Federal Register and provide an opportunity for the presentation of views on the issues raised by the petition, including a public hearing if a timely request therefor were made by the petitioner. The hearing would be held within 30 days after the date of the determination to initiate an investigation if a hearing were requested in the petition, unless the petitioner agreed to a later date. Otherwise, the hearings would be held at such other reasonable time following a timely request by the petitioner.

Reason for the provision.—The amendments to present law under new section 302 will provide a more definite procedure for the consideration of petitions and the initiation of investigations into matters covered by section 301. The President will have discretion as to whether to initiate an investigation, a discretion necessary to reject frivolous cases and to take account of other matters so as to proceed on a basis best designed to secure U.S. interests in the matters alleged in the petition. However, this discretion must be exercised in light of the need to vigorously insure fair and equitable conditions for U.S. commerce, and in cases involving the enforcement of U.S. rights under the agreements negotiated in the MTN or where a petition has been filed requesting a response to an action inconsistent with such agreements, this discretion normally should be exercised by proceeding to investigate and to pursue valid claims in appropriate international fora when the petition properly presents issues covered by section 301 as amended by this bill.

In investigations instituted under new section 302, it is expected that the scope of the investigation will comprehend all issues fairly raised by the allegations in the petition, and not be narrowly focused only on the accuracy of the allegations. What is instituted is an investigation, so that the STR is expected to actively seek information on the issues raised and not passively await the provision of information to it. In this respect, the STR should be able to request assistance of other agencies in investigating or pursuing a petition, and such assistance should be forthcoming.

International Consultations Upon Investigation (New Section 303 of the Trade Act of 1974)

Present law.—No provision in existing section 301 requires the President or the STR to consult with a foreign country and to pursue the international dispute settlement processes available when it is investigating a matter covered by section 301. In practice, when matters are under investigation under section 301, consultations proceed internationally with the concerned countries, and the dispute settlement procedures under articles XXII and XXIII have been pursued on occasion.

The bill.—New section 303 of the Trade Act of 1974, as added by section 901 of the bill, would require the STR, on the same day as its determination to initiate an investigation, to request on behalf of the United States consultations with the foreign country concerned re-

garding the issues raised in the petition. If the issues are covered by a trade agreement and are not resolved during the consultation period, if any, specified in that trade agreement, then the STR would be required to promptly request proceedings on the matter under the dispute settlement procedures of the agreement. The STR must seek information and advice from the petitioner and from other appropriate private sector representatives, including those advisory committees provided for under section 135 of the Trade Act, as amended by section 1103 of this bill, in preparing the presentation by the United States in the consultations and dispute settlement proceeding.

Reason for the provision.—The new section 303 builds upon existing practice in formalizing the international consultation process, and additionally requires resort to dispute settlement in matters covered by agreements. This provision will provide the needed direction for moving forward internationally under the dispute settlement process at the same time the domestic investigation is proceeding.

Before resort to the dispute settlement procedures under a trade agreement is required under section 303, an opportunity will be provided for satisfactory resolution of the matter internationally by consultations, including conciliation. In cases where the trade agreement specifies minimum periods for consultation and conciliation before resort to dispute settlement may be made (*e.g.*, the MTN agreement on subsidies and countervailing measures, where a period of 30 days each for consultations and conciliation is set out), then such period may elapse before the STR would be required to invoke the dispute settlement procedures. In cases where no such minimum period is provided, a reasonable amount of time may be devoted to consultations and efforts at conciliation before dispute settlement must be invoked. In either event, the STR may proceed to invoke dispute settlement proceedings at any earlier time he deems warranted.

The provisions requiring consultations with the private sector are designed to insure appropriate private sector involvement in the preparatory and on-going aspects of U.S. involvement in the consultative and dispute settlement procedures of a trade agreement. It requires close, detailed consultations and a free exchange of information so that the U.S. representatives keep the private sector involved in the international process and so that the private sector may provide the best information and counsel possible.

Recommendation for Relief (New Section 304 of the Trade Act of 1974)

Present law.—Under the present section 301 there is no requirement for a report and recommendation for action to the President by the STR as a result of its review under section 301 on the basis of a complaint, nor is there a time limit within which the President must make a decision on what action to take in response to a complaint under section 301. However, under present practice, the STR conducts a review and reports its results to the President, although no time limits have been established within which the report must be made.

Also under existing section 301, the President is required to provide an opportunity for the presentation of views, and for a public hearing where requested, concerning any proposed retaliatory action under section 301 before the action may be taken. The President may take

action prior to providing an opportunity for presentation of views and a public hearing when he determines that such prior proceeding would be contrary to the national interest because of the need for expeditious action. However, in any such case, the President is required to provide an opportunity for the presentation of views and, when requested, public hearings, after any action is taken under section 301.

The bill.—As previously described, under new section 301 as amended by the bill, the President would be required to decide on what appropriate action to take in a matter investigated pursuant to a petition under section 301 within 21 days of receipt of the recommendation by the STR with respect to the petition. New section 304 of the Trade Act of 1974, as added by section 901 of the bill, would provide specific time limits within which the STR must make such recommendations to the President, including specifically what action, if any, the President should take under revised section 301 on the issues raised in the petition. The recommendations will be based on the investigation under new section 302, and, if a trade agreement is involved, on the international consultations and, if applicable and timely concluded, the results of the dispute settlement proceedings under the agreement. From the date of initiation of an investigation, the STR would be required to make a recommendation to the President under new section 304(a)(1):

(A) Within 7 months if the petition contains only allegations with respect to an export subsidy covered by the MTN agreement relating to subsidies and countervailing measures;

(B) within 8 months if the petition alleges any matter covered by the agreement relating to subsidies and countervailing measures other than only an export subsidy (e.g., a petition alleging a domestic subsidy or alleging both an export subsidy and a domestic subsidy);

(C) within 30 days after the dispute settlement procedure is concluded if the petition alleges a matter which is covered by a trade agreement approved by the Congress under section 2(a) of the bill, other than the agreement relating to subsidies and countervailing measures; or

(D) within 12 months in any case not described in (A), (B), or (C).

Under new section 304(a)(1), if an investigation is initiated on or after the date of enactment of the bill (including pending investigations treated as initiated on the date of enactment under section 903 of the bill) but before the date an agreement, approved by the Congress under section 2(a), relating to an allegation in the petition which is the basis for the investigation has entered into force for the United States and applies to the foreign country concerned, then the STR recommendation in that investigation would be subject to the 12-month time limit under subparagraph (D). However, under the special rule in section 304(a)(2), if that agreement enters into force for the United States and applies to the foreign country concerned prior to the expiration of the 12-month period, then the appropriate time limit under subparagraph (A) (7 months), (B) (8 months), or (C) (30 days following end of dispute proceedings), would be applied, and with re-

spect to subparagraph (A) and (B), would be applied as if the investigation were initiated on the date of entry into force of the agreement and application to the foreign country concerned.

Under new section 304(a)(3), if a dispute is not resolved before the close of the minimum period provided for dispute settlement under an agreement approved under section 2(a) of this bill, other than the agreement on subsidies and countervailing measures, the STR would be required to submit a report to the Congress within 15 days after the end of that minimum period setting forth the reasons the dispute was not resolved, the status of the dispute proceedings at the close of the minimum period, and the prospects for resolution and any actions contemplated with respect to the dispute. The minimum period would be the total period of time for all stages of the dispute settlement procedures to be carried out within the time limits specified in the particular agreement (*e.g.*, 6 months in cases involving export subsidies under the agreement on subsidies and countervailing measures), excluding any extension authorized under the agreement at any stage.

New section 304(b) contains provisions similar to existing law. The STR would be required, unless he determines that expeditious action is required, to provide an opportunity for the presentation of views, including a public hearing if requested by any interested person, and to obtain advice from the appropriate private sector advisory representatives provided for under section 135 of the Trade Act, before recommending that the President take action with respect to the treatment of any product or service of a foreign country under section 301 on a petition filed under section 302. When he has determined that expeditious action is required, the STR would comply with these requirements after making the recommendations to the President, even if the recommended action has been taken. The STR could request the views of the U.S. International Trade Commission on the probable economic impact of the taking of action under revised section 301 either before or after action is taken.

Reason for the provision.—In order for action on matters covered by new section 301 to be effective, it must be timely. New section 304 will build some time limits into proceedings under U.S. law for enforcing U.S. rights under trade agreements and for responding to other matters covered by section 301. Further, section 304 largely will continue existing law regarding public comment and receipt of advice before action is taken.

The time limits under section 304 within which the STR must make its recommendation with respect to an investigation are keyed in appropriate cases to the time limits in the agreements approved by Congress under section 2(a) of the bill. Thus, the 7 month period applicable to cases where allegations in a petition relate only to an export subsidy is based upon the 30-day consultation period, 30-day conciliation period, 30-day period for panel formation, 60-day period for production of a panel report, 30-day period for Committee on Subsidies and Countervailing Measures consideration, and the reasonable period to respond to any recommendation of the Committee, which periods are contained in the agreement relating to subsidies and countervailing measures.

The special rule in section 304(a)(2) will provide a transition for investigations which relate to matters which are, subsequent to the initia-

tion of the investigation, covered by the terms of a trade agreement approved under section 2(a) of the bill. For example, a case pending on the date of enactment of this bill alleging an export subsidy which may be covered by the agreement relating to subsidies and countervailing measures will be treated as an investigation initiated on the date of enactment and become subject to a 12-month time limit from the date of enactment for purposes of the recommendation by the STR to the President. If, 2 months after the date of enactment, the agreement relating to subsidies and countervailing measures enters into force for the United States and applies as of that date between the United States and the foreign country concerned, the case will automatically become subject on that date to the seven-month time limit under section 304(a)(1), with the seven-month period to be measured from that date. Steps already undertaken in the international dispute settlement process would not have to be repeated, nor would steps under the domestic procedure. For example, if consultations with the country concerned have already taken place and a dispute settlement panel had already been established prior to the imposition of the seven-month time limit, then presumably the case will proceed from that stage and the recommendation to the President would be made in less than the seven months allowed. Similarly, under section 903 of this bill, any hearing already held would not need to be repeated.

Requests for Information (New Section 305 of the Trade Act of 1974)

Present law.—No specific statutory provision now exists that requires, upon request of a private party, the provision of information by the U.S. Government on particular trade practices of foreign governments or instrumentalities. Freedom-of-Information-Act procedures are available, of course, with respect to the agencies and departments subject to its requirements. Further, the STR and others often provide such information on an informal basis.

The bill.—Section 305 would require the STR to make available to any person upon written request all reasonably available information (other than confidential information) on: (1) The nature and extent of a specific trade policy or practice of a foreign government with respect to particular merchandise, to the extent such information is available to the STR or other Federal agency (*e.g.*, from the library of subsidy practices established under section 777 of the Tariff Act of 1930, as added by section 101 of the bill); (2) United States rights under any trade agreement and the remedies which may be available under that agreement and under United States laws (*e.g.*, antidumping or countervailing duty laws, or revised section 301) with respect to the policy or practice; and (3) past and present domestic and international proceedings or actions on the policy or practice. If an interested party requests information which is not available to the STR or other Federal agencies, the STR would be required to, within 30 days of the request for information, request the information from the foreign government or instrumentality concerned or inform the person in writing of his reasons for declining to request the information.

Reason for the provision.—These new provisions will allow private persons access to information to assist them in determining whether they have a legitimate complaint about a foreign trade practice and whether it might be worthwhile to file a petition under new section 302

or pursue other recourse. It will operate to make section 301 and other laws more effective in protecting U.S. commerce from unfair trade practices and burdensome foreign restrictions. The STR is expected to administer this provision with this in mind, and in particular should request information from foreign countries when information is not otherwise reasonably available to permit an adequate response to a request from an interested party, unless he determines that such a request to a foreign government would be detrimental in terms of securing the removal of a burdensome or unfair practice.

Administrative Provisions (New Section 306 of the Trade Act of 1974)

Present law.—The STR is authorized under existing section 301 of the Trade Act of 1974 to issue regulations concerning the filing of complaints and the conduct of reviews and hearings under that section. Further, the STR must submit a report to the House of Representatives and the Senate on a semiannual basis which summarizes the investigations and hearings conducted by it under section 301 during the preceding 6-month period.

The bill.—Section 306 of the Trade Act of 1974 as added by the bill would continue existing law and additionally would require that the STR keep each petitioner regularly informed of all determinations, recommendations, and developments regarding its case, including the reasons for any undue delays encountered in resolving the matter, and specifies that the semiannual report include a description of petitions filed and determinations made (including reasons therefor), developments in and the current status of each proceeding, and the actions taken, or reasons for no action, under section 301.

Reason for the provision.—The changes that will be made by the bill to existing law are designed to keep petitioners better informed of the proceedings in their cases, and are consistent with the requirement of the bill that the STR work closely with, and consult with and seek the advice of, petitioners during proceedings domestically and internationally involving their cases. The provisions also will result in more information being provided to Congress on the conduct and results of section 301 proceedings, so that Congress can properly assess the way in which U.S. interests are pursued under these provisions and the effectiveness of the provisions in protecting such interests.

Conforming Amendments (Section 902 of the Bill)

Present law.—None.

The bill.—Under section 902 of the bill, sections 152 and 154 of the Trade Act of 1974 would be amended to delete reference to the concurrent resolution of disapproval which was provided for in section 302 of the Trade Act, and which if passed, would have required retaliatory action taken by the President under existing section 301 to be taken only against the country maintaining the practice, policy, or act to which the President was responding. Further, the table of contents in the first section of the Trade Act would be amended to reflect the new provisions of chapter 1 of title III of that act as added by section 901 of the bill.

Reason for the provision.—Section 902 of the bill makes conforming amendments in sections 152 and 154 of the Trade Act, as well as in

the table of contents of the Trade Act, because of the repeal of the congressional override procedure under existing section 302 and the expanded and more detailed provisions under section 901 of the bill on matters now within the scope of section 301 of existing law.

Effective Date (Section 903 of the Bill)

Present law.—None.

The bill.—Section 903 of the bill would provide that amendments made by sections 901 and 902 take effect on the date of enactment of this bill. Further, any reviews under existing section 301 of the Trade Act and pending on the date of enactment of this bill would not have to be reinstituted, but would be treated as an investigation initiated on the date of enactment under section 301 as revised by section 901. Any information developed by or submitted to the STR before the date of enactment in a review under existing section 301 would be treated as part of the information developed during the investigation under new section 301.

Reason for change.—The bill will preserve the efforts already made in cases under existing section 301 pending on the date of enactment of this bill. Reviews under existing section 301 pending as of the date of enactment of this bill will not be subject to the provision permitting a 45-day period from the date petitions are filed for a determination under revised section 302 as to whether to initiate an investigation, as they are automatically continued as investigations under the new law. Further, the record established in any review prior to the date of enactment will be incorporated in the investigation with respect to that matter under the new law. Pending cases are expected to receive priority treatment under domestic procedures, and recommendations on such cases are expected to be made in a shorter timeframe than that permitted under new section 304 to the extent that domestic investigations and international proceedings have already taken place. The committee expects that the STR will work with petitioners who have reviews pending on the date of enactment of the bill to ensure that the record in the investigation under the new law is adequate. This may involve additional hearings if the record has become "stale" with the passage of time. The amendment made to section 301 of existing law by this bill should have no adverse effect on reviews pending under section 301 on the date of enactment of this bill.

TITLE X—JUDICIAL REVIEW

Introduction

Title X of the Trade Agreements Act of 1979 is composed of two sections. The first, section 1001, is entitled "Judicial Review" and mainly involves new judicial review provisions relating to antidumping and countervailing duty cases. Under this section, there will be increased opportunities for appeal of certain interlocutory and all final determinations by the administering authority and the United States International Trade Commission. The second, section 1002, includes (a) the effective date of the title and (b) the transitional rules for certain protests, petitions, and actions which may be initiated or pending before or on the effective date.

Both the availability and the scope of judicial review will be substantially altered by the enactment of the provisions contained in title X. The changes which title X effects are purposed upon the elimination of several discernible deficiencies which detracted from the effective enforcement of earlier laws and particularly those relating to antidumping and countervailing duties. The new provisions contemplate greater access to the Customs Court for an expanded number of parties, more opportunity for interlocutory judicial review during antidumping and countervailing duty proceedings, and expedited appeals from administrative determinations.

The implementing legislation will preserve an interested party's right to challenge final determinations issued by either the administering authority or the U.S. International Trade Commission in antidumping and countervailing duty cases while enlarging the opportunities for judicial review of interim decisions made during the course of an investigation. The Trade Agreements Act also provides for enhanced access to the Customs Court in matters involving determinations by the Customs Service with respect to the appraised value, classification, or rate of duty of imported goods. Customs Service determinations under the Government Procurement Code regarding the "country of origin" certification of imported products will likewise be subject to judicial review under title X.

The inclusion of provisions for interlocutory review of administering authority and U.S. International Trade Commission determinations in antidumping and countervailing duty procedures is intended to enable a party to obtain review of administrative determinations at the earliest possible opportunity so as to avoid delay. Any substantial delay could make an ultimate resolution of an issue in a party's favor irrelevant because of the irreversible damage suffered during the interim period. This objective is accomplished by incorporating a new section, 516A, which sets forth the judicial review procedures governing appeals from administrative determinations made during an antidumping or countervailing duty proceeding. Section 516, which was significantly amended by the Trade Act of 1974, is amended by title X to delete those portions relating to antidumping and countervailing duty matters with the result that the remaining provisions of section 516 will solely govern the procedures by which a domestic interested party may challenge the appraised value, classification, or rate of duty of imported merchandise. Although the parties who have standing under section 516 are expanded to include a recognized union or group of workers representative of an industry engaged in the production or sale of a like product in the United States and of trade associations, a majority of whose members are similarly engaged, the judicial review provisions applicable to the classification and value portions of the section have not been otherwise materially altered.

Judicial Review of Determinations Relating to Countervailing and Antidumping Duties (Section 1001 of the Bill)

Present law.—Pursuant to present law, judicial review of countervailing and antidumping duty determinations can be obtained in several different ways. Importers may challenge antidumping and countervailing duty determinations after a duty has been imposed upon

an entry of merchandise by filing a protest pursuant to section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) and, upon denial of the protest in whole or in part under section 515 of the Tariff Act of 1930 (19 U.S.C. 1515), they may institute suit in the Customs Court pursuant to section 1582(a) of title 28 of the United States Code.

American manufacturers, producers and wholesalers may challenge the failure to impose a countervailing duty by following the procedures contained in 19 U.S.C. 1516(a), (b), and (c). These procedures involve (1) an inquiry addressed to the Secretary as to whether these types of duties are being imposed; (2) if the reply of the Secretary is not acceptable, the filing of a petition with the Secretary stating the reasons in support of the petitioner's view that the Secretary's action is incorrect; (3) if the Secretary's determination as a result of the petition is unacceptable, the filing with the Secretary of a notice of a desire to contest the determination by the petitioner; (4) publication of the notice of a desire to contest in the Federal Register; (5) notification to the petitioner of the first entry after publication of the notice of the desire to contest which will enable the petitioner to the determination of the Secretary; and (6) institution of suit by the petitioner in the Customs Court pursuant to 28 U.S.C. 1582(b).

An American manufacturer, producer or wholesaler may also challenge a determination of the Secretary that imported mechandise is not being sold or is not likely to be sold at less than fair value under the Antidumping Act, and a determination that a bounty or grant is not being paid or bestowed under the countervailing duty statute, by following the procedure contained in 19 U.S.C. 1516(d). This procedure involves the filing of a notice of desire to contest with the Secretary within 30 days of the determination which the petitioner desires to challenge and the institution of suit in the Customs Court pursuant to 28 U.S.C. 1582(b) within 30 days of the publication of the notice of desire to contest.

The bill.—Section 1001(a) of the bill would provide for the review of determinations relating to countervailing and antidumping duties by adding a new section 516A to the Tariff Act of 1930. This new section would contain provisions which (1) define the class of persons who would be entitled to institute suit and to participate in the litigation; (2) specify the types of determinations which may be challenged in the Customs Court; (3) clarify the scope and standard of review; and (4) define the types of relief to be made available in the Customs Court.

Persons entitled to institute suit and to participate in the litigation.— Section 516A would provide that a suit may be instituted by any "interested party". The term "interested party" is defined by subparagraph (f)(3) of the new section 516A to include (1) a foreign manufacturer, producer, or exporter, or the United States importer of merchandise which was the subject of the investigation which led to the challenged determination, or a trade or business association, a majority of the members of which are importers of such merchandise; (2) the government of a country in which such merchandise is produced or manufactured; (3) a manufacturer, producer, or wholesaler in the United States of a like product; (4) a certified union or recognized union or group of workers which is representative of an

industry engaged in the manufacture, production, or sale at wholesale in the United States of a like product; and (5) a trade or business association, a majority of whose members manufacture, produce or wholesale a like product in the United States.

In addition, pursuant to subsection (d) of section 516A, any "interested party" who was a party to the administrative proceeding which is the subject of the decision challenged in the Customs Court would be granted the right to appear and to be heard as a party in interest before the court. The party filing the action would be required to notify all other interested parties of the institution of the suit so that the latter may exercise their right to appear and to be heard. It is intended that the term "party to the proceeding" mean any person who participated in the administrative proceeding.

Determinations subject to review.—Subsection (a)(1) of section 516A would enable interested parties to immediately challenge some antidumping and countervailing duty determinations within 30 days after the date of publication of the determinations in the Federal Register. The determinations which may be challenged would be confined by subsection (a)(1) of section 516A to (1) determinations not to institute a countervailing duty or antidumping investigation; (2) determinations to extend the time for the completion of a countervailing or antidumping duty investigation due to the extraordinarily complex nature of the case; (3) determinations not to review, due to alleged changed circumstances, agreements with foreign governments or exporters in particular cases designed to eliminate the injurious effects of dumped or of subsidized exports; (4) determinations that there is no reasonable indication that merchandise which is the subject of an antidumping or countervailing duty investigation is causing or threatening to cause material injury to an industry in the United States or that the establishment of an industry in the United States is materially retarded due to importation of such merchandise; (5) determinations that there is no reasonable basis to believe or suspect that a subsidy is being provided with respect to merchandise which is the subject of a countervailing duty investigation or that there is no reasonable basis to believe or suspect that merchandise which is the subject of an antidumping investigation is being or is likely to be sold at less than fair value.

Subsection (a)(2) of section 516A would render certain final determinations subject to judicial review in the Customs Court at the instance of any "interested party" as defined in subsection (f)(3). These final determinations would be confined in subsection (a)(2)(A) to: (1) final determinations regarding the imposition of a countervailing or antidumping duty; (2) periodic determinations of the amount of countervailing or antidumping duties to be imposed; (3) determinations to suspend antidumping or countervailing duty investigations as the result of an agreement eliminating the injurious effects caused by the subsidies or sales at less than fair value; (4) determinations by the International Trade Commission resulting from the review of an agreement to eliminate the injurious effect of subsidized imports or sales at less than fair value.

Scope and standard of review.—Judicial review of determinations subject to the provisions of subsection (a)(1) would proceed upon

the basis of information before the relevant decision-maker at the time the decision was rendered including any information that has been compiled as part of the formal record. The court is not to conduct a trial *de novo* in reviewing such determinations. Pursuant to subsection (b)(1)(A), suits challenging preliminary determinations would be judicially reviewed to decide whether they are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. This standard of review has been previously applied by the Customs Court in *Suwanee Steamship Co.* v. *United States*, 435 F. Supp. 389 (1977), which dealt with the refusal to remit duties paid on ship repairs in a foreign country.

Determinations subject to judicial review pursuant to subsection (a)(2) would be subject to review upon the basis of the record made before the agency which issued the decision. The court is not to conduct a trial *de novo* in reviewing such determinations. Pursuant to subsection (b)(2)(A), the record would consist of a copy of all information presented to or obtained by the administering authority or the International Trade Commission in the course of the administrative proceeding (including all governmental memoranda pertaining to the case and the record of *ex parte* meetings), as well as a copy of the determination sought to be reviewed, all transcripts or records of conferences or hearings, and all notices published in the Federal Register. Special provision would be made in subsection (b)(2)(B) for preserving the confidential or privileged status of any materials contained in this record, including, where the court determines it would be appropriate, the disclosure of the privileged or confidential material only under the terms of a protective order. However, the lack of a determination during the administrative proceedings concerning confidentiality or privilege with respect to documents, comments, or information will not preclude a party from seeking protection for such material from the court. Pursuant to subsection (b)(1)(B), the court would review the administrative record in order to determine whether the final determination is unsupported by substantial evidence on the record, or otherwise not in accordance with law.

Relief.—Section 516A would contain provisions relating to liquidation during and after the litigation instituted pursuant to the section as well as provisions relating to the relief which the court may order.

Pursuant to subsections (c)(1) and (e), in the usual case, liquidation would proceed in accordance with the decision under challenge while the litigation is proceeding. If the court issues a decision which is contrary to the challenged determination decision, then the administering authority is to publish notice of the adverse decision in the Federal Register within 10 days and all entries which occur on or after the date of publication are to be liquidated in accordance with the court's decision.

In extraordinary circumstances, the Customs Court, pursuant to subsection (c)(2), could order the suspension of liquidation while the litigation proceeds. In ruling upon a request by a party for relief of this nature, the court would consider, among other factors, whether (1) the party filing the action is likely to prevail on the merits; (2) the party filing the action would be irreparably harmed if liquidation of some or all of the entries is not enjoined; (3) the public interest would

best be served if liquidation is enjoined; and (4) the harm to the party filing the action would be greater if liquidation of some or all of the entries is not enjoined than the harm to other persons if liquidation of some or all of the entries is enjoined. Pursuant to subsection 1001(b)(4), the decision of a Customs Court to grant or deny preliminary injunctive relief would be subject to appeal to the Court of Customs and Patent Appeals as if it were a final order.

If the Customs Court grants preliminary injunctive relief and is not reversed upon an appeal, then liquidation of the entries occurring during the period covered by the injunction would proceed in accordance with the final decision of the court.

Finally, section 516A would provide in subsection (c)(3) that if the final disposition of an action instituted under the section is not in harmony with the challenged decision, the matter shall be remanded to the decision-maker for disposition consistent with the court's decision.

Reason for the provisions.—Prior to the Trade Act of 1974, section 516 of the Tariff Act of 1930 was designed to afford American manufacturers, producers and wholesalers the right to challenge the classification or valuation of imported merchandise which competed with merchandise they manufactured, produced, or sold at wholesale. For all practical purposes, the right of action provided in that section was the parallel to the right provided to importers by sections 514 and 515.

In the Trade Act of 1974, Congress expanded the rights of American manufacturers, producers, and wholesalers by amending section 516 so as to make it clear that those individuals could challenge certain decisions relating to antidumping and countervailing duties in the Customs Court.

Unfortunately, the procedures contained in section 516 as amended were not particularly well-suited for suits not involving traditional classification and valuation questions. In addition, the amendments to section 516 made by the Trade Act of 1974 left unclear such questions as the scope and standard of review.

The bill seeks to remedy these problems and others by restoring section 516, with some amendments, to its traditional role (section 1001(b) of this Act) and by creating a new section 516A which concerns only challenges to determinations relating to countervailing and antidumping duties. In addition, the new section 516A expands the class of persons who may institute suit, enlarges the types of decisions which may be challenged, specifies the scope and standard of review, and enlarges the type of relief which may be afforded the plaintiff.

Parties who may institute suit and participate in the litigation.—Under present law, only American manufacturers, producers, and wholesalers who manufacture, produce, or sell at wholesale goods which compete with the merchandise covered by the challenged determination may institute suit in the Customs Court pursuant to section 516 in order to challenge antidumping or countervailing duty determinations.

However, these individuals are not the only individuals who are affected by antidumping and countervailing duty determinations. For example, persons employed by an American manufacturer are just as affected by a decision not to impose such duties as the manufacturer-employer.

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The new section 516A would greatly expand the categories of persons who would be entitled to institute suit in the Customs Court in this type of case. Most notably, the right to institute suit would be extended to foreign countries and exporters, certain trade associations (which, by judicial decision are not currently able to institute suit), and certain labor organizations.

In addition, the new section 516A would greatly expand the right of interested parties to appear and be heard in litigation concerning antidumping and countervailing duties. For example, under current law, an importer is not permitted to appear as a party-in-interest in a suit challenging the failure to impose a countervailing duty instituted by an American manufacturer pursuant to section 516(d) (19 U.S.C. 1516(d)) even though the importer would be affected by a court decision holding that a countervailing duty should have been imposed. Under the proposed section 516A, if an importer participated in the administrative proceedings which preceded the challenged decision, it would possess a right to be notified of the institution of litigation challenging the decision and to appear and be heard as if it were a party—not simply as an *amicus curiae*. For purposes of section 516A, it is intended that an interested party is one which falls within the scope of section 771(9) of the Tariff Act of 1930, and which participated in the administrative proceeding subject to review.

The standing of persons to challenge the classification or valuation of merchandise is also expanded by the bill. This revision is discussed under the heading "Amendments to Section 516 of the Tariff Act of 1930" which follows in this part of the report.

Determinations subject to review.—Subsection (a) of new section 516A provides a list of the types of antidumping and countervailing determinations which will now be reviewable. This increase in the number of determinations subject to judicial review in the Customs Court is intended to provide greater procedural safeguards than exist under current law and to expedite the obtaining of judicial relief. These changes are also designed to make it clear that the Customs Court is the appropriate forum for the resolution of all disputes concerning antidumping and countervailing duties.

Under current law, no suit can be instituted by an importer or by an American manufacturer, producer, or wholesaler under section 516 (a), (b), (c) until at least one entry has been liquidated. The requirement that at least one entry be liquidated can result in the denial of effective relief in some instances. For example, an American manufacturer who contends that an antidumping investigation has not proceeded with sufficient dispatch cannot challenge the delay, if at all, until long after it has occurred. Pursuant to the new section 516A, suit can be instituted immediately after a determination to extend the period during which an investigation will be conducted or a preliminary determination not to impose a countervailing duty without awaiting a liquidation of an entry. This expedited judicial review will shorten the time limits for obtaining review of an administrative determination.

Under section 516A any person with standing in an antidumping or countervailing duty case can challenge a determination in the Customs Court within 30 days of notice of the determination. There is no

need for administrative review by the authority or the Commission. Where review is on the record pursuant to subsection (a)(2), the complaint must be filed within 60 days of the filing of the determination complained of. In cases involving *interlocutory* review pursuant to subsection (a)(1) of section 516A, the complaint must be filed within 30 days. The bill thus represents a significant improvement over present law both in terms of shortening the overall review process and eliminating the disparity in review procedures provided to importers and domestic interested parties. All 516 and 516A cases are given priority on the Court's docket, with cases involving a challenge to an *interlocutory* order given precedence.

For importers, this fact will result in a significant change of procedure. Under current law, an importer may challenge the imposition of a countervailing or antidumping duty only with respect to those entries of his which have been assessed with a duty of this nature. Pursuant to section 516A, the importer's right to challenge the assessment of a countervailing and antidumping duty is contained exclusively in section 516A and the importer will be required to challenge the assessment of an antidumping or countervailing duty when the final finding or order is published or when periodic announcement of the amount to be assessed is published pursuant to section 751 of the Tariff Act of 1930.

These revisions in review procedures will have the advantage of reducing the existing redundancy of proceedings. No longer will importers and foreign manufacturers, whose interests are generally aligned, have three separate opportunities to present their information which required review by the Customs Service. Under the Act information must be presented to the administering authority and the International Trade Commission during the administrative process for it to be considered by the Customs Court.

Scope and standard of review.—Section 516A clearly defines the scope and standard of review in suits challenging antidumping and countervailing determinations and orders. Currently, the state of the law in this area is unclear and conflicting.

Subsection (b) of new section 516A sets forth the standard of review for those antidumping and countervailing duty determinations which will now be reviewable. Under present law, determinations made by the International Trade Commission have been set aside only where found to be arbitrary or contrary to law. More controversial, however, is the standard to be applied to determinations by the Secretary of the Treasury. The Treasury Department has consistently asserted that antidumping and countervailing duty determinations, unlike traditional value and classification decisions, are not subject to *de novo* review. A reading of the two recent countervailing duty decisions in the Customs Court relating to investigations of float glass from Italy and X-belted radial tires (Michelin) from Canada indicates that some differences of opinion exist with respect to the issue.

Section 516A would remove all doubt on whether *de novo* review is appropriate by excluding *de novo* review from consideration as a standard in antidumping and countervailing duty determinations. *De novo* review is both time consuming and duplicative. The amendments made by Title I of the Trade Agreements Act provide all parties with

greater rights of participation at the administrative level and increased access to information upon which the decisions of the administering authority and the International Trade Commission are based. These changes, along with the new requirement for a record of the proceeding, have eliminated any need for *de novo* review.

Section 516A would make it clear that traditional administrative law principles are to be applied in reviewing antidumping and countervailing duty decisions where by law Congress has entrusted the decision-making authority in a specialized, complex economic situation to administrative agencies. Thus, review of any determination listed in subsection (a)(1) would be to ascertain whether there was a rational basis in fact for the determination by the administrative decision-maker. Review of determinations listed in subsection (a)(2) would proceed upon the basis of a formal administrative record and the standard of review provided is "unsupported by substantial evidence on the record or otherwise not in accordance with law."

Relief.—Section 516A will substantially clarify the state of law relating to the type of relief which the Customs Court may award in antidumping and countervailing duty cases and grant authority to the Customs Court for the first time to grant preliminary injunctive relief.

Currently, there is no clear agreement as to the effective date of a judicial decision not in harmony with a countervailing order or antidumping finding issued by the Secretary of the Treasury or the International Trade Commission. Some court decisions have interpreted section 516(e) and (g) of the Tariff Act of 1930 (19 U.S.C. 1516) as providing that the court's decision applies to entries entered on or after the date of the court's decision. Others have interpreted the same sections as providing that the court's decision is effective only with respect to entries entered on or after publication of the court's decision in the Customs Bulletin.

Section 516A will clarify the law by providing that the court's decision must be published by the Secretary of the Treasury or the administering authority within 10 days of its issuance in the Federal Register and that the decision is effective with respect to the entries entered on or after the day of its publication in that periodical.

It is also unclear under current law whether the Customs Court can or should remand a matter to an administrative agency when it holds that the agency's decision is erroneous. Section 516A will make it clear that the court has the power to remand the matter to the agency.

Finally, section 516A grants injunctive powers to the Customs Court. This change is not to be construed as granting the Customs Court full equity powers in all situations. The court's current lack of these powers has led to the denial of effective relief in the past. For example, an American manufacturer may contend that an antidumping decision of the Secretary is unlawful and may in fact succeed on this point. Although this result may mean that antidumping duties should have been imposed on all entries between the date of the challenged administrative decision and the court's decision, in fact, the latter possesses only prospective effect and all entries occurring prior to the court's decision will unjustifiably escape the imposition of antidumping duties.

Section 516A will remedy this problem by empowering the court to issue an injunction restraining liquidation while the litigation is pending. However, due to the commercial uncertainty relating to the suspension of liquidation, section 516A specifies certain factors which the court must take into account before injunctive relief may be issued and makes the grant or denial of injunctive relief immediately appealable. These factors are specified in the statute so as to make it clear that the issuance of injunctive relief is truly an extraordinary measure and that the relief should not be granted in the ordinary course of events.

Amendments to Section 516 of the Tariff Act of 1930 (Section 1001 of the Bill)

Present law.—Pursuant to section 516 of the Tariff Act of 1930 (19 U.S.C. 516), only manufacturers, producers and wholesalers may challenge in the Customs Court the classification or valuation of merchandise of the same class or kind as that manufactured, produced or sold by them at wholesale.

The bill.—Subsection 1001(b)(1) of the bill would amend section 516 to permit challenges in Customs Court by "interested parties" as defined in section 771(9)(C), (D), and (E). Thus, in addition to manufacturers, producers or wholesalers in the United States of a like product, standing is conferred upon a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a like product, as well as to a trade or business association, a majority of whose members manufacture, produce or sell at wholesale a like product in the United States.

Reasons for the provision.—As noted above, the bill would restore section 516 to its more traditional role by providing for judicial review of countervailing and antidumping decisions in a new section 516A.

However, if simply restored to its role prior to the amendments made in the Trade Act of 1974, section 516, when coupled with section 515 of the Tariff Act of 1930 (19 U.S.C. 1515), would continue to restrict the types of individuals who could contest classification or valuation decisions to a small fraction of the individuals actually affected by those decisions, *i.e.*, importers, and American manufacturers, producers and wholesalers of like products.

Section 1001(b)(1) of the bill considerably expands the remedy contained in section 516 by conferring standing upon labor unions, groups of workers, and trade associations who do not currently possess standing under section 516. The net result of this amendment coupled with the amendment contained in subsection 1001(b)(3)(E) (increasing the class of persons who would be entitled to file protests) is to expand the right to challenge classification and valuation determinations to most of the groups and individuals who can be adversely affected by these determinations.

Denial of Protests (Section 1001 of the Bill)

Present law.—Pursuant to section 515(a) of the Tariff Act of 1930 (19 U.S.C. 1515), an importer must be given notice of denial of his protest.

The bill.—Section 1001(b)(2) of the bill would amend secton 515 (a) so as to require the Customs Service to include reasons in its notice of denial of a protest as well as a statement that the importer may file a civil action in the Customs Court to contest the denial.

Reason for the provision.—This amendment conforms United States law to the obligation found in Article 11.3 of the MTN Customs Valuation Agreement. This provision is not intended to change existing law to the effect that an importer is otherwise entitled to a trial *de novo*. In addition, this provision gives statutory effect to existing practice and is in no way intended to change existing law.

Persons Who May File a Protest (Section 1001 of the Bill)

Present law.—Pursuant to section 514(b) of the Tariff Act of 1930 (19 U.S.C. 1514) a protest may be filed by an importer, consignee, or any authorized agent of the person paying any charge or extraction, or filing any claim for drawback, or seeking entry or delivery.

The bill.—Section 1001(b)(3)(E) of the bill would amend section 514(b) so as to clarify and expand the definition of the class of persons who are entitled to file protests.

Reason for the provision.—Under current law, goods may be entered by a broker or other individual who is not the real party-in-interest. This has had two results. In some instances, suits have been prosecuted in the name of a broker who is in fact not in control of the litigation. In other instances, the courts have expanded the law of agency in order to find that the real party-in-interest is in fact the "authorized agent" of the broker or consignee (when, in fact, the broker or consignee was acting for the real party-in-interest). Section 1001(b)(3)(E) would eliminate the need to engage in fictions as to agency in order to permit the real party-in-interest to file a protest (and therefore institute an action in Customs Court) so long as it actually paid the duties.

It is also clear under present law that sureties have had difficulty in fulfilling the prerequisites to suit in the Customs Court due to the frequent failures of the sureties to receive notice of the failure of the importer to pay the duties until after the time for filing a protest has expired. Section 1001(b)(3)(E) would remedy this problem by permitting a surety to file a protest in its own name and by extending the time within which it may file a protest so long as it certifies that it is not filing the protest simply because the importer allowed his time to file a protest to expire without filing a protest.

Country of Origin (Section 1001 of the Bill)

Present law.—No comparable provision.

The bill.—Pursuant to title III of this bill, the President would be permitted to waive, in whole or in part, the application of laws, regulations, procedures or practices regarding Government procurement to eligible products of certain designated foreign countries or instrumentalities. The Secretary of the Treasury would be required to provide for the prompt issuance of final determinations as to whether an article is or would be a product of a foreign country or instrumentality designated by the President.

Section 1001(b)(4)(B)(iii) of the bill would grant exclusive jurisdiction to the Customs Court to review final determinations by the Secretary of the Treasury in a civil action instituted by a "party-at-interest". The term "party-at-interest" is confined to (1) a foreign manufacturer, producer, or exporter, or a United States importer of merchandise which is the subject of the final determination; (2) a manufacturer, producer, or wholesaler in the United States of a like product; (3) United States members of a labor organization or other association of workers whose members are employed in the manufacture, production, or sale at wholesale in the United States of a like product, and (4) a trade or business association, a majority of whose members manufacture, produce, or sell at wholesale a like product in the United States.

Effective Date and Transitional Rule (Section 1002 of the Bill)

Effective date.—The bill would provide in section 1002(a) that the judicial review provisions of title X shall become effective on the same date that title VII to the Tariff Act of 1930 (as provided in title I of the Trade Agreements Act of 1979) becomes effective. The same subsection would provide that the provision of the bill requiring a statement of reasons to be included in a notice of the denial of a protest (subsection 1001(b)(2) of the bill) shall become effective only with respect to a protest filed on or after the effective date.

Transitional rules.—Generally, the bill would provide for judicial review of pending cases, and cases which were far advanced in the administrative process before the effective date, to proceed as if the bill had not been enacted into law. Thus, title X would not apply to (1) any protest, petition, or notice of desire to contest filed before the effective date of the title and pursuant to section 514, 516(a), or 516(d), respectively, of the Tariff Act of 1930; (2) any civil action commenced under 29 U.S.C. 2632 and filed before the effective date of title X; or (3) any civil action under 28 U.S.C. 2632, which is filed after the effective date of title X, if the action is based upon a protest, petition, or notice of desire to contest under section 514, 516(a), or 516(d), respectively, of the Tariff Act of 1930, which was filed before the effective date of title X. Pursuant to subsection 1002(b)(2) of the bill, the law which is to be applied in all of the civil actions mentioned in this paragraph would be the law in effect on the date of any finding or determination which is contested in the civil action.

With respect to the assessment of or the failure to assess a countervailing or antidumping duty on entries subject to a countervailing duty order or antidumping finding, title X, according to subsection 1002(b)(3), would apply if the assessment is made or the failure to assess occurs after the effective date. This general rule is subject to an exception, however. If no assessment of a countervailing or antidumping duty was made before the effective date which could serve as the basis for a challenge to the underlying finding or order, then a challenge to the underlying finding or order would be subject to judicial review without regard to the amendments made by title X of the bill. For example, suppose an antidumping finding was issued prior to the effective date but no duty was assessed prior to the effective date. This

latter fact would mean that no importer possessed the opportunity to challenge the underlying finding in the Customs Court prior to the effective date of the act. The exception to the general rule thus would provide that if a duty is assessed after the effective date, and an importer utilizes that assessment as a basis for challenging the validity of the underlying finding, then judicial review of the underlying finding shall proceed without regard to the amendments made by title X and shall be based upon the law in effect on the day before the effective date of title X. This provision ensures that rights of review under current law are preserved where necessary.

Finally, the bill would provide in subsection 1002(b)(4) that with respect to judicial review of any preliminary or final determination of the Secretary of the Treasury under the countervailing duty statute or the Antidumping Act which, according to provisions contained in title VII of the Tariff Act of 1930 as provided in section 102 of the bill, would be treated as if made under specified provisions of title VII, review would proceed without regard to the amendments made by title X.

TITLE XI—MISCELLANEOUS PROVISIONS

Extension of Nontariff Barrier Negotiating Authority (Section 1101 of the Bill)

Present law.—Under section 102 of the Trade Act of 1974, whenever the President determines that any barriers to, or other distortions of, international trade of any foreign country or the United States unduly burden or restrict the foreign trade of the United States or adversely affect the U.S. economy, or that the imposition of such barriers is likely to result in such a burden, restriction, or effect, then he may enter into trade agreements with foreign countries providing for the harmonization, reduction, or elimination of such a barrier or other distortion, or providing for the prohibition of or limitation on the imposition of such a barrier or other distortion. This authority was provided for a 5-year period beginning on the date of enactment of the Trade Act of 1974, and will expire at the close of January 2, 1980, absent extension. Agreements negotiated under the authority of section 102 must be submitted to Congress for approval and implementation under the procedures established in sections 102 and 151 *et seq.* of the Trade Act of 1974, which provide special rules for consultations on, and rapid consideration of approval and domestic implementation of, such agreements.

The bill.—Section 1101 of the bill would extend the negotiating authority provided by section 102 for 8 additional years, *i.e.*, through January 2, 1988.

Reason for the provision.—Without an extension of the authority to negotiate trade agreements under section 102, that authority would expire at the close of January 2, 1980. Extension of this authority will permit the President to negotiate improvements or other amendments to agreements negotiated under section 102 and approved by the Congress under section 2(a) of this bill (*e.g.*, agreements on subsidies and countervailing measures, antidumping measures, customs valuation, government procurement), as well as to negotiate and enter into new

agreements to reduce other types of barriers to trade. The end of the Multilateral Trade Negotiations and the implementation of agreements negotiated therein can only be a beginning if the United States is to continue its necessary leadership role in encouraging further expansion of international trade through mutually beneficial reductions in tariff and nontariff barriers.

The extension of this authority also will provide the President with an essential tool to reduce barriers to U.S. exports, a necessary element of export expansion, vital to U.S. economic well-being in the future. In particular the committee recommends that future negotiations entered into under section 102 of the Trade Act address foreign practices affecting U.S. service industries, such as insurance and banking. The effect of foreign government subsidy practices on the service sector should be examined. The committee also recommends that the President explore the possibility of an international conference on tax practices which affect international trade.

Auction of Import Licenses (Section 1102 of the Bill)

Present law.—Under present law, the President may impose quantitative restrictions on the imports of products into the United States under a number of authorities. With respect to many of these authorities, it is unclear whether the President may auction import licenses in order to administer the quantitative restrictions imposed.

The bill.—Section 1102 of the bill would provide that, notwithstanding any other provision of law, the President may sell import licenses at public auction under such terms and conditions as he deems appropriate. An import license is defined in the section to include any documentation used to administer a quantitative restriction imposed or modified after the date of enactment of the act under: (1) Sections 125, 203, 301, or 406 of the Trade Act of 1974; (2) the International Emergency Economic Powers Act (50 U.S.C. App. 1701–1706); (3) authority under the headnotes of the Tariff Schedules of the United States, but not including a quantitative restriction imposed under section 22 of the Agricultural Adjustment Act of 1933; (4) the Trading With the Enemy Act (50 U.S.C. App. 1–44); and (5) section 204 of the Agricultural Act of 1956, with respect to articles other than meat or meat products; or any act enacted explicitly for the purpose of implementing an international agreement to which the United States is a party, including such agreements relating to commodities, but not including any agreement relating to cheese or dairy products. Regulations prescribed with respect to licenses auctioned under this authority must, to the extent practicable and consistent with efficient and fair administration, insure against inequitable sharing of imports by a relatively small number of the larger importers.

Reason for the provision.—In the Multilateral Trade Negotiations, the United States has entered into an agreement on import licensing procedures, approved by section 2(a) of the bill. Acceptance by the United States of this agreement will not require any change in existing U.S. statutes involving import licensing. However, to insure that all Government agencies administering licenses do so in accordance with the agreement, an executive order will be issued specifying the proce-

dures required by the agreement and ordering agencies to conform their procedures to the extent that they are not already in compliance.

Section 1102 of the bill will permit the President to sell import licenses at public auction, and is an appropriate amendment to U.S. law to provide for more efficient and fair administration of quantitative restrictions and import licenses used to administer them. Under existing programs, import licenses are allocated by the U.S. Government on a first-come first-served basis. Auctioning of such licenses may be a more desirable method to achieve the purposes of the particular quantitative restriction and could be used to capture any "quota premium" associated with the restriction. The authority to auction provided by this section will apply only to the laws specified in the bill. To the extent that authority to auction import licenses does not already exist under these provisions of law, auctioning of such licenses may occur only with respect to quantitative restrictions imposed or modified after the date of enactment of this bill. The committee does not necessarily endorse use of this authority in any particular case.

Advice From Private Sector (Section 1103 of the Bill)

Present law.—Section 135 of the Trade Act of 1974 provides that the President shall seek information and advice from representative elements of the private sector with respect to negotiating objectives and bargaining positions before entering into trade agreements under the Trade Act of 1974. The President is directed to establish a policy committee, the Advisory Committee for Trade Negotiations, to provide overall policy advice on any trade agreement being negotiated under the Trade Act. The chairman of this committee is the Special Representative for Trade Negotiations (STR). Under section 135, the President may, on his own initiative or at the request of organizations representing industry, labor, or agriculture, establish policy advisory committees for industry, labor, and agriculture, respectively, to provide general policy advice on any trade agreement being negotiated under the Trade Act. In addition, the President shall, on his own initiative or at the request of organizations in a particular sector, establish industry, labor, or agriculture sector advisory committees as he determines to be necessary for any trade negotiations under the Trade Act.

The bill.—Section 1103 of the bill would amend section 135 of the Trade Act of 1974 in the following major ways:

(1) Broaden the mandate of the advisory committees to include advice on implementation of trade agreements and other trade policy activities, as well as continue the mandate with respect to trade negotiations themselves.

(2) Revise the existing authority to permit the establishment of advisory committees for agriculture, industry, labor, or services on an appropriate basis when the President determines that the trade policy activities of the United States Government warrant them, thus adding specific authority for advisory committees on services and making the establishment of all the advisory committees discretionary with the President.

(3) Repeal the Trade Act requirement that existing advisory committees prepare summary reports after the authority of the President to negotiate pursuant to the Trade Act expires.

(4) Provide to the extent practicable that advisory committee members be informed and consulted before and during any negotiations and be permitted to participate, but not speak on behalf of the United States, in international meetings to the extent the head of the U.S. delegation deems appropriate.

(5) Continue Trade Act advisory committee exemptions from certain provisions of the Federal Advisory Committee Act and also exempt Trade Act advisory agricultural committees from requirements of title 18 of the Food and Agriculture Act of 1977.

Reason for the provision.—The private sector advisory committee structure established under section 135 of the Trade Act of 1974 has proved a valuable mechanism for identifying U.S. objectives and priorities during the Multilateral Trade Negotiations (MTN), evaluating the progress and results of the negotiations, and educating key private sector representatives on the issues and problems involved in the negotiations. Continuation of this type of mechanism will be of critical importance to ensure effective implementation of the MTN agreements; evaluate and refine those agreements and negotiate new agreements in the future; manage problems in key trading sectors; and shape overall U.S. trade policy objectives and priorities.

Under the bill, the advisory process will operate on essentially the same basis as it has under the Trade Act of 1974. The STR will manage committees jointly with the Department of Agriculture, Commerce, or Labor. It is expected that the number of advisory committees will be substantially reduced from the present level of 45, largely because of consolidation of industry sector committees. The Advisory Committee for Trade Negotiations and the Industry, Labor, and Agricultural Policy Advisory Committee will be rechartered and operated in the same manner as under the Trade Act and a policy advisory committee for services will be established. In establishing the membership of the policy, sectoral, or functional advisory committees with respect to labor, industry, agriculture, and services, it is expected that each of these committees will fully represent the interests of the Government, small business, retailers, wholesalers, distributors, consumers, and the general public, a well as labor, industry, agriculture and services, as the case may be. It also is expected that the President will establish an advisory committee whose members can provide expert legal advice with respect to the agreements and with respect to U.S. law on the same matters.

Study of Possible Agreements With North American Countries (Section 1104 of the Bill)

Present law.—Under the Trade Act of 1974, various negotiating objectives are established by Congress regarding the exercise of Presidential negotiating authority granted by the Act. In particular, section 612 of the Trade Act provides that it is the sense of the Congress that the United States should enter into a trade agreement with Canada to provide for continued economic stability in both countries. In order to

promote such stability, the President is authorized to initiate negotiations for a United States-Canada free-trade area.

The bill.—Section 1104 of the bill would amend section 612 of the Trade Act by adding a new provision to existing section 612 which would require the President to study the desirability of entering into trade agreements with countries in the northern portion of the Western Hemisphere. A report on the study would be required to be submitted to the Committee on Ways and Means of the House and the Committee on Finance of the Senate within two years after the date of enactment of this act.

Reasons for the provision.—With increasing economic interdependence among the United States and many countries in the northern portion of the Western Hemisphere, including Canada, Mexico, and Central American and Caribbean countries, it may be desirable to enter into trade agreements with such countries to promote mutual economic stability and economic growth through the mutual expansion of market opportunities. It is believed that serious and rigorous consideration should be given to this issue. An in-depth study should be undertaken to determine what are the competitive opportunities and conditions of competition between such countries and what is the desirability of entering into a trade agreement or series of trade agreements to achieve the ends mentioned. That is the objective of the study required under section 1104.

Amendments to Section 337 of the Tariff Act of 1930 (Section 1105 of the Bill)

Present law.—Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) provides that unfair methods of competition or unfair acts in the importation of articles into the United States, or in their sale, the effect or tendency of which is to destroy or substantially injure, or prevent the establishment of, an industry in the United States, or to restrain or monopolize trade and commerce in the United States, are unlawful. The U.S. International Trade Commission (ITC) is to investigate any alleged violations of section 337 upon complaint under oath. If the ITC finds a violation, it may either order the exclusion of the articles involved in the violation from entering into the United States, or issue an order requiring the parties violating section 337 to cease and desist in such violation.

Section 337(b)(3), as amended by the Trade Act of 1974, requires the ITC to inform the Secretary of the Treasury of matters under investigation under section 337 which the Commission believes may fall within the purview of the antidumping or countervailing duty law so that action authorized under those laws may be taken.

Under section 337(f), the ITC may order a party violating section 337 to cease and desist in that violation. Under present law, if an ITC cease and desist order which has become final is violated, the Commission may order the exclusion of articles subject to the cease and desist order from entering the United States.

The bill.—Section 1105 of the bill would amend section 337 of the Tariff Act in several respects. Section 1105(a) would amend present

section 337(b)(3) to require the ITC to terminate an investigation begun, or not to institute an investigation, when it has reason to believe that the matter before it is based solely on alleged acts and effects which are within the purview of the countervailing duty or antidumping duty law. Section 337(b)(3) would be further amended to provide that when the ITC believes that the matters before it under section 337 are based in part on alleged acts and effects which may be within the purview of the countervailing duty or antidumping duty law and in part on alleged acts and effects which are not within the purview of those laws but which independently may form, or in conjunction with the matters within the purview of those laws may form, a basis for relief under section 337, then the Commission may continue an investigation it is conducting, or institute an investigation, as the case may be. With respect to matters notified to the administering authority (which under existing law is the Secretary of the Treasury) in cases involving mixed allegations, the bill would provide that a final decision of the administering authority under the antidumping law or the countervailing duty law with respect to that matter would be conclusive upon the Commission with respect to the issue of less-than-fair-value sales or subsidization as the case may be, and the factual findings necessary for such decision.

Section 1105(b) of the bill would amend section 337(f) to provide a civil penalty for each day on which an importation of articles, or their sale, occurs in violation of a final ITC cease and desist order. The penalty is in an amount up to the greater of $10,000 or the domestic value of the articles entered or sold on such day in violation of the order. The ITC would bring an action in the Federal district courts for recovery of the penalty for the United States. Authority would be given also for the courts to issue mandatory injunctions incorporating the cease and desist orders of the ITC so as to aid in the enforcement of such orders.

Reasons for the provision.—The amendments made to section 337 by section 1105(a) of the bill will clarify the relationship between the jurisdiction of the ITC under section 337 and the shared jurisdiction of the administering authority and the Commisson under the antidumping and countervailing duty laws. As indicated in the report of the Committee on Finance of the Senate on the Trade Act of 1974, it was expected that the Commission practice of not investigating under section 337 those matters clearly within the purview of the countervailing duty or antidumping duty law would continue. (See S. Rept. No. 93–1298, p. 195.) The amendment made by section 1105(a) requiring the Commission to terminate an investigation begun or not to institute an investigation will place in the statute what is current practice, and what was referred to in the Senate report cited, and is intended to have the questions of subsidization or dumping decided in the most appropriate forum and to conserve administrative resources.

The amendments of section 1105(a) which relate to mixed allegations, some within the purview of the countervailing duty and antidumping duty laws and others not, will further clarify the jurisdictional relationship, but would not change existing law regarding when investigations are required under section 337 and the suspension of such investigations. The ITC will, as required by existing section 337(b)

(3), notify the administering authority of those matters which may be within the purview of the countervailing duty or antidumping duty law. Section 1105(a) reaffirms with respect to these cases that, if the ITC has notified a matter to the administering authority, then the Commission may suspend its investigation during the time the matter is before the administering authority for a final decision. The term "final decision" denotes a decision by the administering authority not to investigate, on its own motion or on the basis of a petition, the matter notified to it by the ITC a negative decision terminating any countervailing duty or antidumping duty investigation, or an affirmative final determination of less-than-fair-value sales or subsidization. The ITC is expected to exercise its discretionary authority to suspend its investigation so as to achieve an appropriate balance between the needs on the one hand to conserve administrative resources and prevent undue burdens upon parties to the Commission proceeding and to the countervailing duty or antidumping duty proceeding, and on the other hand to conclude the section 337 investigation in as expeditious a fashion as possible.

As indicated, the decision of the administering authority with respect to less-than-fair-value sales or subsidization and the factual findings necessary for such decision will be conclusive upon the ITC with respect to matters notified to the administering authority in cases under section 337 involving mixing allegations. Thus, if the administering authority finds that subsidization exists and that the net subsidy amounted to a certain amount, the Commission, in making the decision under section 337, will be bound by those decisions, which will become the controlling part of the record in the section 337 proceeding as to those issues and will be considered by the Commission in arriving at a decision as to whether unfair methods of competition or unfair acts exist with the requisite effect or tendency.

Section 1105(b) of the bill will amend section 337 to provide a civil penalty as an alternative remedy for violation of a cease and desist order issued by the Commission after it has found a violation of section 337. It is unclear whether under current law any other remedy exists for violation of an ITC cease and desist order except exclusion of the article from entry into the United States. The remedy of exclusion from entry into the United States of articles subject to a Commission order is too draconian in some cases, and is not always to the public benefit. Section 1105(b) will provide a more flexible remedy in the form of a civil penalty for each day in which an importation of articles, or their sale, occurs in viloation of an order. The provision for a civil penalty up to the amount of the domestic value of the articles entered or sold on a day in violation of the order is directed to the situation in which the violation may involve a large shipment of articles of sufficient value so as to make a $10,000 penalty not a deterrent to the violation of the order. The Commission will exercise the discretionary authority provided with respect to the appropriate size of any penalty under this section so as to insure the deterrent effect of its order while taking into account such factors as intentional versus unintentional violations and the public interest.

Technical Amendments to the Trade Act of 1974 (Section 1106 of the Bill)

Present law.—Section 102 of the Trade Act of 1974 authorizes the President to enter into trade agreements to harmonize, reduce, or eliminate barriers or other distortions to trade, or to prohibit or limit the imposition of such barriers or other distortions. Section 102 agreements enter into force with respect to United States if, among other conditions, the President transmits a document to the House of Representatives and to the Senate containing a copy of such agreement, and an implementing bill with respect to such agreement is enacted into law.

Under section 121 of the Trade Act, the President is directed to enter into trade agreements with foreign countries to promote the development of an open, nondiscriminatory, and fair economic system with respect to the international trade between the United States and such countries. Such trade agreements may be submitted to the Congress for approval and implementation in accordance with the procedures of section 151 of the Trade Act, which provides for special rapid consideration, and under which agreements negotiated pursuant to section 102 of the Trade Act are also approved and implemented.

Under the import relief provisions (in particular section 203) of the Trade Act of 1974, the President may provide import relief for a U.S. industry when the International Trade Commission (ITC) has determined that increased imports are a substantial cause of serious injury or threat thereof to the industry and recommends relief. Among the forms of relief which may be provided is the negotiation of orderly marketing agreements (OMA's) with foreign countries which limit the export from foreign countries and the import into the United States of the articles involved in the ITC determination. Any relief which the President provides which is different from that recommended by the ITC is subject to being overridden by the Congress (with the ITC relief taking effect) within a 90-day period following the date on which the President proclaims import relief under this section or announces his intention to negotiate one or more orderly marketing agreements. If the President has negotiated an orderly marketing agreement as import relief, and such agreement has not continued to be effective, he may proclaim duty increases, tariff rate quotas, quantitative restrictions, or combinations thereof. The President is further authorized to issue regulations to provide for the efficient and fair administration of any quantitative restriction proclaimed as import relief.

Under title V of the Trade Act of 1974, the President may establish a Generalized System of Preferences and provide duty-free treatment with respect to articles from countries designated as beneficiary developing countries. An article from a particular beneficiary developing country may receive this duty-free treatment subject to certain conditions, including that imports of that article from that country do not exceed competitive-need limitations established by section 504 of the Trade Act. If such limitations are exceeded in a calendar year, then, not later than 60 days after the close of the calendar year, such country generally may not be treated as a beneficiary developing country

with respect to that article for at least the calendar year in which the removal of GSP treatment occurs.

The bill.—Section 1106 of the bill would make several consequential amendments to the Trade Act of 1974, and make a number of conforming and clerical amendments. Section 1106(c) would amend section 102(e)(2) of the Trade Act by requiring that the copy of the agreement which is submitted for approval to the Congress under the procedures of sections 102 and 151 of the Trade Act must be a copy of the final legal text of such agreement. This amendment is to apply with respect to trade agreements submitted to the Congress under section 102 after the date of enactment of this bill. The same section of the bill would amend section 121(c) of the Trade Act of 1974 by striking the language which provides that a trade agreement negotiated under section 121 may be submitted to the Congress for approval according to the procedures of section 151 of the Trade Act, and replace that with a provision that such trade agreement may be entered into under section 102 of the Trade Act of 1974.

Section 1106(d) of the bill would make numerous changes to the import relief provisions of the Trade Act of 1974. With respect to the President's authority to negotiate orderly marketing agreements as import relief under section 203(a)(4) of the Trade Act, the bill would provide specific authority to conclude and carry out such agreements also. Section 1106(d) also would amend section 203(b) of the Trade Act to provide that the date which begins the running of the period within which Congress may override a Presidential import relief decision is the date on which the President determines to provide import relief, including the announcement of the intention to negotiate an orderly marketing agreement; this is opposed to present law, which measures the period from the day on which the President proclaims import relief or announces his intention to negotiate one or more orderly marketing agreements. Present law also would be amended to add a new section 203(b)(3) providing that on the day on which the President proclaims any import relief under section 203 which he has not previously reported to Congress, he must transmit to Congress a document setting forth the action he has taken and reasons therefor.

Section 1106(d) also would amend section 203(e)(3) of the Trade Act of 1974 by striking out reference to the particular types of action that can be taken if an orderly marketing agreement is no longer effective. Section 203(g)(1) of the Trade Act would be amended to delete the reference to "quantitative" in describing the restrictions with respect to which regulations to provide for efficient and fair administration of import relief actions may be issued, so that such regulations may now be issued with respect to any restrictive action taken under section 203.

Section 1106(g) would amend section 504(c)(1), which provides that articles imported from beneficiary developing countries which exceed competitive-need limitations in a calendar year must be removed from GSP treatment within 60 days of the end of that calendar year. The 60-day period would be changed to a 90-day period.

Reasons for the provision.—Section 1106 of the bill makes several substantial changes to the Trade Act of 1974 and numerous technical, clerical, and conforming amendments.

The amendment to section 203(a)(4) of the Trade Act will specify the authority of the President to conclude and carry out OMA's as well as negotiate them. This will assure that full authority exists not only for negotiating but for concluding and implementing any orderly marketing agreement. The other authorities of section 203(a) to take particular restrictive actions by their terms give final authority to implement any such action, whereas the authority relating to an orderly marketing agreement appears incomplete without this amendment.

The amendment which will be made by section 1106 with respect to the date from which the override authority of Congress is measured clears up any ambiguity with respect to the reporting requirement to Congress as it relates to the override provision. Under present law, the language creates an ambiguity with respect to when the President must report on his actions under section 203. Occasionally actions are taken under section 203 a year or more after the initial action is taken (*e.g.*, secondary OMA's). Under present law, there would be uncertainty should these actions have to be notified under section 203(b), because section 203(c) (the override provision) is triggered by a notice under section 203(b), and thus the possibility of an override on a secondary OMA is raised if the OMA is reported under section 203(b). In that situation, the earlier OMA was implicitly approved by the Congress, because there was no override of that action. Further, any override of the secondary OMA would require going back to the original ITC recommendation which had already been disapproved by the President, an action which had been implicitly approved by the Congress. The amendment relating to this issue will make it clear that, with respect to the override, the reporting requirement under section 203(b) on actions taken which differ from the ITC recommendation refers to the original action taken and reported under section 203(b). That is, action taken within 60 days of the ITC recommendations. To assure that all action under section 203, whenever taken, is reported to the Congress, a new paragraph 203(b)(3) is added which requires the President to report to the Congress on any action taken subsequent to the original action, giving the reasons for the taking of that action.

The amendment which is made by section 1106(d) to section 203(e)(3) of the Trade Act of 1974 takes out the reference to the type of action that can be taken when an orderly marketing arrangement is no longer effective. This change results in increased flexibility in taking action under that section, which now arguably only allows duty increases, tariff rate quotas, quantitative restrictions, or combinations thereof. This amendment will assure that another action which may be taken, should an orderly marketing agreement not be effective, will be the negotiating of another orderly marketing agreement or agreements. This is particularly important when there is an import surge from a third country which interferes with the effectiveness of the original orderly marketing agreement, as this amendment will give clear authority to the President to use a secondary OMA to restrict imports from the third countries.

The amendment that is made by section 1106(d) to section 203(g)(1) of the Trade Act, which will delete the term "quantita-

tive" before the word "restriction" in the provision authorizing regulations to be issued for efficient and fair administration of a restriction, will permit the President to issue regulations to provide for efficient and fair administration of any restrictive action taken under section 203. There is no particular reason why quantitative restrictions alone should be singled out with respect to such regulations.

Technical Amendments to the Tariff Schedules of the United States (Section 1107 of the Bill)

Present law.—The Tariff Schedules of the United States (TSUS) is the law of the United States with respect to the classification of imported merchandise for the purposes of assessing duties. In addition to providing a description of an article and the tariff rate that applies to that particular article, the TSUS contains headnotes and rules of interpretation for use in applying the TSUS.

The bill.—Section 1107 of the bill would make numerous technical, clarifying, and conforming amendments to the TSUS.

Reasons for the provision.—The amendments made by section 1107 correct technical errors and make clarifying and conforming changes in the TSUS. No substantive changes respecting the rates of duties or classification of an article are made by these amendments. The changes reduce ambiguity and confusion in the use of the TSUS.

Reporting of Statistics on a Cost-Insurance-Freight Basis (Section 1108 of the Bill)

Present law.—The Trade Act of 1974 amended section 301 of title 13 of the U.S. Code to provide a reporting requirement with respect to certain international trade statistics. Section 301(b)(6) as added by the Trade Act provides in part that on quarterly and cumulative bases there should be reported to the Committee on Ways and Means of the House and the Committee on Finance of the Senate, a United States port-of-entry value with respect to each item of the Tariff Schedules of the United States. This value reflects the purchase price or its equivalent of the goods imported (or the equivalent of the arms-length value in the case of related-party transactions), plus the aggregate cost from the port of exportation to the U.S. port of entry. This value is referred to as a cost-insurance-freight (CIF) value, as it includes the freight charges, insurance charges, and associated charges, costs and expenses of bringing the goods from the port of exportation to the U.S. port of entry. Under current practice, most trade statistics, including balance-of-trade statistics, which are reported on a monthly basis and made publicly available are reported on a basis which does not include the CIF amount.

With the exception of the United States, Canada, and Australia, most other countries of the world generally apply their customs duties based on values of imports which include CIF amounts. The United States and the other named countries apply their customs duties based on values of imports which do not include CIF amounts.

The bill.—Section 1108(a) of the bill would add a new subsection (e) to section 301 of title 13 of the U.S. Code. The new subsection (e)

would require, on monthly (instead of the present quarterly) and cumulative bases, with respect to each item in the Tariff Schedules of the United States Annotated, that there be reported a U.S. port-of-entry value, as defined in existing law in section 301(b)(6). The U.S. balance of trade would also be required to be reported using such a port-of-entry value with respect to imports when calculating the balance. Additionally, new subsection (e) of section 301 would require the release of this CIF-based information on imports and balance of trade 48 hours before the release of any other statistics on the value of U.S. imports or balance of trade, or statistics from which such values or the balance of trade may be derived. The reports required by new subsection (e) would be required to begin on monthly and cumulative bases beginning after December 31, 1979, i.e., beginning with a monthly report covering January 1980.

Section 1108(a) also adds a new subsection (f) to section 301 to require the reporting of U.S. duty rates on a basis comparable with the reporting duty rates of most of our major trading partners. It provides that on or before January 1, 1981, there would be required to be reported for each item of the Tariff Schedules of the United States Annotated the *ad valorem* or *ad valorem* equivalent duty which would be required to be imposed on dutiable imports under that item, if the United States customs value of such imports were based on the United States port-of-entry values reported under section 301(b)(6), in order to collect the same amount of duty on imports under that item as are currently collected.

Reason for the provision.—Under current practice, most trade statistics, including balance-of-trade statistics, which are reported on a monthly basis and made publicly available are reported on a basis which does not include the CIF amount. The current practice regarding reporting and making public U.S. import statistics and balance-of-trade statistics does not reflect the most appropriate manner of reporting and publicizing these statistics so as to reveal the most realistic picture of the situation of the United States in international trade. CIF amounts are imminently associated with the value of the articles imported and should be included in import values for statistical purposes. The amendment that will be made by section 1108 of the bill in adding a new subsection (e) to section 301 of title 13 of the U.S. Code will focus attention on CIF statistics in the consideration of the situation of the United States in international trade. The 48-hour prior release rule under new subsection (e) does not prevent the release of, at the same time as or within 48 hours of the release of the CIF-based import values and balance-of-trade figures, such other statistics as may be CIF based, including U.S. bilateral balances of trade with other countries or groups of countries, or balances of trade for various groupings of articles, such as along product or industry sector lines. It should be noted that the 48-hour rule does not impinge upon release of information reporting quantities, as opposed to values, of imports.

The amendment that will be made by section 1108(a) adding a new subsection (f) to section 301 will require the reporting of U.S. rates of duty as if the United States valued imports on a CIF basis. Clearly, section 1108 is a reporting requirement. It is not intended to affect the way goods are valued for customs purposes. One result of

the differential bases of valuation (CIF versus non-CIF) is that tariff rates in countries which, such as the United States, do not value for customs purposes on a CIF basis, often appear to be more protective than they are. Further, it is often confusing and difficult to discuss tariff policy between countries which value imports on different bases. The reporting requirement imposed by section 1108 will be useful in negotiations on tariff laws and discussions of tariff policy, permitting these to proceed on a comparable basis.

Reorganizing and Restructuring of International Trade Functions of the United States Government (Section 1109 of the Bill)

Present law.—None.

The bill.—Section 1109 of the bill would require the President to submit to the Congress, not later than July 10, 1979, a proposal to restructure the international trade functions of the Executive branch of the U.S. Government. In developing this proposal, the President would have to consider, among other possibilities: Strengthening the coordination and functional responsibilities of the Office of the Special Representative for Trade Negotiations (STR) to include, among other things, representation of the United States in all matters before the General Agreement on Tariff and Trade; the establishment of a Board of Trade with a coordinating mechanism in the Executive Office of the President; and the establishment of a Department of International Trade and Investment. The proposal should include a monitoring and enforcement structure which would insure protection of U.S. rights under agreements negotiated pursuant to the Multilateral Trade Negotiations and all other elements of multilateral and bilateral international trade agreements. The proposal should also result in an upgrading of commercial programs and commercial attaches overseas to assure that U.S. trading partners are meeting their trade agreement obligations, including the tendering procedures of the agreement on government procurement.

Upon submission of the proposal, the bill would require the appropriate committee of each House of the Congress to give the proposal by the President immediate consideration and make its best efforts to take final committee action to reorganize and restructure the international trade functions of the Government by November 10, 1979.

Reason for the provision.—Over the past several years, numerous complaints have been voiced and increasing concern has been expressed regarding the manner in which the Executive branch of the U.S. Government is organized to handle international trade functions. Among other problems noted, trade is not given a very high priority in terms of commitment of resources and the attention of top governmental policy officials on a regular basis, other than the STR. Additionally, major trade functions are spread throughout the Executive branch making formulation of trade policy and implementation of trade policy haphazard and in some cases contradictory. No single agency exists which clearly predominates in the formulation of trade policy to the extent that people with a trade issue know where in the Executive Branch they can turn to find a person who will give their

particular problem attention and whom they and the rest of the Government can hold accountable. Another problem that has been noted often is that the present organization of the Executive branch with respect to trade has failed to result in retaining experienced trade personnel, so that often the United States is faced with the prospect of entering trade negotiations with other countries who have a tough, seasoned corps of trade negotiators. Further, the lack of coordination and lack of attention to trade issues has often resulted in failure to aggressively enforce U.S. unfair trade practice statutes and to insist on U.S. rights under international trade agreements.

Against this background, section 1109 of the bill requires a proposal from the President with respect to reorganizing and restructuring the international trade functions of the Executive branch of the U.S. Government. The President should include in his review of executive branch trade responsibilities and in arriving at his proposal: All functions of the Office of the Special Representative for Trade Negotiations and responsibilities under the Trade Act of 1974 and the Trade Agreements Act of 1979; the Customs Service and the countervailing duties and antidumping functions of the Department of the Treasury; the functions of the Department of State relating to commercial attaches and the negotiation of commercial and commodity agreements and U.S. Government participation in all international trade organizations; the export promotion and control, foreign investment, trade intelligence analysis and reporting, and industry-sector policy functions of the Department of Commerce; the Foreign Agricultural Service of the Department of Agriculture; functions in various Departments responsible for East-West trade policy; and all functions of the International Trade Commission, OPEC and the Export-Import Bank.

The President's proposal should include a monitoring and enforcement structure which will insure protection of U.S. rights under the MTN agreements and all other elements of multilateral and bilateral trade agreements. As is noted elsewhere in the report, absent effective, aggressive action by the United States in insisting upon its rights under trade agreements, many of the supposed benefits of such trade agreements will come to naught. In particular, the success or failure of the new agreements in liberalizing trade restrictions and providing new international disciplines against such restrictions depends to a large degree on the strength and effectiveness which can be developed within the General Agreement on Tariffs and Trade for the monitoring of obligations and settlement of disputes rising out of these agreements. U.S. representation in the form of high level officials from the agency responsible for trade policy is essential to this task.

Study of Export Trade Policy (Section 1110 of the Bill)

Present law.—None.

The bill.—Section 1110 of the bill would direct the President to submit to Congress, no later than July 15, 1980, a review of all export trade functions of the Executive branch of the U.S. Government and existing and potential programmatic and regulatory disincentives to exports.

Particular attention is to be given to enumerating those programs, functions, and activities that enhance the role of small and medium size businesses in export trade.

The President is also to submit to Congress by July 15, 1980, a study of the factors bearing on the competitive posture of U.S. producers in world markets and the policies and programs required to strengthen the relative competitive position of the United States in world markets.

Reason for the provision.—If the United States is to overcome the negative balance of trade it has experienced since the beginning of the 1970's, it must make a special effort to improve its export trade performance. In order to do this there must be a clear understanding and appreciation of what export promotion is undertaken now and how effective that is, as well as what existing and potential programmatic and regulatory disincentives to exporting exist. It is also imperative that an understanding of the competitiveness of U.S. firms in world markets be acquired so that emphasis can be placed on improving in areas which result in noncompetitiveness and in continuing to strengthen and maintain areas of competitiveness.

The studies directed by section 1110 are to this end. It is expected that the President will conduct these studies in light of the new potential for export trade that should develop from the implementation of the MTN and not merely update past export promotion studies or summaries. Furthermore, this review should be in such detail and sufficiently comprehensive to be an adequate basis upon which remedial legislation can be drafted should it be necessary.

Generalized System of Preferences (Section 1111 of the Bill)

Present law.—Title V of the Trade Act of 1974 authorizes the President to proclaim a Generalized System of Preferences (GSP) under which duty-free treatment would be granted to specified articles from designated developing countries for a period of 10 years (until January 3, 1985). Section 502 of the Trade Act contains criteria for determining which countries may be designated by the President as beneficiary developing countries for GSP treatment. Section 503 contains the procedures and criteria for determining which products may be designated as eligible articles for duty-free treatment. Section 504 contains limitations on the granting of preferential treatment and authority for the President to withdraw, suspend or limit its application by country and by article.

Under section 502(b)(2) of the Trade Act, the President is prohibited from designating as a beneficiary developing country for GSP treatment any country which is a member of the Organization of Petroleum Exporting Countries (OPEC) or any similar arrangement if that country participates in any action pursuant to the arrangement, the effect of which is either to withhold supplies of vital commodity resources from international trade or to raise their prices to an unreasonable level causing serious disruption to the world economy. Numerous other restrictions on designation as a beneficiary developing country are found under section 502(b), and with respect to many of them the President is authorized to exempt a country from their application

if it is found to be in the national economic interest. However, the restriction of section 502(b)(2) with respect to OPEC countries is not subject to this Presidential exemption authority.

Section 502(a)(3) of the Trade Act permits the President to treat an association of countries which is a free trade area or customs union as one country for GSP purposes. Imports from all eligible member countries of a designated association are treated as exports from one country for purposes of the value-added requirements of the rules of origin under section 503(b). Under these provisions, which are designed to assure that the benefits of GSP accrue to the designated beneficiary developing country, the sum of the cost or value of materials produced in the developing country plus direct cost of processing operations performed in such countries must equal or exceed a minimum percentage of the appraised value of the article at the time of its entry into the U.S. customs territory. In the case of an association of countries, the value of the article attributed by two or more member countries may be added together to meet a minimum 50 percent requirement as opposed to the less stringent 35 percent requirement for countries treated individually.

Under section 504 of the Trade Act, certain competitive need limitations are set out and applied to associations of countries treated as one country under section 502(a)(3). Under those limitations, the President must withdraw duty-free GSP treatment for a particular developing country (or association treated as one country) on a particular article if that country has supplied in the preceding calendar year 50 percent or more of the total value of United States imports of the article, or imports the appraised value of which exceeds an amount which bears the same ratio to $25 million as the United States GNP for the preceding year bears to the GNP for the calendar year 1974 (this amount equalled approximately $37 million in 1978).

The bill.—Section 1111 of the bill would amend various provisions of title V of the Trade Act of 1974 relating to GSP. Section 502(e) of the Trade Act would be amended to authorize the President to exempt from the application of section 502(b)(2) (the prohibition from designating as beneficiary developing countries members of OPEC or similar cartels) any country that enters into a bilateral product-specific trade agreement with the United States under section 101 or 102 of the Trade Act before January 3, 1980. Under the amendment, the President must terminate the exemption granted any country if that country interrupts or terminates the delivery of supplies of petroleum or petroleum products to the United States.

Section 1111 of the bill would amend the customs union/free-trade area provisions of title V in three ways. First, section 502(a)(3) would be amended to include associations of countries which are not only free-trade areas or customs unions, but which are also contributing to comprehensive regional economic integration among their members through appropriate means, within the scope of associations which may be treated as one country for GSP purposes. Second, section 503(b)(2) would be amended to reduce the minimum value-added requirement from 50 percent to 35 percent for associations of countries, comparable to the existing minimum percentage for individual countries. Third, section 504(c) would be amended to exempt specifically customs

unions, free trade areas, or other regional economic associations of developing countries treated as one country under section 502(a)(3), as amended, from the competitive need limitations. Member countries of such associations would continue to have individual competitive need ceilings applied against their exports to the United States.

Section 1111 of the bill also would amend section 504(d) to authorize the President to disregard the 50 percent limitation under section 504 with respect to any eligible article from a beneficiary developing country if the appraised value of total imports of the article into the United States during the preceding calendar year does not exceed an amount which bears the same ratio to $1 million as the U.S. GNP for that calendar year, as determined by the Department of Commerce, bears to the U.S. GNP for calendar year 1979.

Reason for the provision.—The amendments to title V of the Trade Act of 1974 that will be made by section 1111 of the bill are intended to make the Generalized Systems of Preferences under title V more beneficial to developing countries, while at the same time taking account of legitimate domestic interests with respect to imports from such countries.

The amendment made by section 1111 with respect to the provision prohibiting designation of an OPEC country or member of a similar cartel arrangement from GSP benefits permits exemption of a country concluding the required trade agreements with the United States from this prohibition only as long as such country does not interrupt or terminate the delivery of supplies of petroleum or petroleum products to the United States. Interruption or termination of such supplies includes an embargo or unilateral or concerted action with other member countries of OPEC to cut back production or otherwise withhold supplies directed against the United States. Further, the authority given to the President to exempt a country from the application of the OPEC or cartel exclusion is discretionary. In deciding whether to exercise this authority with respect to any country which meets the criteria for an exemption, the President should take into account whether the United States maintains an unfavorable balance of trade with that country. In particular the committee believes it is doubtful whether certain OPEC countries which maintain a highly favorable balance of trade with the United States and which use most of the foreign exchange earned from sales of oil to the United States to purchase goods from countries other than the United States should be rewarded with designation as beneficiaries of duty-free treatment under GSP.

The purpose of the provisions in existing title V of the Trade Act of 1974 permitting associations of countries to be considered a single country is to encourage economic integration among the developing countries on a regional basis in order to increase the political stability as well as economic health of these countries in fulfillment of their development goals. However, because of the more stringent value-added requirements and because the quantity of exports from each member of the association in a particular year is aggregated for purposes of the competitive need ceilings under title V, no customs unions or free-trade areas have requested designation as a single beneficiary developing country. Furthermore, a number of associations of developing countries do not meet the criteria for customs unions or

free-trade areas. These problems are the reasons for the changes that will be made by this bill with respect to the customs union and free-trade area provisions. The broader definition which will apply to permit associations of countries to be considered as one country will permit designation of such regional economic associations of countries as the ASEAN (Indonesia, Malaysia, Singapore, Thailand, Philippines), the Andean Pact (Venezuela, Ecuador, Bolivia, Colombia, Peru), CACM (El Salvador, Guatemala, Honduras, Nicaragua, Costa Rica), and CARICOM (Jamaica, Trinidad and Tobago, Guvana, Barbados, Antigua) as a single beneficiary developing country for GSP. The prohibition under section 502(a)(3) against including any member of an association in the treatment of such an association as one country if that member is prohibited from designation as a GSP beneficiary country under section 502(b) remains unchanged.

Under the amendment made by section 1111 of the bill, which will permit the President to disregard the 50 percent limitations under section 504 with respect to any eligible article if the appraised value of total imports does not exceed a certain amount in any calendar year, the dollar ceiling of that limiting amount will be set at $1 million for calendar year 1980. Each subsequent year the ceiling will increase or decrease by the same percentage as the United States GNP increased or decreased in the previous year over the base year, 1979. Based on 1978 trade data, 189 products totalling only $27 million of U.S. imports fall below the $1 million de minimus level. This amendment should reduce the administrative burden for the Customs Service as well as uncertainties for exporters and importers, without imperiling U.S. domestic producers. The President will retain the discretion to exclude particular products from the authority, *i.e.*, to withdraw from or not designate products for GSP treatment, if, for example, the items are determined to be import sensitive.

The President is required under section 505 of the Trade Act to submit to the Congress a full and complete report on the operation of the GSP program by January 3, 1980. This Administration review of the program should include, in particular, review of the operation of the competitive need criteria and a consideration of measures that would increase graduation by country and by product and provide greater distribution of benefits to the less advanced developing countries.

The President should also exercise his existing authority under section 504(a) of the Trade Act of 1974 to proclaim changes in the GSP program in 1980 which will bring about effective graduation by the more advanced developing countries and greater distribution of GSP benefits. Additionally, the Special Representative for Trade Negotiations should develop principles and qualitative factors which will be applied by the United States in negotiating with developing countries to insure that developing countries adhere to a graduation principle and, in fact, phase out from special and differential status and gradually assume the obligations and adhere to the rules of the international trading system under the General Agreement on Tariffs and Trade as they achieve economic progress. The principles and factors the United States will apply should be specified in the President's report to the Congress on the GSP program.

Concession—Related Revenue Losses to United States Possessions (Section 1112 of the Bill)

Present law.—None.

The bill.—Under section 1112 of the bill, upon the request of the government of a U.S. possession, the Secretary of Commerce would be required to determine, before January 1, 1980, whether a concession was granted by the United States in the Multilateral Trade Negotiations on an article produced in that possession on which excise taxes are levied by the United States, and whether the sum of the amounts transferred and paid over to that possession attributable to such taxes for calendar year 1978 were equal to or greater than an amount equal to 10 percent of the tax revenues (not including revenues associated with petroleum or petroleum products) of that possession in 1978. The Secretary would be required to determine, within 3 months after the close of each fiscal year 1980–84, whether a concession made by the United States with respect to a product on which an affirmative determination was made under the preceding sentence contributed importantly to a reduction in the sum of the amounts transferred and paid over to that possession with respect to that product for the most recently closed fiscal year. In making the determination, the Secretary would take into account the extent to which other factors may have contributed to the reduction, and determine the amount of the reduction by subtracting the amount transferred and paid over for the fiscal year under consideration from the amount which would have been transferred and paid over for that fiscal year if the products of the possession with respect to which the excise tax is imposed had maintained the same share of the United States market for that product as in fiscal year 1979.

Section 1112 of the bill also would require the Secretary to advise the President of the amount of the reduction in the excise tax revenues he has determined. The President may then include that amount in a budget submitted under the Budget and Accounting Act of 1921. Upon appropriation of the amount, the amount would be paid promptly to the government of the possession. If the President includes an amount in the budget different from the amount determined by the Secretary, including determining not to include any amount, the President would be required to promptly submit a report to Congress setting forth his reason for submitting such different amount.

Section 1112 of the bill also would require a report to Congress on January 31, 1984, by the President on the operation of section 1112. The President would be required to report reductions in revenues that have been determined under this section, and any reductions that are likely to occur in fiscal years beginning after September 30, 1984. If the President determines such action is warranted, he could recommend to the Congress in the required report an extension of the application of this section to fiscal years after 1984.

Reason for the provision.—Section 1112 of the bill will provide some protection to U.S. possessions against revenue losses to the possessions as a result of concessions granted by the United States in the course of the Multilateral Trade Negotiations (MTN). For example, the United States now levies excise taxes on certain articles produced in the United States, U.S. possessions, and elsewhere, which are sold

within the United States. The amounts collected by the levy of such taxes on products of U.S. possessions by the United States are transferred and paid over to the possessions after collection. The United States has agreed as a concession in the MTN to assess excise taxes on rum and other distilled spirits on the basis of a proof gallon rather than a wine gallon and to reduce the tariff on rum (implemented in domestic law under title VIII of this bill). Rum is a major product of Puerto Rico and the Virgin Islands of the United States. Possible loss of sales of these products in the United States as a result of the lower tax and duty assessments on imports into the U.S. of distilled spirits from other sources would mean a direct loss of government revenues for the possessions, affecting government services and economic development plans. Puerto Rico and the Virgin Islands depend upon the excise taxes imposed on sales in the United States of the rum they produce for a significant portion of their government revenues.

The 10 percent threshold amount with respect to tax revenues used to determine which products will be covered by section 1112 is considered as indicative of a major source of tax revenues. In applying the 10 percent requirement, revenues associated with the sales of petroleum or petroleum products from the Virgin Islands on which excise taxes are assessed and paid over to the government of the Virgin Islands will not be included as part of the tax revenue base in determining whether the 10 percent requirement is satisfied.

In the Secretary's determination of whether the concession made by the United States with respect to a product contributed importantly to a reduction in the sum of the amounts transferred and paid over to the possession with respect to that product for a fiscal year, he must take into account the extent to which other factors may have contributed to the reduction. In taking into account other factors, it is not expected that the Secretary will try to make a precise calculation regarding what part, if any, of the reduction which occurred may be associated with these other factors as opposed to associated with the concession. All that is required is that the Secretary be satisfied that the concession contributed importantly to the reduction, the calculation of which is specified in the statute.

While the President is given authority to include in his budget an amount less than that determined by the Secretary to be the reduction in revenue, it is expected that the President will include the full amount of the reduction determined by the Secretary in the budget absent compelling policy considerations to the contrary. Further, with respect to the Presidential determination of whether to recommend to Congress that the provisions of this section be extended to fiscal years beyond 1984, it is expected that this recommendation will be based upon an attempt to ascertain whether in fact the impact of a concession granted is likely to become greater on revenues as the concession becomes fully implemented in years beyond 1984. It is recognized that as a concession made by the United States in the MTN on products of importance to the possessions is implemented, the impact is likely to become greater on the revenues of the possessions. Therefore, it may be important to extend the application of this section to fiscal years after 1984 if in fact the impact of the concessions is likely to become greater in years after 1984.

No budget Authority for Any Fiscal Year Before Fiscal year 1981 (Section 1113 of the Bill)

Present law.—None.

The bill.—Section 1113 of the bill would provide that nothing in the Trade Agreements Act of 1979 shall be construed as authorizing the enactment of new budget authority for any fiscal year beginning before October 1, 1980.

Reason for the provision.—Section 1113 will ensure compliance with the requirements of section 402(a) of the Congressional Budget Act by specifying that none of the provisions may be construed as authorizing the enactment of new budget authority for fiscal year 1980. Any funding of these provisions in fiscal year 1980 must be from funds already appropriated.

Effective Date (Section 1114 of the Bill)

Present law.—None.

The bill.—Section 1114 would provide that the effective date of provisions in title XI would be the date of enactment of the Trade Agreements Act of 1979, except as otherwise provided in title XI.

III. REGULATORY IMPACT OF THE BILL

In compliance with paragraph 5 of Rule XXIX of the Standing Rules of the Senate the following evaluation is made of the regulatory impact which would be incurred in carrying out the bill.

The bill has as its objective the implementation of the results of Multilateral Trade Negotiations. It can be expected that these results and their implementation through this legislation and through administrative and regulatory action under this legislation will affect virtually all individuals and businesses in the United States to some degree. Direct impact of a regulatory nature, however, will be much more limited and will tend to occur on an *ad hoc* basis rather than as a continuing element in day-to-day operations of businesses and individuals. The numbers of individuals and businesses who may be affected by this kind of direct regulatory impact cannot be projected with any degree of accuracy. In general, however, the classes of individuals and businesses affected would be those involved in export or import of goods.

The economic impact that can be expected as a result of this bill is discussed at length in part I of this report.

The paperwork and recordkeeping requirements which may be imposed by regulations related to this legislation are not anticipated to be different in any significant or substantial way from those under existing law.

Under this bill, as under existing law, certain investigations are required in the course of which information of a confidential nature may be obtained. Under existing law, such information may not be divulged. This is generally true also under the bill. However, the bill does include authority for disclosing certain confidential information pursuant to an administrative protective order or a court order. This

provision of the bill (which is discussed more fully earlier in this report) is the only part of the bill which should have an impact on privacy.

IV. BUDGETARY IMPACT OF THE BILL

In compliance with section 252(a) of the Legislative Reorganization Act of 1970 and sections 308 and 403 of the Congressional Budget Act, the following statements are made relative to the costs and budgetary impact of the bill.

The committee accepts the estimates of the Congressional Budget Office concerning the impact on revenues of the provisions of the bill. The bill, as reported, does not directly provide any budget authority or create any new entitlements; however, it does contain certain authorizations which will be funded through future appropriations acts. In general, the Committee anticipates that these items will be accommodated within the budgets of the agencies affected without requiring any significant increase in Federal spending. Section 1112 of the bill authorizes appropriations to reimburse U.S. possessions for certain concession-related revenue losses. It is expected that the amount of funding required to implement this section will be minimal.

The estimate prepared by the Congressional Budget Office concerning this bill is printed below:

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., July 13, 1979.

Hon. RUSSELL B. LONG,
Chairman, Committee on Finances,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In accordance with the Budget Act, the Congressional Budget Office has examined H.R. 4537, which would approve and implement the trade agreements negotiated under the Trade Act of 1974.

The bill would not provide any new budget authority or any new or increased tax expenditures.

For the purposes of Section 403 of the Budget Act, the Congressional Budget Office estimates that the trade agreements concluded at Geneva as part of the Tokyo Round Multilateral Trade Negotiations would reduce budget receipts by the following amounts:

[In millions of dollars; fiscal years]

	1980	1981	1982	1983	1984
Reductions in excise tax collections (title VIII)	69	142	202	105	105
Reduction in customs duties (titles V, VI, VIII)	261	552	882	1,232	1,600
Total	330	694	1,084	1,337	1,705

These negotiations were authorized by the Trade Act of 1974 which gave the President authority to agree to certain tariff reductions without further Congressional action. Some of the agreements reached in those negotiations, however, call for tariff reductions in excess of the

authority granted the President in the 1974 Trade Act as well as changes in the method of assessing certain excise taxes.

The cost estimate set out above is for all the agreements, both tariff and nontariff, reached in these negotiations. For purposes of the Budget Act, the revenue losses attributable to H.R. 4537 are the revenue losses that would result from those provisions which could not otherwise have been implemented by the President under the authority granted him by the Trade Act. These revenue losses are as follows:

[In millions of dollars; fiscal years]

	1980	1981	1982	1983	1984
Reductions in excise tax collections (title VIII)	69	142	202	105	105
Reductions in customs duties (titles V, VI, VIII)	14	3	3	3	3
Total	83	145	205	108	108

This cost estimate was made on the basis of information supplied by the International Trade Commission.

Sincerely,

ALICE M. RIVLIN, *Director.*

V. VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with section 133 of the Legislative Reorganization Act of 1946, the following statement is made relative to the vote by the committee to report the bill.

The bill was ordered reported by a voice vote.

VI. Changes in Existing Law

In compliance with paragraph 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown below (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Trade Act of 1974

* * * * * * *

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TITLE I—NEGOTIATING AND OTHER AUTHORITY

CHAPTER 1—RATES OF DUTY AND OTHER TRADE BARRIERS

* * * * * * *

SEC. 102. NONTARIFF BARRIERS TO AND OTHER DISTORTIONS OF TRADE.

(a) * * *

(b) Whenever the President determines that any barriers to (or other distortions of) international trade of any foreign country or the United States unduly burden and restrict the foreign trade of the United States or adversely affect the United States economy, or that the imposition of such barriers is likely to result in such a burden, restriction, or effect, and that the purposes of this Act will be promoted thereby, the President, during the [5-year] *13-year* period beginning on the date of the enactment of this Act, may enter into trade agreements with foreign countries or instrumentalities providing for the harmonization, reduction, or elimination of such barriers (or other distortions) or providing for the prohibition of or limitations on the imposition of such barriers (or other distortions).

* * * * * * *

(e) Each trade agreement submitted to the Congress under this subsection shall enter into force with respect to the United States if (and only if)—

(1) the President, not less than 90 days before the day on which he enters into such trade agreement, notifies the House of Representatives and the Senate of his intention to enter into such an agreement, and promptly therafter publishes notice of such intention in the Federal Register;

(2) after entering into the agreement, the President transmits a document to the House of Representatives and to the Senate containing a copy *of the final legal text* of such agreement together with—

(A) a draft of an implementing bill and a statement of any administrative action proposed to implement such agreement, and an explanation as to how the implementing bill and proposed administrative action change or affect existing law, and

(B) a statement of his reasons as to how the agreement serves the interests of United States commerce and as to why the implementing bill and proposed administrative action is required or appropriate to carry out the agreement; and

(3) the implementing bill is enacted into law.

* * * * * * *

SEC. 109. STAGING REQUIREMENTS AND ROUNDING AUTHORITY.

(a) * * *

* * * * * * *

(c)(1) No reduction in the rate of duty on any article pursuant to a trade agreement under section 101 shall take effect more than 10 years after the effective date of the first reduction proclaimed to carry out such trade agreement with respect to such article.

(2) If any part of a reduction takes effect, then any time thereafter during which [such] *any* part of the reduction is not in effect by reason of legislation of the United States or action thereunder, the effect of which is to maintain or increase the rate of duty on an article, shall be excluded in determining—

(A) the 1-year intervals referred to in subsection (a)(2), and

(B) the expiration of the 10-year period referred to in paragraph (1) of this subsection.

CHAPTER 2—OTHER AUTHORITY

SEC. 121. STEPS TO BE TAKEN TOWARD GATT REVISION; AUTHORIZATION OF APPROPRIATIONS FOR GATT.

(a) * * *

* * * * * * *

(c) If the President enters into a trade agreement which establishes rules or procedures, including those set forth in subsection (a), promoting the development of an open, nondiscriminatory, and fair world economic system and if the implementation of such agreement will change any provision of Federal law (including a material change in an administrative rule), such agreement shall take effect with respect to the United States only if the appropriate implementing legislation is enacted by the Congress unless implementation of such agreement is effected pursuant to authority delegated by Congress. Such trade agreement may be [submitted to the Congress for approval in accordance with the procedures of section 151] *entered into under section 102.* Nothing in this section shall be construed as prior approval of any legislation necessary to implement a trade agreement entered into under this section.

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CHAPTER 3—HEARINGS AND ADVICE CONCERNING NEGOTIATIONS

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SEC. 135. ADVICE FROM PRIVATE SECTOR.

(a) The President [, accordance with the provisions of this section,] shall seek information and advice from representative elements of the private sector with respect to negotiating objectives and bargaining positions before entering into a trade agreement referred to in section 101 [or 102], *102, or 124, with respect to the operation of any trade agreement once entered into, and with respect to other matters arising in connection with the administration of the trade policy of the United States.*

(b)(1) The President shall establish an Advisory Committee for Trade Negotiations to provide overall policy advice on [any trade agreement referred to in section 101 or 102] *matters referred to in subsection (a)*. The Committee shall be composed of not more than 45 individuals, and shall include representatives of government, labor, industry, agriculture, small business, service industries, retailers, consumer interests, and the general public.

[(2) The Committee shall meet at the call of the Special Representative for Trade Negotiations, who shall be the Chairman. The Committee shall terminate upon submission of its report required under subsection (e)(2). Members of the Committee shall be appointed by the President for a period of 2 years and may be reappointed for one or more additional periods.]

(2) The Committee shall meet at the call of the Special Representative for Trade Negotiations. The chairman of the Committee shall be elected by the Committee from among its members. Members of the Committee shall be appointed by the President for a period of 2 years and may be reappointed for one or more additional periods.

* * * * * * *

[(c)(1) The President may, on his own initiative or at the request of organizations representing industry, labor, or agriculture, establish general policy advisory committees for industry, labor, and agriculture, respectively, to provide general policy advice on any trade agreement referred to in section 101 or 102. Such committees shall, insofar as practicable, be representative of all industry, labor, or agricultural interests (including small business interests), respectively, and shall be organized by the President acting through the Special Representative for Trade Negotiations and the Secretaries of Commerce, Labor, and Agriculture, as appropriate.]

(c)(1) The President may, on his own initiative, or at the request of organizations representing industry, labor, agriculture, or services, establish general policy advisory committees for industry, labor, agriculture, or services, respectively, to provide general policy advice on matters referred to in subsection (a). Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, and service interests, respectively, including small business interests, and shall be organized by the Special Representative for Trade Negotiations and the Secretary of Commerce, Labor, or Agriculture, as appropriate.

(2) [The President shall, on his own initiative or at the request of organizations in a particular sector, establish such industry, labor, or agricultural sector advisory committees as he determines to be necessary for any trade negotiations referred to in section 101 or 102. Such committees shall, so far as practicable, be representative of all industry, labor, or agricultural interests including small business interests in the sector concerned.] *The President shall establish such sectoral or functional advisory committees as may be appropriate. Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, or service interests (including small business interests) in the sector or functional areas concerned.* In organizing such committees [the President, acting through the Special Representative

for Trade Negotiations and] *the Special Representative for Trade Negotiations;* the Secretary of Commerce, Labor, or Agriculture, as appropriate, (A) shall consult with interested private organizations, and (B) shall take into account such factors as patterns of actual and potential competition between United States industry and agriculture and foreign enterprise in international trade, the character of the non-tariff barriers and other distortions affecting such competition, the necessity for reasonable limits on the number of such [product sector] advisory committees, the necessity that each committee be reasonably limited in size, and that, *in the case of each sectoral committee*, the product lines covered by each committee be reasonably related.

[(d) Committees established pursuant to subsection (c) shall meet at the call of the Special Representative for Trade Negotiations, before and during any trade negotiations, to provide the following:

[(1) policy advice on negotiations;

[(2) technical advice and information on negotiations on particular products both domestic and foreign; and

[(3) advice on other factors relevant to positions of the United States in trade negotiations.]

(d) Committees established under subsection (c) shall meet at the call of the Special Representative for Trade Negotiations and the Secretary of Agriculture, Commerce, or Labor, as appropriate, to provide policy advice, technical advice and information, and advice on other factors relevant to the matters referred to in subsection (a).

(e)[(1)] The Advisory Committee for Trade Negotiations, each appropriate policy advisory committee, [and each sector advisory committee, if the sector] *and each sector or functional advisory committee, if the sector or area* which such committee represents is affected, shall meet at the conclusion of negotiations for each trade agreement entered into under this Act, to provide to the President, to Congress, and to the Special Representative for Trade Negotiations a report on such agreement. The report of the Advisory Committee for Trade Negotiations and each appropriate policy advisory committee shall include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States and the report of the appropriate sector *or functional area* committee shall include an advisory opinion as to whether the agreement provides for equity and reciprocity within the sector *or within the functional area.*

[(2) The Advisory Committee for Trade Negotiations, each policy advisory committee, and each sector advisory committee shall issue a report to the Congress as soon as is practical after the end of the period which ends 5 years after the date of enactment of this Act. The report of the Advisory Committee for Trade Negotiations and each policy advisory committee shall include an advisory opinion as to whether and to what extent trade agreements entered into under this Act, taken as a whole, serve the economic interests of the United States. The report of each sector advisory committee shall include an advisory opinion on the degree to which trade agreements entered into under this Act which affect the sector represented by each such committee, taken as a whole, provide for equity and reciprocity within that sector.]

(f) The provisions of the Federal Advisory Committee Act (Public Law 92-463) shall apply—

(1) to the Advisory Committee for Trade Negotiations established pursuant to subsection (b); and

(2) to all other advisory committees which may be established pursuant to subsection (c); except that the meetings of advisory [groups] *committees* established under subsection (c) shall be exempt from the requirements of subsections (a) and (b) of section 10 and section 11 of the Federal Advisory Committee Act (relating to open meetings, public notice, public participation, and public availability of documents), whenever and to the extent it is determined by the President or his designee that such meetings will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions [on the negotiation of any trade agreement.] *with respect to matters referred to in subsection (a).*

(g)(1)(A) Trade secrets and commercial or financial information which is privileged or confidential, submitted in confidence by the private sector to officers or employees of the United States in connection with trade negotiations, shall not be disclosed to any person other than to—

(i) officers and employees of the United States designated by the Special Representative for Trade Negotiations, and

(ii) members of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate who are accredited as official advisers under section 161 (a) or are designated by the chairman of either such committee under section 161(b)(2), and members of the staff of either such committee designated by the chairman under section 161(b)(2), for use in connection with negotiation of [a trade agreement referred to in section 101 or 102.] *matters referred to in subsection (a).*

(B) Information, other than that described in paragraph (A), and advice submitted in confidence by the private sector to officers or employees of the United States, to the Advisory Committee for Trade Negotiations or to any advisory committee established under subsection (c), in connection with [trade negotiations] *matters referred to in subseciton (a)*, shall not be disclosed to any person other than—

(i) the individuals described in subparagraph (A), and

(ii) the appropriate advisory committees established under this section.

(2) Information submitted in confidence by officers or employees of the United States to the Advisory Committee for Trade Negotiations, or to any advisory committee established under subsection (c), shall not be disclosed other than in accordance with rules issued by the Special Representative for Trade Negotiations and the Secretary of Commerce, Labor or Agriculture, as appropriate, after consultation with the relevant advisory committees established under subsection (c). Such rules shall define the categories of information which require restricted or confidential handling by such committee considering the extent to which public disclosure of such information can

reasonably be expected to prejudice United States negotiating objectives. Such rules shall, to the maximum extent feasible, permit meaningful consultations by advisory committee members with persons affected by [proposed trade agreements] *matters referred to in subsection (a).*

* * * * * * *

(i) It shall be the responsibility of the Special Representative for Trade Negotiations, in conjunction with the Secretary of Commerce, Labor, or Agriculture, as appropriate, to adopt procedures for consultation with and obtaining information and advice from the advisory committees established pursuant to subsection (c) on a continuing and timely basis [, both during preparation for negotiations and actual negotiations]. Such consultation shall include the provision of information to each advisory committee as to (1) significant issues and developments [, arising in preparation for or in the course of such negotiations], and (2) overall negotiating objectives and positions of the United States and other parties [to the negotiations.] *with respect to matters referred to in subsection (a).* The Special Representative for Trade Negotiations shall not be bound by the advice or recommendations of such advisory committees but the Special Representative for Trade Negotiations shall inform the advisory committees of failures to accept such advice or recommendations, and the President shall include in his statement to the Congress, required by section 163, a report by the Special Representative for Trade Negotiations on consultation with such committees, issues involved in such consultation, and the reasons for not accepting advice or recommendations.

(j) In addition to any advisory committee established pursuant to this section, the President shall provide adequate, timely and continuing opportunity for the submission on an informal and, if such information is submitted under the provisions of subsection (g), confidential basis by private oragnizations or groups, representing labor, industry, agriculture, small business, service industries, consumer interests, and others, of statistics, data, and other trade information, as well as policy recommendations, pertinent to the negotiation of any [trade agreement referred to in section 101 or 102.] *matters referred to in subsection (a).*

(k) Nothing contained in this section shall be construed to authorize or permit any individual to participate directly in any negotiation or any [trade agreement referred to in section 101 or 102.] *matters referred to in subsection (a). To the maximum extent practicable, the members of the committees established under subsections (b) and (c), and other appropriate parties, shall be informed and consulted before and during any such negotiations and may be permitted to participate in international meetings to the extent the head of the United States delegation deems appropriate, but may not speak or negotiate for the United States.*

(l) The provisions of title XVIII of the Food and Agriculture Act of 1977 shall not apply to any advisory committee established under subsection (c).

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CHAPTER 5—CONGRESSIONAL PROCEDURES WITH RESPECT TO PRESIDENTIAL ACTIONS

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SEC. 152. RESOLUTIONS DISAPPROVING CERTAIN ACTIONS.

(a) CONTENTS OF RESOLUTIONS.—

(1) For purposes of this section, the term "resolution" means only—

[(A) a concurrent resolution of the two Houses of the Congress, the matter after the resolving clause of which is as follows: "That the Congress does not approve ——— transmitter to the Congress on ———.", the first blank space being filled in accordance with paragraph (2) and the second blank space being filled with the appropriate date; and]

(A) a concurrent resolution of the two Houses of the Congress, the matter after the resolving clause of which is as follows: "That the Congress does not approve the action taken by, or the determination of, the President under section 203 of the Trade Act of 1974 transmitted to the Congress on .", the blank space being filled with the appropriate date; and

(B) a resolution of either House of the Congress, the matter after the resolving clause of which is as follows: "That the ——— does not approve ——— transmitted to the Congress on ———.", with the first blank space being filled with the name of the resolving House, the second blank space being filled in accordance with paragraph [(3)] *(2)*, and the third blank space being filled with the appropriate date.

[(2) The first blank space referred to in paragraph (1)(A) shall be filled as follows:

[(A) in the case of a resolution referred to in section 203(c), with the phrase "the action taken by, or the determination of, the President under section 203 of the Trade Act of 1974"; and

[(B) in the case of a resolution referred to in section 302(b), with the phrase "the action taken by the President under section 301 of the Trade Act of 1974".]

[3](*2*) The second blank space referred to in paragraph (1)(B) shall be filled as follows:

(A) in the case of a resolution referred to in section 303(e) of the Tariff Act of 1930, with the phrase "the determination of the Secretary of the Treasury under section 303(d) of the Tariff Act of 1930";

(B) in the case of a resolution referred to in section 407(c)(2), with the phrase "the extension of nondiscriminatory treatment with respect to the products of ————" (with this blank space being filled with the name of the country involved); and

(C) in the case of a resolution referred to in section 407(c)(3), with the phrase "the report of the President submitted under section ——— of the Trade Act of 1974 with

respect to ————" (with the first blank space being filled with "402(b)" or "409(b)", as appropriate, and the second blank space being filled with the name of the country involved).

(b) REFERENCE TO COMMITTEES.—All resolutions introduced in the House of Representatives shall be referred to the Committee on Ways and Means and all resolutions introduced in the Senate shall be referred to the Committee on Finance.

(c) DISCHARGE OF COMMITTEES.—

(1) If the committee of either House to which a resolution has been referred has not reported it at the end of 30 days after its introduction, not counting any day which is excluded under section [153] *154*(b), it is in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution introduced with respect to the same matter, except no motion to discharge shall be in order after the committee has reported a resolution with respect to the same matter.

(2) A motion to discharge under paragraph (1) may be made only by an individual favoring the resolution, and is highly privileged in the House and privileged in the Senate; and debate thereon shall be limited to not more than 1 hour, the time to be divided in the House equally between those favoring and those opposing the resolution, and to be divided in the Senate equally between, and controlled by, the majority leader and the minority leader or their designees. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

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SEC. 154. SPECIAL RULES RELATING TO CONGRESSIONAL PROCEDURES.

(a) Whenever, pursuant to section 102(e), 203(b), [302(a),] 402(d), or 407 (a) or (b), or section 303(e) of the Tariff Act of 1930, a document is required to be transmitted to the Congress, copies of such document shall be delivered to both Houses of Congress on the same day and shall be delivered to the Clerk of the House of Representatives if the House is not in session and to the Secretary of the Senate if the Senate is not in session.

(b) For purposes of sections 203(c), [302(b),] 407(c)(2), and 407(c)(3), the 90-day period referred to in such sections shall be computed by excluding—

(1) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die, and

(2) any Saturday and Sunday, not excluded under pargaraph (1), when either House is not in session.

CHAPTER 6—CONGRESSIONAL LIAISON AND REPORTS

SEC. 161. CONGRESSIONAL DELEGATES TO NEGOTIATIONS.

(a) At the beginning of each regular session of Congress, the Speaker of the House of Representatives, upon the recommendation of the

chairman of the Committee on Ways and Means, shall select five members (not more than three of whom are members of the same political party) of such committee, and the President pro tempore of the Senate, upon the recommendation of the chairman of the Committee on Finance, shall select five members (not more than three of whom are members of the same political party) of such committee, who shall be accredited by the President as official advisers to the United States delegations to international conferences, meetings, and negotiation sessions relating to trade agreements.

(b) (1) The Special Representative for Trade Negotiation shall keep each official adviser currently informed on United States negotiating objectives, the status of negotiations in progress, and the nature of any changes in domestic law or the administration thereof which may be recommended to Congress to carry out any trade agreement *or any requirement of, amendment to, or recommendation under, such agreement.*

(2) The chairmen of the Committee on Ways and Means and the Committee on Finance may designate members (in addition to the official advisors under subsection (a)) and staff members of their respective committees who shall have access to the information provided to official advisers under paragraph (1).

* * * * * * *

TITLE II—RELIEF FROM INJURY CAUSED BY IMPORT COMPETITION

CHAPTER 1—IMPORT RELIEF

SEC. 201. INVESTIGATION BY INTERNATIONAL TRADE COMMISSION.

(a) (1) * * *

* * * * * * *

(b) (1) * * *

* * * * * * *

(6) In the course of any proceeding under this subsection, the Commission shall investigate any factors which in its judgment may be contributing to increased imports of the article under investigation; and, whenever in the course of its investigation the Commission has reason to believe that the increased imports are attributable in part to circumstances which come within the purview of [the Antidumping Act, 1921, section 303 or 337] *subtitles A and B of title VII or section 337* of the Tariff Act of 1930, or other remedial provisions of law, the Commission shall promptly notify the appropriate agency so that such action may be taken as is otherwise authorized by such provisions of law.

* * * * * * *

SEC. 203. IMPORT RELIEF.

(a) If the President determines to provide import relief under section 202(a)(1), he shall, to the extent that and for such time (not to exceed 5 years) as he determines necessary taking into account the considerations specified in section 202(c) to prevent or remedy serious

injury or the threat thereof to the industry in question and a facilitate the orderly adjustment to new competitive conditions by the industry in question—

(1) proclaim an increase in, or imposition of, any duty on the article causing or threatening to cause serious injury to such industry;

(2) proclaim a tariff-rate quota on such article;

(3) proclaim a modification of, or imposition of, any quantitative restriction on the import into the United States of such article;

(4) negotiate, *conclude, and carry out* orderly marketing agreements with foreign countries limiting the export from foreign countries and the import into the United States of such articles; or

(5) take any combination of such actions.

(b)(1) On the day [on which the President proclaims import relief under this section or announces his intention to negotiate one or more orderly marketing agreements,] *the President determines under section 202 to provide import relief, including announcement of his intention to negotiate an orderly marketing agreement,* the President shall transmit to Congress a document setting forth the action he is taking under this section. If the action taken by the President differs from the action recommended to him by the Commission under section 201[(b)](*d*)(1)(A), he shall state the reason for such difference.

(2) On the day on which the President determines that the provision of import relief is not in the national economic interest of the United States, the President shall transmit to Congress a document setting forth such determination and the reasons why, in terms of the national economic interest, he is not providing import relief and also what other steps he is taking, beyond adjustment assistance programs immediately available to help the industry to overcome serious injury and the workers to find productive employment.

(*3*) *On the day on which the President proclaims any import relief under this section not reported pursuant to paragraph (1), he shall transmit to Congress a document setting forth the action he is taking and the reasons therefor.*

(c)(1) If the President reports under subsection (b) that he is taking atcion which differs from the action recommended by the Commission under section 201[(b)](*d*)(1)(A), or that he will not provide import relief, the action recommended by the Commission shall effect (as provided in paragraph (2)) upon the adoption by both Houses of Congress (within the 90-day period following the date on which the document referred to in subsection (b) is transmitted to the Congress), by an affirmative vote of a majority of the Members of each House present and voting *under the procedures set forth in section 152;* of a concurrent resolution disapproving the action taken by the President or his determination not to provide import relief under section 202(a)(1)(A).

* * * * * * *

(e)(1) Import relief under this section shall be proclaimed and take effect within 15 days after the import relief determination date unless

the President announces on such date his intention to negotiate one or more orderly marketing agreements under subsection (a) (4) or (5) in which case import relief shall be proclaimed and take effect within 90 days after the import relief determination date.

(2) If the President provides import relief under subsection (a) (1), (2), (3), or (5), he may, after such relief takes effect, negotiate orderly marketing agreements with foreign countries, and may, after such agreements take effect, suspend or terminate, in whole or in part, such import relief.

(3) If the President negotiates an orderly marketing argeement under subsection (a) (4) or (5) and such agreement does not continue to be effective, he may, consistent with the limitations contained in subsection (h), provide import relief under subsection (a) [(1), (2), (3), or (5)].

(4) For purposes of this subsection, the term "import relief determination date" means the date of the President's determination under section 202(b).

(g)(1) The President shall by regulations provide for the efficient and fair administration of any [quantitative] restriction proclaimed pursuant to [subsection (a)(3) or (c)] *this section.*

(2) In order to carry out an agreement concluded under subsection (a)(4), (a)(5), [or (e)(2)] *(e)(2)*, or *(e)(3)*, the President is authorized to prescribe regulations governing the entry or withdrawal from warehouse of articles covered by such agreement. In addition, in order to carry out any agreement concluded under subsection (a)(4), (a)(5), (e)(2), or *(e)(3)* [(e)(2)] with one or more countries accounting for a major part of United States imports of the article covered by such agreements, including imports into a major geographic area of the United States, the President is authorized to issue regulations governing the entry or withdrawal from warehouse of like articles which are the product of countries not parties to such agreement.

(3) Regulations prescribed under this subsection shall, to the extent practicable and consistent with efficient and fair administration, insure against inequitable sharing of imports by a relatively small number of the larger importers.

(h)(1) Any import relief provided pursuant to this section shall, unless renewed pursuant to paragraph (3), terminate no later than the close of the day which is 5 years after the day on which import relief with respect to the article in question first took effect pursuant to this section.

(2) To the extent feasible, any import relief provided pursuant to this section for a period of more than 3 years shall be phased down during the period of such relief, with the first reduction of relief taking effect no later than the close of the day which is 3 years after the day on which such relief first took effect.

(3) Any import relief provided pursuant to this section or section 351 or 352 of the Trade Expansion Act of 1962 may be extended by the President, at a level of relief no greater than the level in effect immediately before such extension, for [one 3-year period] *one period of not more than 3 years* if the President determines, after taking into account the advice received from the Commission under subsection (i)(2) *or (i)(3)* and after taking into account the considerations

described in section 202(c), that such extension is in the national interest.

(4) Any import relief provided pursuant to this section may be reduced or terminated by the President when he determines, after taking into account the advice received from the Commission under subsection (i)(2) *or* (*i*)(*3*) and after seeking advice of the Secretary of Commerce and the Secretary of Labor, that such reduction or termination is in the national interest.

(5) For purposes of this subsection and subsection (i), the import relief provided in the case of an orderly marketing agreement shall be the level of relief contemplated by such agreement.

* * * * * * *

CHAPTER 3—ADJUSTMENT ASSISTANCE FOR FIRMS

SEC. 261. [DEFINITIONS.] *DEFINITION OF FIRM.*

For purposes of this chapter, the term "firm" includes an individual proprietorship, partnership, joint venture, association, corporation (including a development corporation), business trust, cooperative, trustee in bankruptcy, and receiver under decree of any court. A firm, together with any predecessor or successor firm, or any affiliated firm controlled or substantially beneficially owned by substantially the same persons, may be considered a single firm where necessary to prevent unjustifiable benefits.

* * * * * * *

TITLE III—RELIEF FROM UNFAIR TRADE PRACTICES

CHAPTER 1—FOREIGN IMPORT RESTRICTIONS AND EXPORT SUBSIDIES

SEC. 301. RESPONSES TO CERTAIN TRADE PRACTICES OF FOREIGN GOVERNMENTS.

[(a) Whenever the President determines that a foreign country or instrumentality—

[(1) maintains unjustifiable or unreasonable tariff or other import restrictions which impair the value of trade commitments made to the United States or which burden, restrict, or discriminate against United States commerce,

[(2) engages in discriminatory or other acts or policies which are unjustifiable or unreasonable and which burden or restrict United States commerce,

[(3) provides subsidies (or other incentives having the effect of subsidies) on its exports of one or more products to the United States or to other foreign markets which have the effect of substantially reducing sales of the competitive United States product or products in the United States or in those other foreign markets, or

[(4) imposes unjustifiable or unreasonable restrictions on access to supplies of food, raw materials, or manufactured or semimanufactured products which burden or restrict United States commerce,

the President shall take all appropriate and feasible steps within his power to obtain the elimination of such restrictions or subsidies, and he—

[(A) may suspend, withdraw, or prevent the application of, or may refrain from proclaiming, benefits of trade agreement concessions to carry out a trade agreement with such country or instrumentality; and

[(B) may impose duties or other import restrictions on the products of such foreign country or instrumentality, and may impose fees or restrictions on the services of such foreign country or instrumentality, for such time as he deems appropriate.

For purposes of this subsection, the term "commerce" includes services associated with the international trade.

[(b) In determining what action to take under subsection (a), the President shall consider the relationship of such action to the purposes of this Act. Action shall be taken under subsection (a) against the foreign country or instrumentality involved, except that, subject to the provisions of section 302, any such action may be taken on a nondiscriminatory treatment basis.

[(c) The President in making a determination under this section, may take action under subsection (a)(3) with respect to the exports of a product to the United States by a foreign country or instrumentality if—

[(1) the Secretary of the Treasury has found that such country or instrumentality provides subsidies (or other incentives having the effect of subsidies) on such exports;

[(2) the International Trade Commission has found that such exports to the United States have the effect of substantially reducing sales of the competitive United States product or products in the United States; and

[(3) the President finds that the Antidumping Act, 1921, and section 303 of the Tariff Act of 1930 are inadequate to deter such practices.

[(d)(1) The President shall provide an opportunity for the presentation of views concerning the restrictions, acts, policies, or practices referred to in paragraphs (1), (2), (3), and (4) of subsection (a).

[(2) Upon complaint filed by any interested party with the Special Representative for Trade Negotiations alleging any such restriction, act, policy, or practice, the Special Representative shall conduct a review of the alleged restriction, act, policy, or practice, and, at the request of the complainant, shall conduct public hearings thereon. The Special Representative shall have a copy of each complaint filed under this paragraph published in the Federal Register. The Special Representative shall issue regulations concerning the filing of complaints and the conduct of reviews and hearings under this paragraph and shall submit a report to the House of Representatives and the Senate semi-annually summarizing the reviews and hearings conducted by it under this paragraph during the preceding 6-month period.

[(e) Before the President takes any action under subsection (a) with respect to the import treatment of any product or the treatment of any service—

[(1) he shall provide an opportunity for the presentation of views concerning the taking of action with respect to such product or service,

[(2) upon request by any interested person, he shall provide for appropriate public hearings with respect to the taking of action with respect to such product or service, and

[(3) he may request the International Trade Commission for its views as to the probable impact on the economy of the United States of the taking of action with respect to such product or service.

If the President determines that, because of the need for expeditious action under subsection (a), compliance with paragraphs (1) and (2) would be contrary to the national interest, then such paragraphs shall not apply with respect to such action, but he shall thereafter promptly provide an opportunity for the presentation of views concerning the action taken and, upon request by any interested person, shall provide for appropriate public hearings with respect to the action taken. The President shall provide for the issuance of regulations concerning the filing of requests for, and the conduct of, hearings under this subsection.

SEC. 302. PROCEDURE FOR CONGRESSIONAL DISAPPROVAL OF CERTAIN ACTIONS TAKEN UNDER SECTION 301.

[(a) Whenever the President takes any action under subparagraph (A) or (B) of section 301(a) with respect to any country or instrumentality other than the country or instrumentality whose restriction, act, policy, or practice was the cause for taking such action, he shall promptly transmit to the House of Representatives and to the Senate a document setting forth the action which he has so taken, together with his reasons therefor.

[(b) If, before the close of the 90-day period beginning on the day on which the document referred to in subsection (a) is delivered to the House of Representatives and to the Senate, the two Houses adopt, by an affirmative vote of a majority of those present and voting in each House, a concurrent resolution of disapproval under the procedures set forth in section 152, then such action under section 301(a) shall have no force and effect beginning with the day after the date of the adoption of such concurrent resolution of disapproval, except with respect to the country or instrumentality whose restriction, act, policy, or practice was the cause for taking such action.]

CHAPTER 1—ENFORCEMENT OF UNITED STATES RIGHTS UNDER TRADE AGREEMENTS AND RESPONSE TO CERTAIN FOREIGN TRADE PRACTICES

SEC. 301. DETERMINATIONS AND ACTION BY PRESIDENT.

(a) DETERMINATIONS REQUIRING ACTION.—If the President determines that action by the United States is appropriate—

(1) to enforce the rights of the United States under any trade agreement; or

(2) to respond to any act, policy, or practice of a foreign country or instrumentality that—

(A) is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or

(B) is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce;

the President shall take all appropriate and feasible action within his power to enforce such rights or to obtain the elimination of such act, policy, or practice. Action under this section may be taken on a nondiscriminatory basis or solely against the products or services of the foreign country or instrumentality involved.

(b) OTHER ACTION.—Upon making a determination described in subsection (a), the President, in addition to taking action referred to in such subsection, may—

(1) suspend, withdraw, or prevent the application of, or refrain from proclaiming, benefits of trade agreement concessions to carry out a trade agreement with the foreign country or instrumentality involved; and

(2) impose duties or other import restrictions on the products of, and fees or restrictions on the services of, such foreign country or instrumentality for such time as he determines appropriate.

(c) PRESIDENTIAL PROCEDURES.—

(1) ACTION ON OWN MOTION.—If the President decides to take action under this section and no petition requesting action on the matter involved has been filed under section 302, the President shall publish notice of his determination, including the reasons for the determination in the Federal Register. Unless he determines that expeditious action is required, the President shall provide an opportunity for the presentation of views concerning the taking of such action.

(2) ACTION REQUESTED BY PETITION.—Not later than 21 days after the date on which he receives the recommendation of the Special Representative under section 304 with respect to a petition, the President shall determine what action, if any, he will take under this section, and shall publish notice of his determination, including the reasons for the determination, in the Federal Register.

(d) SPECIAL PROVISIONS.—

(1) DEFINITION OF COMMERCE.—For purposes of this section, the term "commerce" includes, but is not limited to, services associated with international trade, whether or not such services are related to specific products.

(2) VESSEL CONSTRUCTION SUBSIDIES.—An act, policy, or practice of a foreign country or instrumentality that burdens or restricts United States commerce may include the provision, directly or indirectly, by that foreign country or instrumentality of subsidies for the construction of vessels used in the commercial transportation by water of goods between foreign countries and the United States.

SEC. 302. PETITIONS FOR PRESIDENTIAL ACTION.

(a) FILING OF PETITION WITH SPECIAL REPRESENTATIVE.—Any interested person may file a petition with the Special Representative for Trade Negotiations (hereinafter in this chapter referred to as the

"Special Representative") requesting the President to take action under section 301 and setting forth the allegations in support of the request. The Special Representative shall review the allegations in the petition and, not later than 45 days after the date on which he received the petition, shall determine whether to initiate an investigation.

(b) DETERMINATIONS REGARDING PETITIONS.—

(1) NEGATIVE DETERMINATION.—If the Special Representative determines not to initiate an investigation with respect to a petition, he shall inform the petitioner of his reasons therefor and shall publish notice of the determination, together with a summary of such reasons, in the Federal Register.

(2) AFFIRMATIVE DETERMINATION.—If the Special Representative determines to initiate an investigation with respect to a petition, he shall initiate an investigation regarding the issues raised. The Special Representative shall publish the text of the petition in the Federal Register and shall, as soon as possible, provide opportunity for the presentation of views concerning the issues, including a public hearing—

(A) within the 30-day period after the date of the determination (or on a date after such period if agreed to by the petitioner), if a public hearing within such period is requested in the petition; or

(B) at such other time if a timely request therefor is made by the petitioner.

SEC. 303. CONSULTATION UPON INITIATION OF INVESTIGATION.

On the date an affirmative determination is made under section 302 (b) with respect to a petition, the Special Representative, on behalf of the United States, shall request consultations with the foreign country or instrumentality concerned regarding issues raised in the petition. If the case involves a trade agreement and a mutually acceptable resolution is not reached during the consultation period, if any, specified in the trade agreement, the Special Representative shall promptly request proceedings on the matter under the formal dispute settlement procedures provided under such agreement. The Special Representative shall seek information and advice from the petitioner and the appropriate private sector representatives provided for under section 135 in preparing United States presentations for consultations and dispute settlement proceedings.

SEC. 304. RECOMMENDATIONS BY THE SPECIAL REPRESENTATIVE.

(a) RECOMMENDATIONS.—

(1) IN GENERAL.—On the basis of the investigation under section 302, and the consultations (and the proceedings, if applicable) under section 303, and subject to subsection (b), the Special Representative shall recommend to the President what action, if any, he should take under section 301 with respect to the issues raised in the petition. The Special Representative shall make that recommendation not later than—

(A) 7 months after the date of the initiation of the investigation under section 302(b)(2) if the petition alleges only an export subsidy covered by the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the Gen-

eral Agreement on Tariffs and Trade (relating to subsidies and countervailing measures and hereinafter referred to in this section as the 'Subsidies Agreement');

(B) 8 months after the date of the investigation initiation if the petition alleges any matter covered by the Subsidies Agreement other than only an export subsidy;

(C) in the case of a petition involving a trade agreement approved under section 2(a) of the Trade Agreements Act of 1979 (other than the Subsidies Agreement), 30 days after the dispute settlement procedure is concluded; or

(D) 12 months after the date of the investigation initiation in any case not described in subparagraph (A), (B), or (C).

(2) SPECIAL RULE.—In the case of any petition—

"(A) an investigation with respect to which is initiated on or after the date of the enactment of the Trade Agreements Act of 1979 (including any petition treated under section 903 of that Act as initiated on such date); and

"(B) to which the 12-month time limitation set forth in subparagraph (D) of paragraph (1) would but for this paragraph apply;

if a trade agreement approved under section 2(a) of such Act of 1979 that relates to any allegation made in the petition applies between the United States and a foreign country or instrumentality before the 12-month period referred to in subparagraph (B) expires, the Special Representative shall make the recommendation required under paragraph (1) with respect to the petition not later than the close of the period specified in subparagraph (A), (B), or (C), as appropriate, of such paragraph, and for purposes of such subparagraph (A) or (B), the date of the application of such trade agreement between the United States and the foreign country or instrumentality concerned shall be treated as the date on which the investigation with respect to such petition was initiated; except that consultations and proceedings under section 303 need not be undertaken within the period specified in such subparagraph (A), (B), or (C), as the case may be, to the extent that the requirements under such section were complied with before such period begins.

(3) REPORT IF SETTLEMENT DELAYED.—In any case in which a dispute is not resolved before the close of the minimum dispute settlement period provided for in a trade agreement referred to in paragraph (1)(C) (other than the Subsidies Agreement), the Special Representative, within 15 days after the close of such period, shall submit a report to Congress setting forth the reasons why the dispute was not resolved within the minimum period, the status of the case at the close of the period, and the prospects for resolution. For purposes of this paragraph, the minimum dispute settlement period provided for under any such trade agreement is the total period of time that results if all stages of the formal dispute settlement procedures are carried out within the time limitations specified in the agreement, but computed without regard to any extension authorized under the agreement of any stage.

(b) CONSULTATION BEFORE RECOMMENDATION.—Before recommending that the President take action under section 301 with respect to the treatment of any product or service of a foreign country or instrumentality which is the subject of a petition filed under section 302, the Special Representative, unless he determines that expeditious action is required—

(1) shall provide opportunity for the presentation of views, including a public hearing if requested by any interested person;

(2) shall obtain advice from the appropriate private sector advisory representatives provided for under section 135; and

(3) may request the views of the International Trade Commission regarding the probable impact on the economy of the United States of the taking of action with respect to such product or service.

If the Special Representative does not comply with paragraphs (1) and (2) because expeditious action is required, he shall, after making the recommendation concerned to the President, comply with such paragraphs.

SEC. 305. REQUESTS FOR INFORMATION.

(a) IN GENERAL.—Upon receipt of written request therefor from any person, the Special Representative shall make available to that person information (other than that to which confidentiality applies) concerning—

(1) the nature and extent of a specific trade policy or practice of a foreign government or instrumentality with respect to particular merchandise, to the extent that such information is available to the Special Representative or other Federal agencies;

(2) United States rights under any trade agreement and the remedies which may be available under that agreement and under the laws of the United States; and

(3) past and present domestic and international proceedings or actions with respect to the policy or practice concerned.

(b) IF INFORMATION NOT AVAILABLE.—If information that is requested by an interested party under subsection (a) is not available to the Special Representative or other Federal agencies, the Special Representative shall, within 30 days after receipt of the request—

(1) request the information from the foreign government; or

(2) decline to request the information and inform the person in writing of the reasons for the refusal.

SEC. 306. ADMINISTRATION.

The Special Representative shall—

(1) issue regulations concerning the filing of petitions and the conduct of investigations and hearings under this chapter;

(2) keep the petitioner regularly informed of all determinations and developments regarding his case under this section, including the reasons for any undue delays; and

(3) submit a report to the House of Representatives and the Senate semiannually describing the petitions filed and the determinations made (and reasons therefor) under section 302, developments in and current status of each such proceeding, and the actions taken, or the reasons for no action, by the President under section 301.

* * * * * * *

CHAPTER 3—COUNTERVAILING DUTIES

SEC. 331. AMENDMENTS TO SECTIONS 303 AND 516 OF THE TARIFF ACT OF 1930.

(a) * * *

* * * * * * *

(c) Section [515] *315*(d) of the Tariff Act of 1930 (19 U.S.C. 1315 (d)) is amended by inserting before the period at the end thereof "or the imposition of countervailing duties under section 303".

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TITLE IV—TRADE RELATIONS WITH COUNTRIES NOT CURRENTLY RECEIVING NONDISCRIMINATORY TREATMENT

* * * * * * *

SEC. 402. FREEDOM OF EMIGRATION IN EAST-WEST TRADE.

(a) * * *

* * * * * * *

(c)(1) During the 18-month period beginning on the date of the enactment of this Act, the President is authorized to waive by Executive order the application of [subsection] *subsections* (a) and (b) with respect to any country, if he reports to the Congress that—

(A) he has determined that such waiver will substantially promote the objectives of this section; and

(B) he has received assurances that the emigration practices of that country will henceforth lead substantially to the achievement of the objectives of this section.

(2) During any period subsequent to the 18-month period referred to in paragraph (1), the President is authorized to waive by Executive order the application of subsections (a) and (b) with respect to any country, if the waiver authority granted by this subsection continues to apply to such country pursuant to subsection (d), and if he reports to the Congress that—

(A) he has determined that such waiver will substantially promote the objectives of this section; and

(B) he has received assurances that the emigration practices of that country will henceforth lead substantially to the achievement of the objectives of this section.

(3) A waiver with respect to any country shall terminate on the day after the waiver authority granted by this subsection ceases to be effective with respect to such country pursuant to subsection (d). The President may, at any time, terminate by Executive order any waiver granted under this subsection.

* * * * * * *

SEC. 404. EXTENSION OF NONDISCRIMINATORY TREATMENT.

(a) Subject to the provisions of section 405(c), the President may by proclamation extend nondiscriminatory treatment to the products of a foreign country which has entered into a bilateral commercial agreement referred to in section 405.

(b) The application of nondiscriminatory treatment shall be limited to the period of effectiveness of the obligations of the United States to such country under such bilateral commercial agreement. In addition, in the case of any foreign country receiving nondiscriminatory treatment pursuant to this title which has entered into an agreement with the United States regarding the settlement of lend-lease reciprocal aid and claims, the application of such nondiscriminatory treatment shall be limited to periods during which such country is not in arrears on its obligations under such agreement.

(c) The President may at any time suspend or withdraw any extension of nondiscriminatory treatment to any country pursuant to subsection (a)[,] and thereby cause all products of such country to be dutiable at the rates set forth in rate column numbered 2 of the Tariff Schedules for the United States.

SEC. 405. AUTHORITY TO ENTER INTO COMMERCIAL AGREEMENTS.

(a) * * *

(b) Any such bilateral commercial agreement shall—

(1) * * *

* * * * * * *

(8) in the case of an agreement entered into or renewed after the date of the enactment of this Act, provide arrangements for the promotion of trade, which may include [those] arrangements for the establishment or expansion of trade and tourist promotion offices, for facilitation of activities of governmental commercial officers, participation in trade fairs and exhibits, and the sending of trade missions, and for facilitation of entry, establishment, and travel of commercial representatives;

* * * * * * *

TITLE V—GENERALIZED SYSTEM OF PREFERENCES

* * * * * * *

SEC. 502. BENEFICIARY DEVELOPING COUNTRY.

(a) (1) For purposes of this title, the term "beneficiary developing country" means any country with respect to which there is in effect an Executive order by the President of the United States designating such country as a beneficiary developing country for purposes of this title. Before the President designates any country as a beneficiary developing country for purposes of this title, he shall notify the House of Representatives and the Senate of his intention to make such designation, together with the considerations entering into such decision.

(2) If the President has designated any country as a beneficiary developing country for purposes of this title, he shall not terminate such designation (either by issuing an Executive order for that purpose or by issuing an Executive order which has the effect of terminating such designation) unless, at least 60 days before such termination, he has notified the House of Representatives and the Senate and has notified such country of his intention to terminate such designation, together with the considerations entering into such decision.

(3) For purposes of this title, the term "country" means any foreign country, any overseas dependent territory or possession of a foreign country, or the Trust Territory of the Pacific Islands. In the case of an association of countries which is a free trade area or customs union, *which is contributing to comprehensive regional economic integration among its members through appropriate means, including, but not limited to, the reduction of duties*, the President may by Executive order provide that all members of such association other than members which are barred from designation under subsection (b) shall be treated as one country for purposes of this title.

(b) No designation shall be made under this section with respect to any of the following:

Australia	Japan
Austria	Monaco
Canada	New Zealand
Czechoslovakia	Norway
European Economic Community member states	Poland
Finland	Republic of South Africa
Germany (East)	Sweden
Hungary	Switzerland
Iceland	Union of Soviet Socialist Republics

In addition, the President shall not designate any country a beneficiary developing country under this section—

(1) if such country is a Communist country, unless (A) the products of such country receive nondiscriminatory treatment, (B) such country is a contracting party to the General Agreement on Tariffs and Trade and a member of the International Monetary Fund, and (C) such country is not dominated or controlled by international communism;

(2) if such country is a member of the Organization of Petroleum Exporting Countries, or a party to any other arrangement of foreign countries, and such country participates in any action pursuant to such arrangement the effect of which is to withhold supplies of vital commodity resources from international trade or to raise the price of such commodities to an unreasonable level and to cause serious disruption of the world economy; [withhold supplies of vital commodity resources from international trade or to raise the price of such commodities to an unreasonable level which causes serious disruption of the world economy;]

* * * * * * *

(6) if such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, [partnership] *partnership*, or association which is 50 percent or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute.

* * * * * * *

(e)(*1*) The President may exempt from the application of paragraph (2) of subsection (b) any country during the period during which such country (A) is a party to a bilateral or multilateral trade agreement to which the United States is also a party if such agreement fulfills the negotiating objectives set forth in section 108 of assuring the United States fair and equitable access at reasonable prices to supplies of articles of commerce important to the economic requirements of the United States and (B) is not in violation of such agreement by action denying the United States such fair and equitable access.

(2) The President may exempt from the application of paragraph (2) of subsection (b) any country that enters into a bilateral product-specific trade agreement with the United States under section 101 or 102 of the Trade Act of 1974 before January 3, 1980. The President shall terminate the exemption granted to any country under the preceding sentence if that country interrupts or terminates the delivery of supplies of petroleum and petroleum products to the United States.

SEC. 503. ELIGIBLE ARTICLES.

(a) * * *

(b) The duty-free treatment provided under section 501 with respect to any eligible article shall apply only—

(1) to an article which is imported directly from a beneficiary developing country into the customs territory of the United States; and

[(2)(A) if the sum of (i) the cost or value of the materials produced in the beneficiary developing country plus (ii) the direct costs of processing operations performed in such beneficiary developing country is not less than 35 percent of the appraised value of such article at the time of its entry into the customs territory of the United States; or

[(B) if the sum of (i) the cost or value of the materials produced in 2 or more countries which are members of the same association of countries which is treated as one country under section 502(a)(3), plus (ii) the direct costs of processing operations performed in such countries is not less than 50 percent of the appraised value of such article at the time of its entry into the customs territory of the United States.]

(2) If the sum of (A) the cost or value of the materials produced in the beneficiary developing country or any 2 or more countries which are members of the same association of countries which is treated as one country under section 502(a)(3), plus (B) the direct costs of processing operations performed in such beneficiary developing country or such member countries is not less than 35 percent of the appraised value of such article at the time of its entry into the customs territory of the United States.

[For purposes of paragraph (2)(A), the term "country" does not include an association of countries which is treated as one country under section 502(a)(3) but does include a country which is a member of any such association.] The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out this subsection.

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SEC. 504. LIMITATIONS ON PREFERENTIAL TREATMENT.

(a) * * *

* * * * * * *

(c)(1) Whenever the President determines that any country—

(A) has exported (directly or indirectly) to the United States during a calendar year a quantity of an eligible article having an appraised value in excess of an amount which bears the same ratio to $25,000,000 as the gross national product of the United States for the preceding calendar year, as determined by the Department of Commerce, bears to the gross national product of the United States for calendar year 1974, or

(B) except as provided in subsection (d), has exported (either directly or indirectly) to the United States a quantity of any eligible article equal to or exceeding 50 percent of the appraised value of the total imports of such article into the United States during any calendar year,

then, not later than [60] *90* days after the close of such calendar year, such country shall not be treated as a beneficiary developing country with respect to such article, except that, if before such [60th] *90th* day, the President determines and publishes in the Federal Register that, with respect to such country—

(i) there has been an historical preferential trade relationship between the United States and such country,

(ii) there is a treaty or trade agreement in force covering economic relations between such country and the United States, and

(iii) such country does not discriminate against, or impose unjustifiable or unreasonable barriers to, United States commerce.

then he may designate, or continue the designation of, such country as a beneficiary developing country with respect to such article.

(2) A country which is no longer treated as a beneficiary developing country with respect to an eligible article by reason of this subsection may be redesignated, subject to the provisions of section 502, a beneficiary developing country with respect to such article if imports of such article from such country did not exceed the limitations in paragraph (1) of this subsection during the preceding calendar year.

(3) For purposes of this subsection, the term "country" does not include an association of countries which is treated as one country under section 502(a)(3), but does include a country which is a member of any such association.

(d) Subsection (c)(1)(B) does not apply with respect to any eligible article if a like or directly competitive article is not produced on the date of enactment of this Act in the United States. *The President may disregard subsection (c)(1)(B) with respect to any eligible article if the appraised value of the total imports of such article into the United States during the preceding calendar year is not in excess of an amount which bears the same ratio to $1,000,000 as the gross national product of the United States for that calendar year, as determined by the Department of Commerce, bears to the gross national product of the United States for calendar year 1979.*

* * * * * * *

TITLE VI—GENERAL PROVISIONS

SEC. 601. DEFINITIONS.

For purposes of this Act—

(1) The term "duty" includes the rate and form of any import duty, including but not limited to tariff-rate quotas.

(2) The term "other import restriction" includes a limitation, prohibition, charge, [and] *or* exaction other than duty, imposed on importation or imposed for the regulation of importation. The term does not include any orderly marketing agreement.

(3) The term "ad valorem" includes ad valorem equivalent. Whenever any limitation on the amount by which or to which any rate of duty may be decreased or increased pursuant to a trade agreement is expressed in terms of an ad valorem percentage, the ad valorem amount taken into account for purposes of such limitation shall be determined by the President on the basis of the value of imports of the articles concerned during the most recent representative period.

(4) The term "ad valorem equivalent" means the ad valorem equivalent of a specific rate or, in the case of a combination of rates including a specific rate, the sum of the ad valorem equivalent of the specific rate and of the ad valorem rate. The ad valorem equivalent shall be determined by the President on the basis of the value of imports of the article concerned during the most recent representative period. In determining the value of imports, the President shall utilize, to the maximum extent practicable, the standards of valuation contained in section 402 or 402a of the Tariff Act of 1930 [(19 U.S.C. sec. 1401a or 1402)] *(as in effect before the effective date of the amendments made by title II of the Trade Agreements Act of 1979) or in section 402 of such Act of 1930 (as in effect on the effective date of such title II amendments) whichever is* applicable to the article concerned during such representative period.

* * * * * * *

SEC. 602. RELATION TO OTHER LAWS.

(a) The second and third sentences of section 2(a) of the Act entitled "An Act to amend the Tariff Act of 1930," approved June 12, 1934 [, as amended] (19 U.S.C. sec. 1352(a)), are each amended by striking out "this Act or the Trade Expansion Act of 1962" and inserting in lieu thereof "this Act or the Trade Expansion Act of 1962 or the Trade Act of 1974".

* * * * * * *

(f) All provisions of law (other than this Act, the Trade Expansion Act of 1962, and the Trade Agreements Extension Act of 1951) in effect after the date of enactment of this Act, referring to section 350 of the Tariff Act of 1930, to that section as amended, to the Act entitled "An Act to amend the Tairff Act of 1930," approved June 12, 1934, to that Act as amended or to the Trade Expansion Act of 1962, or to agreements entered into, or proclamations issued, or actions taken

under any of such provisions, shall be construed, unless clearly precluded by the context, to refer also to this Act [,] or to agreements entered into or proclamations or orders issued, pursuant to this Act.

* * * * * * *

SEC. 612. TRADE RELATIONS WITH [CANADA.] *NORTH AMERICAN COUNTRIES.*

(a) It is the sense of the Congress that the United States should enter into a trade agreement with Canada which will guarantee continued stability to the economies of the United States and Canada. In order to promote such economic stability, the President may initiate negotiations for a trade agreement with Canada to establish a free trade area covering the United States and Canada. Nothing in this section shall be construed as prior approval of any legislation which may be necessary to implement such a trade agreement.

(b) The President shall study the desirability of entering into trade agreements with countries in the northern portion of the western hemisphere to promote the economic growth of the United States and such countries and the mutual expansion of market opportunities and report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate his findings and conclusions within 2 years after the date of enactment of this Act. The study shall include an examination of competitive opportunities and conditions of competition between such countries and the United States in the agricultural, and other appropriate sectors.

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TARIFF ACT OF 1930

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TITLE III—SPECIAL PROVISIONS

Part I—Miscellaneous

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SEC. 303. COUNTERVAILING DUTIES.

(a) LEVY OF COUNTERVAILING DUTIES.—(1) [Whenever] *Except in the case of an article or merchandise which is the product of a country under the Agreement (within the meaning of section 701(b) of this Act), whenever any country, dependency, colony, province,* or other political subdivision of government, person, partnership, association, cartel, or corporation, shall pay or bestow, directly or indirectly, any bounty or grant upon the manufacture or production or export of any article or merchandise manufactured or produced in such country, dependency, colony, province, or other political subdivision of government, then upon the importation of such article or merchandise into the United States, whether the same shall be imported directly from the country of production or otherwise, and whether such article or merchandise is imported in the same condition as when exported from the country of production or has been changed in condition by remanufacture or otherwise, there shall be levied and

paid, in all such cases, in addition to any duties otherwise imposed, a duty equal to the net amount of such bounty or grant, however the same be paid or bestowed.

(2) In the case of any imported article or merchandise which is free of duty, duties may be imposed under this section only if there is [an affirmative determination] *affirmative determinations* by the Commission under [subsection (b)(1)] *title VII*; except that such a determination shall not be required unless a determination of injury is required by the international obligations of the United States.

[(3) In the case or any imported article or merchandise as to which the Secretary of the Treasury (hereafter in this section referred to as the "Secretary") has not determined whether or not any bounty or grant is being paid or bestowed—

[(A) upon the filing of a petition by any person setting forth his belief that a bounty or grant is being paid or bestowed, and the reasons therefor, or

[(B) whenever the Secretary concludes, from information presented to him or to any person to whom authority under this section has been delegated, that a formal investigation is warranted into the question of whether a bounty or grant is being paid or bestowed,

the Secretary shall initiate a formal investigation to determine whether or not any bounty or grant is being paid or bestoyed and shall publish in the Federal Register notice of the initiation of such investigation.

[(4) Within six months from the date on which a petition is filed under paragraph (3)(A) or on which notice is published of an investigation initiated under paragraph (3)(B), the Secretary shall make a preliminary determination, and within twelve months from such date shall make a final determination, as to whether or not any bounty or grant is being paid or bestowed.

[(5) The Secretary shall from time to time ascertain and determine, or estimate, the net amount of each such bounty or grant, and shall declare the net amount so determined or estimated.

[(6) The Secretary shall make all regulations he deems necessary for the identification of articles and merchandise subject to duties under this section and for the assessment and collection of such duties. All determinations by the Secretary under this section, and all determinations by the Commission under subsection (b)(1), (whether affirmative or negative) shall be published in the Federal Register.

[(b) INJURY DETERMINATIONS WITH RESPECT TO DUTY-FREE MERCHANDISE; SUSPENSION OF LIQUIDATION.—(1) Whenever the Secretary makes a final determination under subsection (a) that a bounty or grant is being paid or bestowed with respect to any article or merchandise which is free of duty and a determination by the Commission is required under subsection (a)(2), he shall—

[(A) so advise the Commission, and the Commission shall determine within three months thereafter, and after such investigation as it deems necessary, whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such article or merchandise into the United States; and the Commission shall notify the Secretary of its determination; and

[(B) require, under such regulations as he may prescribe, the suspension of liquidation as to such article or merchandise entered, or withdraw from warehouse, for consumption on or after the date of the publication in the Federal Register of his final determination under subsection (a), and such suspension of liquidation shall continue until the further order of the Secretary or until he has made public an order as provided for in paragraph (3).

[(2) For the purposes of this subsection, the Commission shall be deemed to have made an affirmative determination if the commissioners voting are evenly divided as to whether its determination should be in the affirmative or in the negative.

[(3) If the determination of the Commission under paragraph (1)(A) is in the affirmative, the Secretary shall make public an order directing the assessment and collection of duties in the amount of such bounty or grant as is from time to time ascertained and determined, or estimated, under subsection (a).

[(c) APPLICATION OF AFFIRMATIVE DETERMINATION.—An affirmative final determination by the Secretary under subsection (a) with respect to any imported article or merchandise shall apply with respect to articles entered, or withdrawn from warehouse, for consumption on or after the date of the publication in the Federal Register of such determination. In the case of any imported article or merchandise which is free of duty, so long as a finding of injury is required by the international obligations of the United States, the preceding sentence shall apply only if the Commission makes an affirmative determination of injury under subsection (b)(1).]

(b) The duty imposed under subsection (a) shall be imposed, under regulations prescribed by the administering authority (as defined in section 771(1)), in accordance with title VII of this Act (relating to the imposition of countervailing duties) except that, in the case of any imported article or merchandise which is not free of duty—

(1) no determination by the United States International Trade Commission under section 703(a), 704, or 705(b) shall be required,

(2) an investigation may not be suspended under section 704(c),

(3) no determination as to the presence of critical circumstances shall be made under section 703(e) or 705 (a)(2) or (b)(4)(A), and

(4) any reference to determinations by the Commission, or to the suspension of an investigation under section 704(c) which are not permitted or required by this subsection shall be disregarded.

(d) TEMPORARY PROVISION WHILE NEGOTIATIONS ARE IN PROCESS.—(1) * * *

* * * * * * *

(4)(A) The four-year period referred to in paragraph (2) is extended from January 2, 1979, until whichever of the following dates first occurs:

(i) The date on which either House of Congress defeats on a vote of final passage, in accordance with the provisions of section 151 of the Trade Act of 1974, implementing legislation with respect to a multilateral trade agreement or agreements governing the use of subsidies.

(ii) The date of the enactment of such implementing legislation.

(iii) September 30, 1979.

[(B) Any determination made under this subsection by the Secretary that was in effect on January 2, 1979, shall remain in effect, until whichever of the following dates first occurs:

[(i) The date to which the four-year period is extended under subparagraph (A), notwithstanding any provision to the contrary in any such determination.

[(ii) The date such determination is revoked under paragraph (3).

[(iii) The date of adoption of a resolution of disapproval of such determination under subsection (e) (2).]

(B) Any determination made by the Secretary under this subsection with respect to merchandise of a country which, if title VII of the Tariff Act of 1930 were in effect, would, as determined by the President, be a country under the Agreement (within the meaning of section 701(b) of such Act), which is in effect on September 29, 1979, shall remain in effect until whichever of the following dates first occurs:

(i) The date on which the United States International Trade Commission makes a determination under section 104 of the Trade Agreements Act of 1979.

(ii) The date such determination is revoked under paragraph (3).

(iii) The date of adoption of a resolution of disapproval of such determination under subsection (e) (2).

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(f) CROSS REFERENCE.—

For provisions of law applicable in the case of articles and merchandise which are the product of countries under the Agreement within the meaning of section 701(b) of this Act, see title VII of this Act.

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SEC. 311. BONDED MANUFACTURING WAREHOUSES.

All articles manufactured in whole or in part of imported materials, or of materials subject to internal-revenue tax, and intended for exportation without being charged with duty, and without having an internal-revenue stamp affixed thereto, shall, under such regulations as the Secretary of the Treasury may prescribe, in order to be so manufactured and exported, be made and manufactured in bonded warehouses similar to those known and designated in Treasury Regulations as bonded warehouses, class six: *Provided*, That the manufacturer of such articles shall first give satisfactory bonds for the faithful observance of all the provisions of law and of such regulations as shall be prescribed by the Secretary of the Treasury: *Provided further*, That the manufacture of distilled spirits from grain, starch, molasses, or sugar, including all dilutions or mixtures the articles intended to be manufactured in such warehouse, and state the formula of manufacture and the names and quantities of the ingredients to be used therein.

Articles manufactured under these provisions may be withdrawn under such regulations as the Secretary of the Treasury may prescribe for transportation and delivery into any bonded warehouse at an exterior port for the sole purpose of immediate export therefrom: *Provided*, That cigars manufactured in whole of tobacco imported from any one country, made and manufactured in such bonded manufacturing warehouses, may be withdrawn for home consumption upon the payment of the duties on such tobacco in its condition as imported under such regulations as the Secretary of the Treasury may prescribe, and the payment of the internal-revenue tax accruing on such cigars in their condition as withdrawn, and the boxes or packages containing such cigars shall be stamped to indicate their character, origin of tobacco from which made, and place of manufacture.

The provisions of section 3433 of the Revised Statutes shall, so far as may be practicable, apply to any bonded manufacturing warehouse established under this Act and to the merchandise conveyed therein.

Distilled spirits and wines which are rectified in bonded manufacturing warehouses, class six, and distilled spirits which are reduced in proof and bottled in such warehouses, shall be deemed to have been manufactured within the meaning of this section, and may be withdrawn as hereinbefore provided, and likewise for shipment in bond to Puerto Rico, subject to the provisions of this section, and under such regulations as the Secretary of the Treasury may prescribe, there to be withdrawn for consumption or be rewarehoused and subsequently withdrawn for consumption: *Provided*, That upon withdrawal in Puerto Rico for consumption, the duties imposed by the customs laws of the United States shall be collected on all imported merchandise (in its condition as imported) and imported containers used in the manufacture and putting up of such spirits and wines in such warehouses [: *Provided further*, That no internal-revenue tax shall be imposed on distilled spirits and wines rectified in class six warehouses if such distilled spirits and wines are exported or shipped in accordance with the provisions of this section, and that no person rectifying distilled spirits or wines in such warehouses shall be subject by reason of such rectification to the payment of special tax as a rectifier].

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Part II—United States Tariff Commission

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SEC. 332. INVESTIGATIONS.

(a) INVESTIGATIONS AND REPORTS.— * * *

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(e) DEFINITIONS.—When used in this subdivision and in subdivision (d)—

(1) The term "article" includes any commodity, whether grown, produced, fabricated, manipulated, or manufactured;

[(2) The term "import cost" means the price of trade in the is freely offered for sale in the ordinary course of trade in the usual wholesale quantities for exportation to the United States plus, when not included in such price, all necessary expenses, exclusive of customs duties, of bringing such imported article to the United States.]

(2) The term "import cost" means the transaction value of the imported merchandise determined in accordance with section 402(b) plus, when not included in the transaction value, all necessary expenses, exclusive of customs duties, of bringing such merchandise to the United States.

SEC. 336. EQUALIZATION OF COSTS OF PRODUCTION.

(a) CHANGE OF CLASSIFICATION OR DUTIES.— * * *

[(b) CHANGE TO AMERICAN SELLING PRICE.—If the commission finds upon any such investigation that such differences can not be equalized by proceeding as hereinbefore provided, it shall so state in its report to the President and shall specify therein such ad valorem rates of duty based upon the American selling price of the domestic article, as it finds shown by the investigation to be necessary to equalize such differences. In no case shall the total decrease of such rates of duty exceed 50 per centum of the rates expressly fixed by statute, and no such rate shall be increased.]

(c) PROCLAMATION BY THE PRESIDENT.—The President shall by proclamation approve the rates of duty and changes in classification [and in basis of value] specified in any report of the commission under this section, if in his judgment such rates of duty and changes are shown by such investigation of the commission to be necessary to equalize such differences in costs of production.

(d) EFFECTIVE DATE OF RATES AND CHANGES.—Commencing thirty days after the date of any presidential proclamation of approval the increased or decreased rates of duty and changes in classification [or in basis of value] specified in the report of the commission shall take effect.

* * * * * * *

(f) MODIFICATION OF CHANGES IN DUTY.—Any increased or decreased rate of duty or change in classification [or in basis of value] which has taken effect as above provided may be modified or terminated in the same manner and subject to the same conditions and limitations (including time of take effect) as is provided in this section in the case of orignal increases, decreases, or changes.

* * * * * * *

[(j) RULES AND REGULATIONS OF SECRETARY OF TREASURY.—The Secretary of the Treasury is authorized to make such rules and regulations as he may deem necessary for the entry and declaration of foreign articles of the class or kind of articles with respect to which a change in basis of value has been made under the provisions of subdivision (b) of this section, and for the form of invoice required at time of entry.]

(k) INVESTIGATIONS PRIOR TO ENACTMENT OF ACT.—All uncompleted investigations instituted prior to the approval of this Act under the provisions of section 315 of the Tariff Act of 1922, including investigations in which the President has not proclaimed changes in classification [or in basis of value] or increases or decreases in rates of duty, shall be dismissed without prejudice; but the information and evidence secured by the commission in any such investigation may be given due consideration in any investigation instituted under the provisions of this section.

SEC. 337. UNFAIR PRACTICES IN IMPORT TRADE.

(a) UNFAIR METHODS OF COMPETITION DECLARED UNLAWFUL.—

* * *

(b) INVESTIGATIONS OF VIOLATIONS BY COMMISSION; TIME LIMITS.—(1) The Commission shall investigate any alleged violation of this section on complaint under oath or upon its initiative. Upon commencing any such investigation, the Commission shall publish notice thereof in the Federal Register. The Commission shall conclude any such investigation, and make its determination under this section, at the earliest practicable time, but not later than one year (18 months in more complicated cases) after the date of publication of notice of such investigation. The Commission shall publish in the Federal Register its reasons for designating any investigation as a more complicated investigation. For purposes of the one-year and 18-month periods prescribed by this subsection, there shall be excluded any period of time during which such investigation is suspended because of proceedings in a court or agency of the United States involving similar questions concerning the subject matter of such investigation.

(2) During the course of each investigation under this section, the Commission shall consult with, and seek advice and information from, the Department of Health, Education, and Welfare, the Department of Justice, the Federal Trade Commission, and such other departments and agencies as it considers appropriate.

(3) Whenever, in the course of an investigation under this section, the Commission has reason to believe, based on information before it, that [the matter] *a matter, in whole or in part*, may come within the purview of section 303 or of [the Antidumping Act, 1921,] *subtitle B of title VII of the Tariff Act of 1930*, it shall promptly notify the Secretary of the Treasury so that such action may be taken as is otherwise authorized by such section and such Act. *If the Commission has reason to believe the matter before it is based solely on alleged acts and effects which are within the purview of section 303, 701, or 731 of this Act, it shall terminate or not institute, any investigation into the matter. If the Commission has reason to believe the matter before it is based in part on alleged acts and effects which are within the purview of section 303, 701, or 731 of this Act, and in part on alleged acts and effects which may, independently from or in conjunction with those within the purview of such section, establish a basis for relief under this section, then it may institute or continue an investigation into the matter. If the Commission notifies the Secretary or the administering authority (as defined in section 771(1) of this Act) with respect to a matter under this paragraph, the Commission may suspend its investigation during the time the matter is before the Secretary or administering authority for final decision. For purposes of computing the 1-year or 18-month periods prescribed by this subsection, there shall be excluded such period of suspension. Any final decision of the Secretary under section 303 of this Act or by the administering authority under section 701 or 731 of this Act with respect to which the Commission has notified the Secretary or administering authority shall be conclusive upon the Commission with respect to the issue of less-than-fair-value sales or subsidization and the matter necessary for such decision.*

(c) DETERMINATIONS; REVIEW.—The Commission shall determine, with respect to each investigation conducted by it under this section, whether or not there is a violation of this section. Each determination under subsection (d) or (e) shall be made on the record after notice and opportunity for a hearing in conformity with the provisions of subchapter II of chapter 5 of title 5, United States Code. All legal and equitable defenses may be presented in all cases. Any person adversely affected by a final determination of the Commission under subsection (d) [or (e)], *(e), or (f)* may appeal such determination to the United States Court of Customs and Patent Appeals. Such court shall have jurisdiction to review such determination in the same manner and subject to the same limitations and conditions as in the case of appeals from decisions of the United States Customs Court.

* * * * * * *

(f) CEASE AND DESIST ORDERS.—*(1)* In lieu of taking action under subsection (d) or (e), the Commission may issue and cause to be served on any person violating this section, or believed to be violating this section, as the case may be, an order directing such person to cease and desist from engaging in the unfair methods or acts involved, unless after considering the effect of such order upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such order should not be issued. The Commission may at any time, upon such notice and in such manner as it deems proper, modify or revoke any such order, and, in the case of a revocation, may take action under subsection (d) or (e), as the case may be.

(2) Any person who violates an order issued by the Commission under paragraph (1) after it has become final shall forfeit and pay to the United States a civil penalty for each day on which an importation of articles, or their sale, occurs in violation of the order of not more than the greater of $10,000 or the domestic value of the articles entered or sold on such day in violation of the order. Such penalty shall accrue to the United States and may be recovered for the United States in a civil action brought by the Commission in the Federal District Court for the District of Columbia or for the district in which the violation occurs. In such actions, the United States district courts may issue mandatory injunctions incorporating the relief sought by the Commission as they deem appropriate in the enforcement of such final orders of the Commission.

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Part III—Promotion of Foreign Trade

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SEC. 350. (a) (1) For the purpose of expanding foreign markets for the products of the United States (as a means of assisting in establishing and maintaining a better relationship among various branches of American agriculture, industry, mining, and commerce) by regulating the admission of foreign goods into the United States in accordance with the characteristics and needs of various branches of American production so that foreign markets will be made available to

those branches of American production which require and are capable of developing such outlets by affording corresponding market opportunities for foreign products in the United States, the President, whenever he finds as a fact that any existing duties or other import restrictions of the United States or any foreign country are unduly burdening and restricting the foreign trade of the United States and that the purpose above declared will be promoted by the means hereinafter specified, is authorized from time to time—

(A) To enter into foreign trade agreements with foreign governments or instrumentalities thereof: *Provided*, That the enactment of the Trade Agreements Extension Act of 1955 shall not be construed to determine or indicate the approval or disapproval by the Congress of the executive agreement known as the General Agreement on Tariffs and Trade.

(B) To proclaim such modifications of existing duties and other import restrictions, or such additional import restrictions, or such continuance, and for such minimum periods, of existing customs or excise treatment of any article covered by foreign trade agreements, as are required or appropriate to carry out any foreign trade agreement that the President has entered into hereunder.

(2) No proclamation pursuant to paragraph (1) (B) of this subsection shall be made—

(A) increasing by more than 50 per centum any rate of duty existing on July 1, 1934; except that a specific rate of duty existing on July 1, 1934, may be converted to its ad valorem equivalent based on the value of imports of the article concerned during the calendar year 1934 (determined in the same manner as provided in subparagraph (D) (ii)) and the proclamation may provide an ad valorem rate of duty not in excess of 50 per centum above such ad valorem equivalent.

(B) Transferring any article between the dutiable and free lists.

(C) In order to carry out a foreign trade agreement entered into by the President before June 12, 1955, or with respect to which notice of intention to negotiate was published in the Federal Register on November 16, 1954, decreasing by more than 50 per centum any rate of duty existing on January 1, 1945.

(D) In order to carry out a foreign trade agreement entered into by the President on or after June 12, 1955, and before July 1, 1958, decreasing (except as provided in subparagraph (C) of this paragraph) any rate of duty below the lowest of the following rates:

(i) The rate 15 per centum below the rate existing on January 1, 1955.

(ii) In the case of any article subject to an ad valorem rate of duty above 50 per centum (or a combination of ad valorem rates aggregating more than 50 per centum), the rate 50 per centum ad valorem (or a combination of ad valorem rates aggregating 50 per centum). In the case of any article subject to a specific rate of duty (or a combination of rates including a specific rate) the ad valorem equivalent of which has been determined by the President to have been above 50 per centum during a period determined by the President to be a representative period, the rate 50 per

centum ad valorem or the rate(or a combination of rates), however stated, the ad valorem equivalent of which the President determines would have been 50 per centum during such period. The standards of valuation contained in section 402 [*or 402a*] of this Act (as in effect, with respect to the article concerned, during the representative period) shall be utilized by the President, to the maximum extent he finds such utilization practicable, in making the determinations under the preceding sentence.

* * * * * * *

TITLE V—ADMINISTRATIVE PROVISIONS

Part I—Definitions

SEC. 402. VALUE.

[(a) BASIS.—Except as otherwise specifically provided for in this Act, the value of imported merchandise for the purposes of this Act shall be—

[(1) the export value, or

[(2) if the export value cannot be determined satisfactorily, then the United States value, or

[(3) if neither the export value nor the United States value can be determined satisfactorily, then the constructed value;

except that, in the case of an imported article subject to a rate of duty based on the American selling price of a domestic article, such value shall be—

[(4) the American selling price of such domestic article.

[(b) EXPORT VALUE.—For the purposes of this section, the export value of imported merchandise shall be the price, at the time of exportation to the United States of the merchandise undergoing appraisement, at which such or similar merchandise is freely sold or, in the absence of sales, offered for sale in the principal markets of the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, for exportation to the United States, plus, when not included in such price, the cost of all containers and coverings of whatever nature and all other expenses incidental to placing the merchandise in condition, packed ready for shipment to the United States.

[(c) UNITED STATES VALUE.—For the purposes of this section, the United States value of imported merchandise shall be the price, at the time of exportation to the United States of the merchandise undergoing appraisement, at which such or similar merchandise is freely sold or, in the absence of sales, offered for sale in the principal market of the United States for domestic consumption, packed ready for delivery, in the usual wholesale quantities and in the ordinary course of trade, with allowances made for—

[(1) any commission usually paid or agreed to be paid, or the addition for profit and general expenses usually made, in connection with sales in such market of imported merchandise of the same class or kind as the merchandise undergoing appraisement;

[(2) the usual costs of transportation and insurance and other usual expenses incurred with respect to such or similar merchan-

dise from the place of shipment to the place of delivery, not including any expense provided for in subdivision (1); and

[(3) the ordinary customs duties and other Federal taxes currently payable on such or similar merchandise by reason of its importation, and any Federal excise taxes on, or measured by the value of, such or similar merchandise, for which vendors at wholesale in the United States are ordinarily liable.

[If such or similar merchandise was not so sold or offered at the time of exportation of the merchandise undergoing appraisement, the United States value shall be determined, subject to the foregoing specifications of this subsection, from the price at which such or similar merchandise is so sold or offered at the earliest date after such time of exportation but before the expiration of ninety days after the importation of the merchandise undergoing appraisement.

[(d) CONSTRUCTED VALUE.—For the purposes of this section, the constructed value of imported merchandise shall be the sum of—

[(1) the cost of materials (exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the article in the production of which such materials are used) and of fabrication or other processing of any kind employed in producing such or similar merchandise, at a time preceding the date of exportation of the merchandise undergoing appraisement which would ordinarily permit the production of that particular merchandise in the ordinary course of business;

[(2) an amount for general expenses and profit equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise undergoing appraisement which are made by producers in the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, for shipment to the United States; and

[(3) the cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the merchandise undergoing appraisement in condition, packed ready for shipment to the United States.

[(e) AMERICAN SELLING PRICE.—For the purposes of this section, the American selling price of any article produced in the United States shall be the price, including the cost of all containers and coverings of whatever nature and all other expenses incidental to placing the article in condition packed ready for delivery, at which such article is freely sold or, in the absence of sales, offered for sale for domestic consumption in the principal market of the United States, in the ordinary course of trade and in the usual wholesale quantities, or the price that the manufacturer, producer, or owner would have received or was willing to receive for such article when sold for domestic consumption in the ordinary course of trade and in the usual wholesale quantities, at the time of exportation of the imported article.

[(f) DEFINITIONS.—For the purposes of this section—

[(1) The term "freely sold or, in the absence of sales, offered for sale" means sold or, in the absence of sales, offered—

[(A) to all purchasers at wholesale, or

[(B) in the ordinary course of trade to one or more selected purchasers at wholesale at a price which fairly reflects the market value of the merchandise,

without restrictions as to the disposition or use of the merchandise by the purchaser, except restrictions as to such disposition or use which (i) are imposed or required by law, (ii) limit the price at which or the territory in which the merchandise may be resold, or (iii) do not substantially affect the value of the merchandise to usual purchaser at wholesale.

[(2) The term "ordinary course of trade" means the conditions and practices which, for a reasonable time prior to the exportation of the merchandise undergoing appraisement, have been normal in the trade under consideration with respect to merchandise of the same class or kind as the merchandise undergoing appraisement.

[(3) The term "purchasers at wholesale" means purchasers who buy in the usual wholesale quantities for industrial use or for resale otherwise than at retail; or, if there are no such purchasers, then all other purchasers for resale who buy in the usual wholesale quantities; or, if there are no purchasers in either of the foregoing categories, then all other purchasers who buy in the usual wholesale quantities.

[(4) The term "such or similar merchandise" means merchandise in the first of the following categories in respect of which export value, United States value, or constructed value, as the case may be, can be satisfactorily determined:

[(A) The merchandise undergoing appraisement and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, the merchandise undergoing appraisement.

[(B) Merchandise which is identical in physical characteristics with, and was produced by another person in the same country as, the merchandise undergoing appraisement.

[(C) Merchandise (i) produced in the same country and by the same person as the merchandise undergoing appraisement, (ii) like the merchandise undergoing appraisement in component material or materials and in the purposes for which used, and (iii) approximately equal in commercial value to the merchandise undergoing appraisement.

[(D) Merchandise which satisfies all the requirements of subdivisions (C) except that it was produced by another person.

[(5) The term "usual wholesale quantities," in any case in which the merchandise in respect of which value is being determined is sold in the market under consideration at different prices for different quantities, means the quantities in which such merchandise is there sold at the price or prices for one quantity in an aggregate volume which is greater than the aggregate volume sold at the price or prices for any other quantity.

[(g) TRANSACTIONS BETWEEN RELATED PERSONS.—

[(1) For the purposes of subsection (c) (1) or (d), as the case may be, a transaction directly or indirectly between persons specified in any one of the subdivisions in paragraph (2) of this subsection may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales in the

market under consideration of merchandise of the same general class or kind as the merchandise undergoing appraisement. If a transaction is disregarded under the preceding sentence and there are no other transactions available for consideration, then, for the purposes of subsection (d), the determination of the amount required to be considered shall be based on the best evidence available as to what the amount would have been if the transaction had occurred between persons not specified in any one of the subdivisions in paragraph (2).

[(2) The persons referred to in paragraph (1) are:

[(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants;

[(B) Any officer or director of an organization and such organization;

[(C) Partners;

[(D) Employer and employee;

[(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting stock or shares of any organization and such organization; and

[(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.]

SEC. 402. VALUE.

(a) IN GENERAL.—(1) Except as otherwise specifically provided for in this Act, imported merchandise shall be appraised, for the purposes of this Act, on the basis of the following:

(A) The transaction value provided for under subsection (b).

(B) The transaction value of identical merchandise provided for under subsection (c), if the value referred to in subparagraph (A) cannot be determined, or can be determined but cannot be used by reason of subsection (b)(2).

(C) The transaction value of similar merchandise provided for under subsection (c), if the value referred to in subparagraph (B) cannot be determined.

(D) The deductive value provided for under subsection (d), if the value referred to in subparagraph (C) cannot be determined and if the importer does not request alternative valuation under paragraph (2).

(E) The computed value provided for under subsection (e), if the value referred to in subparagraph (D) cannot be determined.

(F) The value provided for under subsection (f), if the value referred to in subparagraph (E) cannot be determined.

(2) If the value referred to in paragraph (1)(C) cannot be determined with respect to imported merchandise, the merchandise shall be appraised on the basis of the computed value provided for under paragraph (1)(E), rather than the deductive value provided for under paragraph (1)(D), if the importer makes a request to that effect to the customs officer concerned within such time as the Secretary shall prescribe. If the computed value of the merchandise cannot

subsequently be determined, the merchandise may not be appraised on the basis of the value referred to in paragraph (1)(F) unless the deductive value of the merchandise cannot be determined under paragraph (1)(D).

(3) Upon written request therefor by the importer of merchandise, and subject to provisions of law regarding the disclosure of information, the customs officer concerned shall provide the importer with a written explanation of how the value of that merchandise was determined under this section.

(b) TRANSACTION VALUE OF IMPORTED MERCHANDISE.—The transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts equal to—

(A) the packing costs incurred by the buyer with respect to the imported merchandise;

(B) any selling commission incurred by the buyer with respect to the imported merchandise;

(C) the value, apportioned as appropriate, of any assist;

(D) any royalty or license fee related to the imported merchandise that the buyer is required to pay, directly or indirectly, as a condition of the sale of the imported merchandise for exportation to the United States; and

(E) the proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrue, directly or indirectly, to the seller.

The price actually paid or payable for imported merchandise shall be increased by the amounts attributable to the items (and no others) described in subparagraphs (A) through (E) only to the extent that each such amount (i) is not otherwise included within the price actually paid or payable; and (ii) is based on sufficient information. If sufficient information is not available, for any reason, with respect to any amount referred to in the preceding sentence, the transaction value of the imported merchandise concerned shall be treated, for purposes of this section, as one that cannot be determined.

(2)(A) The transaction value of imported merchandise determined under paragraph (1) shall be the appraised value of that merchandise for the purposes of this Act only if—

(i) there are no restrictions on the disposition or use of the imported merchandise by the buyer other than restrictions that—

(I) are imposed or required by law,

(II) limit the geographical area in which the merchandise may be resold, or

(III) do not substantially affect the value of the merchandise;

(ii) the sale of, or the price actually paid or payable for, the imported merchandise is not subject to any condition or consideration for which a value cannot be determined, with respect to the imported merchandise;

(iii) no part of the proceeds of any subsequent resale, disposal, or use of the imported merchandise by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment therefor can be made under paragraph (1)(E); and

(iv) the buyer and seller are not related, or the buyer and seller are related but the transaction value is acceptable, for purposes of this subsection, under subparagraph (B).

(B) The transaction value between a related buyer and seller is acceptable for the purposes of this subsection if an examination of the circumstances of the sale of the imported merchandise indicates that the relationship between such buyer and seller did not influence the price actually paid or payable; or if the transaction value of the imported merchandise closely approximates—

(i) the transaction value of identical merchandise, or of similar merchandise, in sales to unrelated buyers in the United States;

(ii) the deductive value or computed value for identical merchandise or similar merchandise; or

(iii) the transaction value determined under this subsection in sales to unrelated buyers of merchandise, for exportation to the United States, that is identical in all respects to the imported merchandise but was not produced in the country in which the imported merchandise was produced;

but only if each value referred to in clause (i), (ii) or (iii) that is used for comparison relates to merchandise that was exported to the United States at or about the same time as the imported merchandise. No two sales to unrelated buyers may be used for comparison for purposes of clause (iii) unless the sellers are unrelated.

(C) In applying the values used for comparison purposes under subparagraph (B), there shall be taken into account differences with respect to the sales involved (if such differences are based on sufficient information whether supplied by the buyer or otherwise available to the customs officer concerned) in—

(i) commercial levels;

(ii) quantity levels;

(iii) the costs, commissions, values, fees, and proceeds described in paragraph (1); and

(iv) the costs incurred by the seller in sales in which he and the buyer are not related that are not incurred by the seller in sales in which he and the buyer are related.

(3) The transaction value of imported merchandise does not include any of the following, if identified separately from the price actually paid or payable and from any cost or other item referred to in paragraph (1):

(A) Any reasonable cost or charge that is incurred for—

(i) the construction, erection, assembly, or maintenance of, or the technical assistance provided with respect to, the merchandise after its importation into the United States; or

(ii) the transportation of the merchandise after such importation.

(B) The customs duties and other Federal taxes currently payable on the imported merchandise by reason of its importation, and any Federal excise tax on, or measured by the value of, such merchandise for which vendors in the United States are ordinarily liable.

(4) For purposes of this subsection—

(A) The term "price actually paid or payable" means the total payment (whether direct or indirect, and exclusive of any costs,

charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation in the United States) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller.

(B) Any rebate of, or other decrease in, the price actually paid or payable that is made or otherwise effected between the buyer and seller after the date of the importation of the merchandise into the United States shall be disregarded in determining the transaction value under paragraph (1).

(c) TRANSACTION VALUE OF IDENTICAL MERCHANDISE AND SIMILAR MERCHANDISE.—(1) The transaction value of identical mechandise, or of similar merchandise, is the transaction value (acceptable as the appraised value for purposes of this Act under subsection (b) but adjusted under paragraph (2) of this subsection) of imported merchandise that is—

(A) with respect to the merchandise being appraised, either identical merchandise or similar merchandise, as the case may be; and

(B) exported to the United States at or about the time that the merchandise being appraised is exported to the United States.

(2) Transaction values determined under this subsection shall be based on sales of identical merchandise or similar merchandise, as the case may be, at the same commerical level and in substantially the same quantity as the sales of the merchandise being appraised. If no such sale is found, sales of identical merchandise or similar merchandise at either a different commercial level or in different quantities, or both, shall be used, but adjusted to take account of any such difference. Any adjustment made under this paragraph shall be based on sufficient information. If in applying this paragraph with respect to any imported merchandise, two or more transaction values for identical merchandise, or for similar merchandise, are determined, such imported merchandise shall be appraised on the basis of the lower or lowest of such values.

(d) DEDUCTIVE VALUE.—(1) For purposes of this subsection, the term 'merchandise concerned' means the merchandise being appraised, identical merchandise, or similar merchandise.

(2) (A) The deductive value of the merchandise being appraised is whichever of the following prices (as adjusted under paragraph (3)) is appropriate depending upon when and in what condition the merchandise concerned is sold in the United States:

(i) If the merchandise concerned is sold in the condition as imported at or about the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity at or about such date.

(ii) If the merchandise concerned is sold in the condition as imported but not sold at or about the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity after the date of importation of the merchandise being appraised but before the close of the 90th day after the date of such importation.

(iii) If the merchandise concerned was not sold in the condition as imported and not sold before the close of the 90th day after the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise being appraised, after further processing, is sold in the greatest aggregate quantity before the 180th day after the date of such importation. This clause shall apply to appraisement of merchandise only if the importer so elects and notifies the customs officer concerned of that election within such time as shall be prescribed by the Secretary.

(B) For purposes of subparagraph (A), the unit price at which merchandise is sold in the greatest aggregate quantity is the unit price at which such merchandise is sold to unrelated persons, at the first commerical level after importation (in cases to which subparagraph (A) (i) or (ii) applies) or after further processing (in cases to which subparagraph (A) (iii) applies) at which such sales take place, in a total volume that is (i) greater than the total volume sold at any other unit price, and (ii) sufficient to establish the unit price.

(3)(A) The price determined under paragraph (2) shall be reduced by an amount equal to—

(i) any commission usually paid or agreed to be paid, or the addition usually made for profit and general expenses, in connection with sales in the United States of imported merchandise that is of the same class or kind, regardless of the country of exportation, as the merchandise concerned;

(ii) the actual costs and associated costs of transportation and insurance incurred with respect to international shipments of the merchandise concerned from the country of exportation to the United States;

(iii) the usual costs and associated costs of transportation and insurance incurred with respect to shipments of such merchandise from the place of importation to the place of delivery in the United States, if such costs are not included as a general expense under clause (i);

(iv) the customs duties and other Federal taxes currently payable on the merchandise concerned by reason of its importation, and any Federal excise tax on, or measured by the value of, such merchandise for which vendors in the United States are ordinarily liable; and

(v) (but only in the case of a price determined under paragraph (2)(A)(iii)) the value added by the processing of the merchandise after importation to the extent that the value is based on sufficient information relating to cost of such processing.

(B) For purposes of applying paragraph (A)—

(i) the deduction made for profits and general expenses shall be based upon the importer's profits and general expenses, unless such profits and general expenses are inconsistent with those reflected in sales in the United States of imported merchandise of the same class or kind, in which case the deduction shall be based on the usual profit and general expenses reflected in such sales, as determined from sufficient information; and

(ii) any State or local tax imposed on the importer with respect to the sale of imported merchandise shall be treated as a general expense.

(C) The price determined under paragraph (2) shall be increased (but only to the extent that such costs are not otherwise included) by an amount equal to the packing costs incurred by the importer or the buyer, as the case may be, with respect to the merchandise concerned.

(D) For purposes of determining the deductive value of imported merchandise, any sale to a person who supplies any assist for use in connection with the production or sale for export of the merchandise concerned shall be disregarded.

(e) COMPUTED VALUE.—(1) The computed value of imported merchandise is the sum of—

(A) the cost or value of the materials and the fabrication and other processing of any kind employed in the production of the imported merchandise;

(B) an amount for profit and general expenses equal to that usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by the producers in the country of exportation for export to the United States;

(C) any assist, if its value is not included under subparagraph (A) or (B); and

(D) the packing costs.

(2) For purposes of paragraph (1)—

(A) the cost or value of materials under paragraph (1)(A) shall not include the amount of any internal tax imposed by the country of exportation that is directly applicable to the materials or their disposition if the tax is remitted or refunded upon the exportation of the merchandise in the production of which the materials were used; and

(B) the amount for profit and general expenses under paragraph (1)(B) shall be based upon the producer's profits and expenses, unless the producer's profits and expenses are inconsistent with those usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by producers in the country of exportation for export to the United States, in which case the amount under paragraph (1)(B) shall be based on the usual profit and general expenses of such producers in such sales, as determined from sufficient information.

(f) VALUE IF OTHER VALUES CANNOT BE DETERMINED OR USED.—(1) If the value of imported merchandise cannot be determined, or otherwise used for the purposes of this Act, under subsections (b) through (e), the merchandise shall be appraised for the purposes of this Act on the basis of a value that is derived from the methods set forth in such subsections, with such methods being reasonably adjusted to the extent necessary to arrive at a value.

(2) Imported merchandise may not be appraised, for the purposes of this Act, on the basis of—

(A) the selling price in the United States of merchandise produced in the United States;

(B) a system that provides for the appraisement of imported merchandise at the higher of two alternative values;

(C) the price of merchandise in the domestic market of the country of exportation;

(D) a cost of production, other than a value determined under subsection (e) for mechandise that is identical merchandise or similar merchandise to the merchandise being appraised;

(E) the price of merchandise for export to a country other than the United States;

(F) minimum values for appraisement; or

(G) arbitrary or fictitious values.

This paragraph shall not apply with respect to the ascertainment, determination, or estimation of foreign market value or United States price under title VII.

(g) SPECIAL RULES.—(1) For purposes of this section, the persons specified in any of the following subparagraphs shall be treated as persons who are related:

(A) Members of the same family, including brothers and sisters (whether by whole or half blood) spouse, ancestors, and lineal descendants.

(B) Any officer or director of an organization and such organization.

(C) An officer or director of an organization and an officer or director of another organization, if each such individual is also an officer or director in the other organization.

(D) Partners.

(E) Employer and employee.

(F) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.

(G) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(2) For purposes of this section, merchandise (including, but not limited to, identical merchandise and similar merchandise) shall be treated as being of the same class or kind as other merchandise if it is within a group or range of merchandise produced by a particular industry or industry sector.

(3) For purposes of this section, information that is submitted by an importer, buyer, or producer in regard to the appraisement of merchandise may not be rejected by the customs officer concerned on the basis of the accounting method by which that information was prepared, if the preparation was in accordance with generally accepted accounting principles. The term "generally accepted accounting principles" refers to any generally recognized consensus or substantial authoritative support regarding—

(A) which economic resources and obligations should be recorded as assets and liabilities;

(B) which changes in assets and liabilities should be recorded;

(C) how the assets and liabilities and changes in them should be measured;

(D) what information should be disclosed and how it should be disclosed; and

(E) which financial statements should be prepared.

The applicability of a particular set of generally accepted accounting principles will depend upon the basis on which the value of the merchandise is sought to be established.

(h) DEFINITIONS.—As used in this section—

(1)(A) The term "assist" means any of the following if supplied directly or indirectly, and free of charge or at reduced cost, by the buyer of imported merchandise for use in connection with the production or the sale for export to the United States of the merchandise:

(i) Materials, components, parts, and similar items incorporated in the imported merchandise.

(ii) Tools, dies, molds, and similar items used in the production of the imported merchandise.

(iii) Merchandise consumed in the production of the imported merchandise.

(iv) Engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in the United States and are necessary for the production of the imported merchandise.

(B) No service or work to which subparagraph (A)(iv) applies shall be treated as an assistant for purposes of this section if such service or work—

(i) is performed by an individual who is domiciled within the United States;

(ii) is performed by that individual while he is acting as an employee or agent of the buyer of the imported merchandise; and

(iii) is incidental to other engineering, development, artwork, design work, or plans or sketches that are undertaken within the United States.

(C) For purposes of this section, the following apply in determining the value of assists described in subparagraph (A)(iv):

(i) The value of an assist that is available in the public domain is the cost of obtaining copies of the assist.

(ii) If the production of an assist occurred in the United States and one or more foreign countries, the value of the assist is the value thereof that is added outside the United States.

(2) The term "identical merchandise" means—

(A) merchandise that is identical in all respects to, and produced in the same country and by the same person as, the merchandise being appraised; or

(B) if merchandise meeting the requirements under subparagraph (A) cannot be found (or for purposes of applying subsection (b)(2)(B)(i), regardless of whether merchandise meeting such requirements can be found), merchandise that is identical in all respects to, and was produced in the country as, but not produced by the same person as, the merchandise being appraised.

Such term does not include merchandise that incorporates or reflects any engineering, development, artwork, design work, or plan or sketch that—

(I) was supplied free or at reduced cost by the buyer of the merchandise for use in connection with the production or the sale for export to the United States of the merchandise; and

(II) is not an assist because undertaken within the United States.

(3) The term "packing costs" means the cost of all containers and coverings of whatever nature and of packing, whether for labor or materials, used in placing merchandise in condition, packed ready for shipment to the United States.

(4) The term "similar merchandise" means—

(A) merchandise that—

(i) was produced in the same country and by the same person as the merchandise being appraised,

(ii) is like the merchandise being appraised in characteristics and component material, and

(iii) is commercially interchangeable with the merchandise being appraised; or

(B) if merchandise meeting the requirements under subparagraph (A) cannot be found (or for purposes of applying subsection (b)(2)(B)(i), regardless of whether merchandise meeting such requirements can be found), merchandise that—

(i) was produced in the same country as, but not produced by the same person as, the merchandise being appraised, and

(ii) meets the requirement set forth in subparagraph (A) (ii) and (iii).

Such term does not include merchandise that incorporates or reflects any engineering, development, artwork, design work, or plan or sketch that—

(I) was supplied free or at reduced cost by the buyer of the merchandise for use in connection with the production or the sale for export to the United States of the merchandise; and

(II) is not an assist because undertaken within the United States.

(5) The term "sufficient information," when required under this section for determining—

(A) any amount—

(i) added under subsection (b) (1) to the price actually paid or payable,

(ii) deducted under subsection (d) (3) as profit or general expense or value from further processing, or

(iii) added under subsection (e) (2) as profit or general expense;

(B) any difference taken into account for purposes of subsection (b) (2) (C); or

(C) any adjustment made under subsection (c) (2);

means information that establishes the accuracy of such amount, difference, or adjustment.

[SEC. 402a. VALUE (ALTERNATIVE).

[(a) BASIS.—For the purposes of this Act the value of imported merchandise shall be—

[(1) The foreign value or the export value, whichever is higher;

[(2) If the appropriate customs officer determines that neither

the foreign value nor the export value can be satisfactorily ascertained, then the United States value;

[(3) If the appropriate customs officer determines that neither the foreign value, the export value, nor the United States value can be satisfactorily ascertained, then the cost of production;

[(4) In the case of an article with respect to which there is in effect under section 336 a rate of duty based upon the American selling price of a domestic article, then the American selling price of such article.

[(b) REVIEW OF CUSTOMS OFFICER'S DECISION.—A decision of the appropriate customs officer that foreign value, export value, or United States value can not be satisfactorily ascertained shall be subject to protest in accordance with section 514; but in any such proceeeding, an affidavit executed outside of the United States shall not be admitted in evidence if executed by any person who fails to permit a Treasury attaché to inspect his books, papers, records, accounts, documents, or shall be the market value or the price, at the time of exportation of such merchandise.

[(c) FOREIGN VALUE.—The foreign value of imported merchandise shall be the market value or the price, at the time of exportation of such merchandise to the United States, at which such or similar merchandise is freely offered for sale to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade, including the cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States.

[(d) EXPORT VALUE.—The export value of imported merchandise shall be the market value or the price, at the time of exportation of such merchandise to the United States, at which such or similar merchandise is freely offered for sale to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade, for exportation to the United States, plus, when not included in such price, the cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States.

[(e) UNITED STATES VALUE.—The United States value of imported merchandise shall be the price at which such or similar imported merchandise is freely offered for sale, packed ready for delivery, in the principal market of the United States to all purchasers, at the time of exportation of the imported merchandise, in the usual wholesale quantities and in the ordinary course of trade, with allowance made for duty, cost of transportation and insurance, and other necessary expenses from the place of shipment to the place of delivery, a commission not exceeding 6 per centum, if any has been paid or contracted to be paid on goods secured otherwise than by purchase, or profits not to exceed 8 per centum and a reasonable allowance for general expenses, not to exceed 8 per centum on purchased goods.

[(f) COST OF PRODUCTION.—For the purpose of this title the cost of production of imported merchandise shall be the sum of—

[(1) The cost of materials of, and of fabrication, manipulation, or other process employed in manufacturing or producing such or

similar merchandise, at a time preceding the date of exportation of the particular merchandise under consideration which would ordinarily permit the manufacture or production of the particular merchandise under consideration in the usual course of business;

[(2) The usual general expenses (not less than 10 per centum of such cost) in the case of such or similar merchandise;

[(3) The cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing the particular merchandise under consideration in condition, packed ready for shipment to the United States; and

[(4) An addition for profit (not less than 8 per centum of the sum of the amounts found under paragraphs (1) and (2) of this subdivision) equal to the profit which ordinarily is added, in the case of merchandise of the same general character as the particular merchandise under consideration, by manufacturers or producers in the country of manufacture or production who are engaged in the production or manufacture of merchandise of the same class or kind.

[(g) AMERICAN SELLING PRICE.—The American selling price of any article manufactured or produced in the United States shall be the price, including the cost of all containers and coverings of whatever nature and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for delivery, at which such article is freely offered for sale to all purchasers in the principal market of the United States, in the ordinary course of trade and in the usual wholesale quantities in such market, or the price that the manufacturer, producer, or owner would have received or was willing to receive for such merchandise when sold in the ordinary course of trade and in the usual wholesale quantities, at the time of exportation of the imported article.]

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Part II—Report, Entry, and Unlading of Vessels and Vehicles

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SEC. 466. EQUIPMENT AND REPAIRS OF VESSELS.

(a) * * *

(f) The duty imposed under subsection (a) shall not apply to the cost of repair parts, materials, or expenses of repairs in a foreign country upon a United States civil aircraft, within the meaning of headnote 3 to Schedule 6, part 6, subpart C of the Tariff Schedules of the United States.

* * * * * * *

SEC. 500. APPRAISEMENT, CLASSIFICATION, AND LIQUIDATION PROCEDURES.—

The appropriate customs officer shall, under rules and regulations prescribed by the Secretary—

[(a) appraise merchandise in the unit of quantity in which the merchandise is usually bought and sold by ascertaining or estimating the value thereof by all reasonable ways and means in his power, any statement of cost or costs of production in any invoice, affidavit, declaration, or other document to the contrary notwithstanding;]

(a) appraise merchandise by ascertaining or estimating the value thereof, under section 402, by all reasonable ways and means in his power, any statement of cost or costs of production in any invoice, affidavit, declaration, other document to the contrary notwithstanding;

* * * * * * *

SEC. 514. FINALITY OF DECISIONS; PROTESTS.—

(a) FINALITY OF DECISIONS.—Except as provided in subsection (b) of this section, in section 501 (relating to voluntary reliquidations), section 516 (relating to petitions by [American manufacturers, producers, and wholesalers] domestic interested parties as defined in section 771(9)(C), (D), and (E) of this Act), section 520 (relating to refunds and errors), and section 521 (relating to reliquidation on account of fraud) of this Act, decisions of the appropriate customs officer, including the legality of all orders and findings entering into the same, as to—

(1) the appraised value of merchandise;

(2) the classification and rate and amount of duties chargeable;

(3) all charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury;

(4) the exclusion of merchandise from entry or delivery under any provision of the customs laws;

(5) the liquidation or reliquidation of an entry, or any modification thereof;

(6) the refusal to pay a claim for drawback; and

(7) the refusal to reliquidate an entry under section 520(c) of this Act,

shall be final and conclusive upon all persons (including the United States and any officer thereof) unless a protest is filed in accordance with this section, or unless a civil action contesting the denial of a protest, in whole or in part, is commenced in the United States Customs Court in accordance with section 2632 of title 28 of the United States Code within the time prescribed by section 2631 of that title. When a judgment or order of the United States Customs Court has become final, the papers transmitted shall be returned, together with a copy of the judgment or order to the appropriate customs officer, who shall take action accordingly.

(b) With respect to determinations made under section 303 of this Act or title VII of this Act which are reviewable under section 516A of this title, determinations of the appropriate customs officer are final and conclusive upon all presons (including the United States and any officer thereof) unless a civil action contesting a determination listed in section 516A of this title is commenced in the United States Customs Court.

[(b)](*c*) PROTESTS.—

(1) IN GENERAL.—A protest of a decision under subsection (a) shall be filed in writing with the appropriate customs officer designated in regulations prescribed by the Secretary, setting forth distinctly and specifically each decision described in subsection (a) as to which protest is made; each category of merchandise affected by each such decision as to which protest is made; and the nature of each objection

and reasons therefor. Only one protest may be filed for each entry of merchandise, except that where the entry covers merchandise of different categories, a separate protest may be filed for each category. In addition, separate protests filed by different authorized persons with respect to any one category of merchandise that is the subject of a protest are deemed to be part of a single protest. A protest may be amended under regulations prescribed by the Secretary, to set forth objections as to a decision or decisions described in subsection (a) which were not the subject of the original protest, in the form and manner prescribed for a protest, any time prior to the expiration of the time in which such protest could have been filed under this section. New grounds in support of objections raised by a valid protest or amendment thereto may be presented for consideration in connection with the review of such protest pursuant to section 515 of this Act at any time prior to the disposition of the protest in accordance with that section. [Except as otherwise provided in section 557(b) of this Act, protests may be filed by the importer, consignee, or any authorized agent of the person paying any charge or exaction, or filing any claim for drawback, or seeking entry or delivery, with respect to merchandise which is the subject of a decision in subsection (a).] *Except as provided in sections 485(d) and 557(b) of this Act, protests may be filed with respect to merchandise which is the subject of a decision specified in subsection (a) of this section by—*

(A) the importers or consignees shown on the entry papers, or their sureties;

(B) any person paying any charge or exaction;

(C) any person seeking entry or delivery;

(D) any person filing a claim for drawback; or

(E) any authorized agent of any of the persons described in clauses (A) through (D).

(2) TIME FOR FILING.—A protest of a decision, order, or finding described in subsection (a) shall be filed with such customs officer within ninety days after but not before—

(A) notice of liquidation or reliquidation, or

(B) in circumstances where subparagraph (A) is inapplicable, the date of the decision as to which protest is made.

A protest by a surety which has an unsatisfied legal claim under its bond may be filed within 90 days from the date of mailing of notice of demand for payment against its bond. If another party has not filed a timely protest, the surety's protest shall certify that it is not being filed collusively to extend another authorized person's time to protest as specified in this subsection.

[(c)] *(d)* LIMITATION ON PROTEST OF RELIQUIDATIONS.—The reliquidation of an entry shall not open such entry so that a protest may be filed against the decision of the customs officer upon any question not involved in such reliquidation.

SEC. 515. REVIEW OF PROTESTS.—

(a) ADMINISTRATIVE REVIEW AND MODIFICATION OF DECISIONS.—Unless a request for an accelerated disposition of a protest is filed in accordance with subsection (b) of this section the appropriate customs officer, within two years from the date a protest was filed in accordance with section 514 of this Act, shall review the protest and

shall allow or deny such protest in whole or in part. Thereafter, any duties, charge, or exaction found to have been assessed or collected in excess shall be remitted or refunded and any drawback found due shall be paid. Upon the request of the protesting party, filed within the time allowed for the filing of a protest under section 514 of this Act, a protest may be subject to further review by another appropriate customs officer, under the circumstances and in the form and manner that may be prescribed by the Secretatry in regulations, but subject to the two-year limitation prescribed in the first sentence of this subsection. Notice of the denial of any protest shall be mailed in the form and manner prescribed by the Secretary. *Such notice shall include a statement of the reasons for the denial, as well as a statement informing the protesting party of his right to file a civil action contesting the denial of a protest under section 514 of the Tariff Act of 1930.*

* * * * * * *

SEC. 516. PETITIONS BY AMERICAN MANUFACTURERS, PRODUCERS, OR WHOLESALERS.

[(a) The Secretary shall, upon written request by an American manufacturer, producer, or wholesaler, furnish the classification, the rate of duty, the additional duty described in section 303 of this Act (hereinafter in this section referred to as "countervailing duties"), if any, and the special duty described in section 202 of the Antidumping Act, 1921 (hereinafter in this section referred to as "antidumping duties"), if any, imposed upon designated imported merchandise of a class or kind manufactured, produced, or sold at wholesale by him. If such manufacturer, producer, or wholesaler believes that the appraised value is too low, that the classification or is not correct, that the proper rate of duty is not being assessed, or that countervailing duties or antidumping duties should be assessed, he may file a petition with the Secretary setting forth (1) a description of the merchandise, (2) the appraised value, the classification, or the rate or rates of duty that he believes proper, and (3) the reasons for his belief including, in appropriate instances, the reasons for his belief that countervailing duties or antidumping duties should be assessed.

[(b) If, after receipt and consideration of a petition filed by an American manufacturer, producer, or wholesaler, the Secretary decides that the appraised value of the merchandise is too low, that the classification of the article or rate of duty assessed thereon is not correct, or that countervailing duties or antidumping duties should be assessed, he shall determine the proper appraised value or classification, rate of duty, or countervailing duties, or antidumping duties and shall notify the petitioner of his determination. Except for countervailing duty and antidumping duty purposes, all such merchandise entered for consumption or withdrawn from warehouse for consumption more than thirty days after the date such notice to the petitioner is published in the weekly Customs Bulletin shall be appraised or classified or assessed as to rate of duty in accordance with the Secretary's determination. For countervailing duty purposes, the procedures set forth in section 303 shall apply. For antidumping duty purposes, the procedures set forth in section 201 of the Antidumping Act, 1921, shall apply.

[(c) If the Secretary decides that the appraised value or classification of the articles or the rate of duty with respect to which a petition was filed pursuant to subsection (a) is correct, or that countervailing duties or antidumping duties should not be assessed, he shall so inform the petitioner. If dissatisfied with the decision of the Secretary, the petitioner may file with the Secretary, not later than thirty days after the date of the decision, notice that he desires to contest the appraised value or classification of, or rate of duty assessed upon or the failure to assess countervailing duties or antidumping duties upon, the merchandise. Upon receipt of notice from the petitioner, the Secretary shall cause publication to be made of his decision as to the proper appraised value or classification or rate of duty or that countervailing duties or antidumping duties should not be assessed and of the petitioner's desire to contest, and shall thereafter furnish the petitioner with such information as to the entries and consignees of such merchandise, entered after the publication of the decision of the Secretary at such ports of entry designated by the petitioner in his notice of desire to contest, as will enable the petitioner to contest the appraised value or classification of, or rate of duty imposed upon or failure to assess countervailing duties or antidumping duties upon, such merchandise in the liquidation of one such entry at such port. The Secretary shall direct the appropriate Customs officer at such ports to notify the petitioner by mail immediately when the first of such entries is liquidated.

[(d) Within 30 days after a determination by the Secretary—

[(1) under section 201 of the Antidumping Act, 1921 (19 U.S.C. 160), that a class or kind of foreign merchandise is not being, nor likely to be, sold in the United States at less than its fair value, or

[(2) under section 303 of this Act that a bounty or grant is not being paid or bestowed,

an American manufacturer, producer, or wholesaler of merchandise of the same class or kind as that described in such determination may file with the Secretary a written notice of a desire to contest such determination. Upon receipt of such notice the Secretary shall cause publication to be made thereof and of such manufacturer's, producer's, or wholesaler's desire to contest the determination. Within 30 days after such publication, such manufacturer, producer, or wholesaler may commence an action in the United States Customs Court contesting such determination.]

SEC. 516. PETITIONS BY DOMESTIC INTERESTED PARTIES

(a) REQUEST FOR CLASSIFICATION AND RATE OF DUTY; PETITION.—The Secretary shall, upon written request by an interested party (as defined in section 771(9) (C), (D), and (E) of this Act) furnish the classification and the rate of duty imposed upon designated imported merchandise of a class or kind manufactured, produced, or sold at wholesale by such interested party. If the interested party believes that the appraised value, the classification, or rate of duty is not correct, it may file a petition with the Secretary setting forth—

(1) a description of the merchandise,

(2) the appraised value, the classification, or the rate of duty that it believes proper, and

(3) the reasons for its belief.

(b) DETERMINATION ON PETITION.—If, after receipt and consideration of a petition filed by such an interested party, the Secretary determines that the appraised value, the classification, or rate of duty is not correct, he shall determine the proper appraised value, classification, or rate of duty and shall notify the petitioner of his determination. All such merchandise entered for consumption or withdrawn from warehouse for consumption more than thirty days after the date such notice to the petitioner is published in the weekly Customs Bulletin shall be appraised, classified, or assessed as to the rate of duty in accordance with the Secretary's determination.

(c) CONTEST BY PETITIONER OF APPRAISED VALUE, CLASSIFICATION, OR RATE OF DUTY.—If the Secretary determines that the appraised value, classification, or rate of duty with respect to which a petition was filed pursuant to subsection (a) of this section is correct, he shall notify the petitioner. If dissatisfied with the determination of the Secretary, the petitioner may file with the Secretary, not later than thirty days after the date of notification, notice that it desires to contest the appraised value, classification, or rate of duty. Upon receipt of notice from the petitioner, the Secretary shall cause publication to be made of his determination as to the proper appraised value, classification, or rate of duty and of the petitioner's desire to contest, and shall thereafter furnish the petitioner with such information as to the entries and consignees of such merchandise, entered after the publication of the determination of the Secretary, at such ports of entry designated by the petitioner in his notice of desire to contest, as will enable the petitioner to contest the appraised value, classification, or rate of duty imposed upon such merchandise in the liquidation of one such entry at such port. The Secretary shall direct the appropriate customs officer at such ports to immediately notify the petitioner by mail when the first of such entries is liquidated.

[(e)] *(d)* Notwithstanding the filing of an action pursuant to section 2632 of title 28 of the United States Code, merchandise of the character covered by the published decision of the Secretary (when entered for consumption or withdrawn from warehouse for consumption on or before the date of publication of a decision of the United States Customs Court or of the United States Court of Customs and Patent Appeals, not in harmony with the published decision of the Secretary) shall be appraised or classified, or both, and the entries liquidated, in accordance with the decision of the Secretary and, except as otherwise provided in this chapter, the final liquidations of these entries shall be conclusive upon all parties.

[(f)] *(e)* The consignee or his agent shall have the right to appear and to be heard as a party in interest before the United States Customs Court.

[(g)] *(f)* If the cause of action is sustained in whole or in part by a decision of the United States Customs Court or of the United States Court of Customs and Patent Appeals, merchandise of the character covered by the published decision of the Secretary, which is entered for consumption or withdrawn from warehouse for consumption after the date of publication *in the Federal Register by the Secretary or the administering authority of a notice* of the court decision, shall be subject to appraisement, classification, and assessment of duty in ac-

cordance with the final judicial decision in the action, and the liquidation of entries covering the merchandise so entered or withdrawn shall be suspended until final disposition is made of the action, whereupon the entries shall be liquidated, or if necessary, reliquidated in accordance with the final decision. *Such notice of the court decision shall be published within ten days from the date of the issuance of the court decision.*

SEC. 516A. JUDICIAL REVIEW IN COUNTERVAILING DUTY AND ANTIDUMPING DUTY PROCEEDINGS.

(a) REVIEW OF DETERMINATION.—

(1) REVIEW OF CERTAIN DETERMINATIONS.—Within 30 days after the date of publication in the Federal Register of notice of—

(A) a determination by the Secretary or the administering authority, under section 303(a)(3), 702(c), or 732(c) of this Act, not to initiate an investigation,

(B) a determination by the administering authority, under section 703(c) or 733(c) of this Act, that a case is extraordinarily complicated,

(C) a determination by the administering authority or the Commission, under section 751(b) of this Act, not to review an agreement or a determination based upon changed circumstances,

(D) a negative determination by the Commission, under section 703(a) or section 733(a) of this Act, as to whether there is reasonable indication of material injury, threat of material injury, or material retardation, or

(E) a negative determination by the administering authority under section 703(b) or 733(b) of this Act,

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Customs Court by filing concurrently a summons and complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

(2) REVIEW OF DETERMINATIONS ON RECORD.—

(A) IN GENERAL.—Within thirty days after the date of publication in the Federal Register of—

(i) notice of any determination described in clause (ii), (iii), (iv), or (v) of subparagraph (B), or

(ii) an antidumping or countervailing duty order based upon any determination described in clause (i) of subparagraph (B),

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Customs Court by filing a summons, and within thirty days thereafter a complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

(B) REVIEWABLE DETERMINATIONS.—The determinations which may be contested under subparagraph (A) are as follows:

(i) Final affirmative determinations by the Secretary and by the Commission under section 303, or by the administering authority and by the Commission under section 705 or 735 of this Act.

(ii) A final negative determination by the Secretary, the administering authority, or the Commission under section 303, 705, or 735 of this Act.

(iii) A determination, other than a determination reviewable under paragraph (1), by the Secretary, the administering authority, or the Commission under section 751 of this Act.

(iv) A determination by the administering authority, under section 704 or 734 of this Act, to suspend an antidumping duty or a countervailing duty investigation.

(v) An injurious effect determination by the Commission under section 704(h) or 734(h) of this Act.

(3) PROCEDURES AND FEES.—The procedures and fees set forth in subsections (b), (c), and (e) of section 2632 of title 28, United States Code, apply to an action under this section.

(b) STANDARDS OF REVIEW.—

(1) REMEDY.—The court shall hold unlawful any determination, finding, or conclusion found—

(A) in an action brought under paragraph (1) of subsection (a), to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, or

(B) in an action brought under paragraph (2) of subsection (a), to be unsupported by substantial evidence on the record, or otherwise not in accordance with law.

(2) RECORD FOR REVIEW.—

(A) IN GENERAL.—For the purposes of this subsection, the record, unless otherwise stipulated by the parties, shall consist of—

(i) copy of all information presented to or obtained by the Secretary, the administering authority, or the Commission during the course of the administrative proceeding, including all governmental memoranda pertaining to the case and the record of ex parte meetings required to be kept by section 777(a)(3); and

(ii) a copy of the determination, all transcripts or records of conferences or hearings, and all notices published in the Federal Register.

(B) CONFIDENTIAL OR PRIVILEGED MATERIAL.—The confidential or privileged status accorded to any documents, comments, or information shall be preserved in any action under this section. Notwithstanding the preceding sentence, the court may examine, in camera, the confidential or privileged material, and may disclose such material under such terms and conditions as it may order.

(c) LIQUIDATION OF ENTRIES.—

(1) LIQUIDATION IN ACCORDANCE WITH DETERMINATION.—Unless such liquidation is enjoined by the court under paragraph (2) of this subsection, entries of merchandise of the character covered

by a determination of the Secretary, the administering authority, or the Commission contested under subsection (a) shall be liquidated in accordance with the determination of the Secretary, the administering authority, or the Commission, if they are entered, or withdrawn from warehouse, for consumption on or before the date of publication in the Federal Register by the Secretary or the administering authority of a notice of a decision of the United States Customs Court, or of the United States Court of Customs and Patent Appeals, not in harmony with that determination. Such notice of a decision shall be published within ten days from the date of the issuance of the court decision.

(2) INJUNCTIVE RELIEF.—In the case of a determination described in paragraph (2) of subsection (a) by the Secretary, the administering authority, or the Commission, the United States Customs Court may enjoin the liquidation of some or all entries of merchandise covered by a determination of the Secetary, the administering authority, or the Commission, upon a request by an interested party for such relief and a proper showing that the requested relief should be granted under the circumstances. In ruling on a request for such injunctive relief, the court shall consider, among other factors, whether—

(A) the party filing the action is likely to prevail on the merits,

(B) the party filing the action would be irreparably harmed if liquidation of some or all of the entries is not enjoined,

(C) the public interest would best be served if liquidation is enjoined, and

(D) the harm to the party filing the action would be greater if liquidation of some or all of the entries is not enjoined than the harm to other persons if liquidation of some or all of the entries is enjoined.

(3) REMAND FOR FINAL DISPOSITION.—If the final disposition of an action brought under this section is not in harmony with the published determination of the Secretary, the administering authority, or the Commission, the matter shall be remanded to the Secretary, the administering authority, or the Commission, as appropriate, for disposition consistent with the final disposition of the court.

(d) STANDING.—Any interested party who was a party to the proceeding under section 303 of this Act or title VII of this Act shall have the right to appear and be heard as a party in interest before the United States Customs Court. The party filing the action shall notify all interested parties of the filing of an action pursuant to this section.

(e) LIQUIDATION IN ACCORDANCE WITH FINAL DECISION.—If the cause of action is sustained in whole or in part by a decision of the United States Customs Court or of the United States Court of Customs and Patent Appeals—

(1) entries of merchandise of the character covered by the published determination of the Secretary, the administering authority, or the Commission, which is entered, or withdrawn from warehouse, for consumption after the date of publication in the

Federal Register by the Secretary or the administering authority of a notice of the court decision, and

(2) entries, the liquidation of which was enjoined under subsection (c)(2),

shall be liquidated in accordance with the final decision in the action. Such notice of the court decision shall be published within ten days from the date of the issuance of the court decision.

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

(1) ADMINISTERING AUTHORITY.—The term "administering authority" means the administering authority described in section 771(1) of this Act.

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

(3) INTERESTED PARTY.—The term "interested party" means any person described in section 771(9) of this Act.

(4) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

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TITLE VII—COUNTERVAILING AND ANTIDUMPING DUTIES

Subtitle A—Imposition of Countervailing Duties

Subtitle B—Imposition of Antidumping Duties

Subtitle C—Review of Determinations

Subtitle D—General Provisions

Subtitle A—Imposition of Countervailing Duties

SEC. 701. COUNTERVAILING DUTIES IMPOSED.

(a) GENERAL RULE.—If—

(1) the administering authority determines that—

(A) a country under the Agreement, or

(B) a person who is a citizen or national of such a country, or a corporation, association, or other organization organized in such a country,

is providing, directly or indirectly, a subsidy with respect to the manufacture, production, or exportation of a class or kind of merchandise imported into the United States, and

(2) the Commission determines that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury,

or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of that merchandise,

then there shall be imposed upon such merchandise a countervailing duty, in addition to any other duty imposed, equal to the amount of the net subsidy.

(b) COUNTRY UNDER THE AGREEMENT.—For purposes of this subtitle, the term "country under the Agreement" means a country—

(1) between the United States and which the Agreement on Subsidies and Countervailing Measures applies, as determined under section 2(b) of the Trade Agreements Act of 1979,

(2) which has assumed obligations with respect to the United States which are substantially equivalent to obligations under the Agreement, as determined by the President, or

(3) with respect to which the President determines that—

(A) there is an agreement in effect between the United States and that country which—

(i) was in force on June 19, 1979, and

(ii) requires unconditional most-favored-nation treatment with respect to articles imported into the United States,

(B) the General Agreement on Tariffs and Trade does not apply between the United States and that country, and

(C) the agreement described in subparagraph (A) does not expressly permit—

(i) actions required or permitted by the General Agreement on Tariffs and Trade, or required by the Congress, or

(ii) nondiscriminatory prohibitions or restrictions on importation which are designed to prevent deceptive or unfair practices.

(c) CROSS REFERENCE.—

For provisions of law applicable in the case of merchandise which is the product of a country other than a country under the Agreement, see section 303 of this Act.

SEC. 702. PROCEDURES FOR INITIATING A COUNTERVAILING DUTY INVESTIGATION.

(a) INITIATION BY ADMINISTERING AUTHORITY.—A countervailing duty investigation shall be commenced whenever the administering authority determines, from information available to it, that a formal investigation is warranted into the question of whether the elements necessary for the imposition of a duty under section 701(a) exist.

(b) INITIATION BY PETITION.—

(1) PETITION REQUIREMENTS.—A countervailing duty proceeding shall be commenced whenever an interested party described in subparagraph (C), (D), or (E) of section 771(9) files a petition with the administering authority, on behalf of an industry, which alleges the elements necessary for the imposition of the duty imposed by section 701(a), and which is accompanied by information reasonably available to the petitioner supporting those allegations. The petition may be amended at such time, and upon such conditions, as the administering authority and the Commission may permit.

(2) SIMULTANEOUS FILING WITH COMMISSION.—The petitioner shall file a copy of the petition with the Commission on the same day as it is filed with the administering authority.

(c) PETITION DETERMINATION.—Within 20 days after the date on which a petition is filed under subsection (b), the administering authority shall—

(1) determine whether the petition alleges the elements necessary for the imposition of a duty under section 701(a) and contains information reasonably available to the petitioner supporting the allegations,

(2) if the determination is affirmative, commence an investigation to determine whether a subsidy is being provided with respect to the class or kind of merchandise described in the petition, and provide for the publication of notice of the determination to commence an investigation in the Federal Register, and

(3) if the determination is negative, dismiss the petition, terminate the proceeding, notify the petitioner in writing of the reasons for the determination, and provide for the publication of notice of the determination in the Federal Register.

(d) NOTIFICATION TO COMMISSION OF DETERMINATION.—The administering authority shall—

(1) notify the Commission immediately of any determination it makes under subsection (a) or (c), and

(2) if the determination is affimative, make available to the Commission such information as it may have relating to the matter under investigation, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

SEC. 703. PRELIMINARY DETERMINATIONS.

(a) DETERMINATION BY COMMISSION OF REASONABLE INDICATION OF INJURY.—Except in the case of a petition dismissed by the administering authority under section 702(c)(3), the Commission, within 45 days after the date on which a petition is filed under section 702(b) or on

which it receives notice from the administering authority of an investigation commenced under section 702(a), shall make a determination, based upon the best information available to it at the time of the determination, of whether there is a reasonable indication that—

(1) an industry in the United States—

(A) is materially injured, or

(B) is threatened with material injury, or

(2) the establishment of an industry in the United States is materially retarded,

by reason of imports of the merchandise which is the subject of the investigation by the administering authority. If that determination is negative, the investigation shall be terminated.

(b) PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—Within 85 days after the date on which a petition is filed under section 702(b), or an investigation is commenced under section 702(a), but not before an affirmative determination by the Commission under subsection (a) of this section, the administering authority shall make a determination, based upon the best information available to it at the time of the determination, of whether there is a reasonable basis to believe or suspect that a subsidy is being provided with respect to the merchandise which is the subject of the investigation. If the determination of the administering authority under this subsection is affirmative, the determination shall include an estimate of the net subsidy.

(c) EXTENTION ON PERIOD IN EXTRAORDINARILY COMPLICATED CASES

(1) IN GENERAL.—If—

(A) the petitioner makes a timely request for an extension of the period within which the determination must be made under subsection (b), or

(B) the administering authority concludes that the parties concerned are cooperating and determines that—

(i) the case is extraordinarily complicated by reason of—

(I) the number and complexity of the alleged subsidy practices;

(II) the novelty of the issues presented;

(III) the need to determine the extent to which particular subsidies are used by individual manufacturers, producers, and exporters; or

(IV) the number of firms whose activities must be investigated; and

(ii) additional time is necessary to make the preliminary determination,

then the administering authority may postpone making the preliminary determination under subsection (b) until not later than the 150th day after the date on which a petition is filed under section 702(b), or an investigation is commenced under section 702(a).

(2) NOTICE OF POSTPONEMENT—The administering authority shall notify the parties to the investigation, not later than 20 days before the date on which the preliminary determinaton would

otherwise be required under subsection (b), if it intends to postpone making the preliminary determination under paragraph (1). The notification shall include an explanation of the reasons for the postponement. Notice of the postponement shall be published in the Federal Register.

(d) EFFECT OF DETERMINATION BY THE ADMINISTERING AUTHORITY.—If the preliminary determination of the administering authority under subsection (b) is affirmative, the administering authority—

(1) shall order the suspension of liquidation of all entries of merchandise subject to the determination which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the determination in the Federal Register,

(2) shall order the posting of a cash deposit, bond, or other security, as it deems appropriate, for each entry of the merchandise concerned equal to the estimated amount of the net subsidy, and

(3) shall make available to the Commission all information upon which its determination was based and which the Commission considers relevant to its injury determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

(e) CRITICAL CIRCUMSTANCES DETERMINATIONS.—

(1) IN GENERAL.—If a petitioner alleges critical circumstances in its original petition, or by amendment at any time more than 20 days before the date of a final determination by the administering authority, then the administering authority shall promptly determine, on the basis of the best information available to it at that time, whether there is a reasonable basis to believe or suspect that—

(A) the alleged subsidy is inconsistent with the Agreement, and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

(2) SUSPENSION OF LIQUIDATION.—If the determination of the administering authority under paragraph (1) is affirmative, then any suspension of liquidation ordered under subsection (d)(1) shall apply, or, if notice of such suspension of liquidation is already published, be amended to apply, to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered.

(f) NOTICE OF DETERMINATIONS.—Whenever the Commission or the administering authority makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based; and it shall publish notice of its determination in the Federal Register.

SEC. 704. TERMINATION OR SUSPENSION OF INVESTIGATION.

(a) TERMINATION OF INVESTIGATION ON WITHDRAWAL OF PETITION.—An investigation under this subtitle may be terminated by either the administering authority or the Commission after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner. The Commission may not terminate an investigation under the preceding sentence before a preliminary determination is made by the administering authority under section 703(b).

(b) AGREEMENTS TO ELIMINATE OR OFFSET COMPLETELY A SUBSIDY OR TO CEASE EXPORTS OR SUBISIDIZED MERCHANDISE.—The administering authority may suspend an investigation if the government of the country in which the subsidy practice is alleged to occur agrees, or exporters who account for substantially all of the imports of the merchandise which is the subject of the investigation agree—

(1) to eliminate the subsidy completely or to offset completely the amount of the net subsidy, with respect to that merchandise exported directly or indirectly to the United States, within 6 months after the date on which the investigation is suspended, or

(2) to cease exports of that merchandise to the United States within 6 months after the date on which the investigation is suspended.

(c) AGREEMENTS ELIMINATING INJURIOUS EFFECT.—

(1) GENERAL RULE.—If the administering authority determines that extraordinary circumstances are present in a case, it may suspend an investigation upon the acceptance of an agreement from a government described in subsection (b), or from exporters described in subsection (b), if the agreement will eliminate completely the injurious effect of exports to the United States of the merchandise which is the subject of the investigation.

(2) CERTAIN ADDITIONAL REQUIREMENTS.—Except in the case of an agreement by a foreign government to restrict the volume of imports of the merchandise which is the subject of the investigation into the United States, the administering authority may not accept an agreement under this subsection unless—

(A) the suppression or undercutting of price levels of domestic products by imports of that merchandise will be prevented, and

(B) at least 85 percent of the net subsidy will be offset.

(3) QUANTITATIVE RESTRICTIONS AGREEMENTS.—The administering authority may accept an agreement with a foreign government under this subsection to restrict the volume of imports of merchandise which is the subject of an investigation into the United States, but it may not accept such an agreement with exporters.

(4) DEFINITION OF EXTRAORDINARY CIRCUMSTANCES.—

(A) EXTRAORDINARY CIRCUMSTANCES.—For purposes of this subsection, the term "extraordinary circumstances" means circumstances in which—

(i) suspension of an investigation will be more beneficial to the domestic industry than continuation of the investigation, and

(ii) the investigation is complex.

(B) COMPLEX.—For purposes of this paragraph, the term "complex" means—

(i) there are a large number of alleged subsidy practices and the practices are complicated,

(ii) the issues raised are novel, or

(iii) the number of exporters involved is large.

(d) ADDITIONAL RULES AND CONDITIONS.—

(1) PUBLIC INTEREST; MONITORING.—The administering authority shall not accept an agreement under subsection (b)) or (c) unless—

(A) it is satisfied that suspension of the investigation is in the public interest, and

(B) effective monitoring of the agreement by the United States is practicable.

(2) EXPORTS OF MERCHANDISE TO UNITED STATES NOT TO INCREASE DURING INTERIM PERIOD.—The administering authority may not accept any agreement under subsection (b) unless that agreement provides a means of ensuring that the quantity of the merchandise covered by that agreement exported to the United States during the period provided for elimination or offset of the subsidy or cessation of exports does not exceed the quantity of such merchandise exported to the United States during the most recent representative period determined by the administering authority.

(3) REGULATIONS GOVERNING ENTRY OR WITHDRAWALS.—In order to carry out an agreement concluded under subsection (b) or (c), the administering authority is authorized to prescribe regulations governing the entry, or withdrawal from warehouse, for consumption of merchandise covered by such agreement.

(e) SUSPENSION OF INVESTIGATION PROCEDURE.—Before an investigation may be suspended under subsection (b) or (c) the administering authority shall—

(1) notify the petitioner of, and consult with the petitioner, concerning, its intention to suspend the investigation, and notify other parties to the investigation and the Commission not less than 30 days before the date on which it suspends the investigation.

(2) provide a copy of the proposed agreement to the petitioner at the time of notification, together with an explanation of how the agreement will be carried out and enforced (including any action required of foreign governments), and of how the agreement will meet the requirements of subsections (b) and (d) or (c) and (d), and

(3) permit all parties to the investigation to submit comments and information for the record before the date on which notice of suspension of the investigation is published under subsection (f)(1)(A).

(f) EFFECTS OF SUSPENSION OF INVESTIGATION.—

(1) IN GENERAL.—If the administering authority determines to suspend an investigation upon acceptance of an agreement described in subsection (b) or (c), then—

(A) it shall suspend the investigation, publish notice of suspension of the investigation, and issue an affirmative preliminary determination under section 703(b) with respect to the merchandise which is the subject of the investigation,

unless it has previously issued such a determination in the same investigation,

(B) the Commission shall suspend any investigation it is conducting with respect to that merchandise, and

(C) the suspension of investigation shall take effect on the day on which such notice is published.

(2) LIQUIDATION OF ENTRIES.—

(A) CESSATION OF EXPORTS; COMPLETE ELIMINATION OF NET SUBSIDY.—If the agreement accepted by the administering authority is an agreemnet described in subsection (b), then—

(i) notwithstanding the affirmative preliminary determination required under paragraph (1)(A), the liquidation of entries of merchandise which is the subject of the investigation shall not be suspended under section 703(d)(1),

(ii) if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case with respect to such merchandise, that suspension of liquidation shall terminate, and

(iii) the administering authority shall refund any cash deposit and release any bond or other security deposited under section 703(d)(1).

(B) OTHER AGREEMENTS.—If the agreement accepted by the administering authority is an agreement described in subsection (c), then the liquidation of entries of the merchandise which is the subject of the investigation shall be suspended under section 703(d)(1), or, if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case, that suspension of liquidation shall continue in effect, subject to subsection (h)(3), but the security required under section 703(d)(2) may be adjusted to reflect the effect of the agreement.

(3) WHERE INVESTIGATION IS CONTINUED. If, pursuant to subsection (g), the administering authority and the Commission continue an investigation in which an agreement has been accepted under subsection (b) or (c), then—

(A) if the final determination by the administering authority or the Commission under section 705 is negative, the agreement shall have no force or effect and the investigation shall be terminated, or

(B) if the final determinations by the administering authority and the Commission under such section are affirmative, the agreement shall remain in force, but the administering authroity shall not issue a countervailing duty order in the case so long as—

(i) the agreement remains in force,

(ii) the agreement continues to meet the requirements of subsections (b) and (d) or (c) and (d), and

(iii) the parties to the agreement carry out their obligations under the agreement in accordance with its terms.

(g) INVESTIGATION TO BE CONTINUED UPON REQUEST.—If the administering authority, within 20 days after the date of publication of the notice of suspension of an investigation, receives a request for the continuation of the investigation from—

(1) the government of the country in which the subsidy practice is alleged to occur, or

(2) an interested party described in subparagraph (C), (D), or (E) of section 771(9) which is a party to the investigation,

then the administering authority and the Commisison shall continue the investigation.

(h) REVIEW OF SUSPENSION.—

(1) IN GENERAL.—Within 20 days after the suspension of an investigation under subsetcion (c), an interested party which is a party to the investigation and which is described in subparagraph (C), (D), or (E) of section 771(9) may, by petition filed with the Commission and with notice to the administering authority, ask for a review of the suspension.

(2) COMMISSION INVESTIGATION.—Upon receipt of a review petition under paragraph (1), the Commission shall, within 75 days after the date on which the petition is filed with it, determine whether the injurious effect of imports of the merchandise which is the subject of the investigation is eliminated completely by the agreement. If the Commission's determination under this subsetcion is negative, the investigatoin shall be resumed on the date of publication of notice of such determination as if the affirmative preliminary determination under section 703(b) had been made on that date.

(3) SUSPENSION OF LIQUIDATION TO CONTINUE DURING REVIEW PERIOD.—The suspension of liquidation of entries of the merchandise which is the subject of the investigation shall terminate at the close of the 20-day period beginning on the day after the date on which notice of suspension of the investigation is published in the Federal Register, or, if a review petition is filed under paragraph (1) with respect to the suspension of the investigation, in the case of an affirmative determination by the Commission under paragraph (2), the date on which notice of the affiirmative determination by the Commission is published. If the determination of the Commission under paragraph (2) is affirmative, then the administering authority shall—

(A) terminate the suspension of liquidation under section 703(d)(1), and

(B) release any bond or other security, and refund any cash deposit, required under section 703(d)(2).

(i) VIOLATION OF AGREEMENT.—

(1) IN GENERAL.—If the administering authority determines that an agreement accepted under subsection (b) or (c) is being, or has been, violated, or no longer meets the requirements of such subsection (other than the requirement, under subsection (c)(1), of elimination of injury) and subsection (d), then, on the date of publication of its determination, it shall—

(A) suspend liquidation under section 703(d)(1) of unliquidated entries of the merchandise made on or after the later of—

(i) the date which is 90 days before the date of publication of the notice of suspension of liquidation, or

(ii) the date on which the merchandise, the sale or export to the United States of which was in violation of the agreement, or under an agreement which no longer meets the requirements of subsections (b) and (d) or (c) and (d), was first entered, or withdrawn from warehouse, for consumption,

(B) if the investigation was not completed, resume the investigation as if its affirmative preliminary determination under section 703(b) were made on the date of its determination under this paragraph,

(C) if the investigation was completed under subsection (g), issue a countervailing duty order under section 706(a) effective with respect to entries of merchandise the liquidation of which was suspended, and

(D) notify the petitioner, interested parties who are or were parties to the investigation, and the Commission of its action under this paragraph.

(2) INTENTIONAL VIOLATION TO BE PUNISHED BY CIVIL PENALTY.—Any person who intentionally violates an agreement accepted by the administering authority under subsection (b) or (c) shall be subject to a civil penalty assessed in the same amount, in the same manner, and under the same procedure, as the penalty imposed for a fraudulent violation of section 592(a) of this Act.

(j) DETERMINATION NOT TO TAKE AGREEMENT INTO ACCOUNT.—In making a final determination under section 705, or in conducting a review under section 751, in a case in which the administering authority has terminated a suspension of investigation under subsection (i)(1), or continued an investigation under subsection (g), the Commission and the administering authority shall consider all of the merchandise which is the subject of the investigation, without regard to the effect of any agreement under subsection (b) or (c).

SEC. 705. FINAL DETERMINATIONS.

(a) FINAL DETERMINATION BY ADMINISTERING AUTHORITY.—

(1) IN GENERAL.—Within 75 days after the date of its preliminary determination under section 703(b), the administering authority shall make a final determination of whether or not a subsidy is being provided with respect to the merchandise.

(2) CRITICAL CIRCUMSTANCES DETERMINATIONS.—If the final determination of the administering authority is affirmative, then that determination, in any investigation in which the presence of critical circumstances has been alleged under section 703(e), shall also contain a finding as to whether—

(A) the subsidy is inconsistent with the Agreement, and

(B) there have been massive imports of the class or kind of merchandise involved over a relatively short period.

(b) *FINAL DETERMINATION BY COMMISSION.—*

(1) IN GENERAL.—The Commission shall make a final determination of whether—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a).

(2) PERIOD FOR INJURY DETERMINATION FOLLOWING AFFIRMATIVE PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—If the preliminary determination by the administering authority under section 703(b) is affirmative, then the Commission shall make the determination required by paragraph (1) before the later of—

(A) the 120th day after the day on which the administering authority makes its affirmative preliminary determination under section 703(b), or

(B) the 45th day after the day on which the administering authority makes its affirmative final determination under subsection (a).

(3) PERIOD FOR INJURY DETERMINATION FOLLOWING NEGATIVE PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—If the preliminary determination by the administering authority under section 703(b) is negative, and its final determination under subsection (a) is affirmative, then the final determination by the Commission under this subsection shall be made within 75 days after the date of that affirmative final determination.

(4) CERTAIN ADDITIONAL FINDINGS.—

(A) If the finding of the administering authority under subsection (a)(2) is affirmative, then the final determination of the Commission shall include findings as to whether—

(i) there is material injury which will be difficult to repair, and

(ii) the material injury was by reason of such massive imports of the subsidized merchandise over a relatively short period.

(B) If the final determination of the Commission is that there is no material injury but that there is threat of material injury, then its determination shall also include a finding as to whether material injury by reason of imports of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a) would have been found but for any suspension of liquidation of entries of that merchandise.

(c) *EFFECT OF FINAL DETERMINATIONS.—*

(1) EFFECT OF AFFIRMATIVE DETERMINATION BY THE ADMINISTERING AUTHORITY.—If the determination of the administering authority under subsection (a) is affirmative, then—

(A) the administering authority shall make available to the Commission all information upon which such determination was based and which the Commission considers relevant to its determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority, and

(B) in cases where the preliminary determination by the administering authority under section 703(b) was negative, the administering authority shall order under paragraphs (1) and (2) of section 703(d) the suspension of liquidation and the posting of a cash deposit, bond, or other security.

(2) ISSUANCE OF ORDER; EFFECT OF NEGATIVE DETERMINATION.—If the determinations of the administering authority and the Commission under subsections (a)(1) and (b)(1) are affirmative, then the administering authority shall issue a countervailing duty order under section 706(a). If either of such determinations is negative, the investigation shall be terminated upon the publication of notice of that negative determination and the administering authority shall—

(A) terminate the suspension of liquidation under section 703(d)(1), and

(B) release any bond or other security and refund any cash deposit required under section 703(d)(2).

(3) EFFECT OF NEGATIVE DETERMINATIONS UNDER SUBSECTIONS (a)(2) AND (b)(4)(A). If the determination of the administrating authority or the Commission under subsection (a)(2) and (b)(4)(A), respectively, is negative, then the administering authority shall—

(A) terminate any retroactive suspension of liquidation required under section 703(e)(2), and

(B) release any bond or other security, and refund any cash deposit required, under section 703(d)(2) with respect to entries of the merchandise the liquidation of which was suspended retroactively under section 703(e)(2).

(d) PUBLICATION OF NOTICE OF DETERMINATIONS.—Whenever the administering authority or the Commission makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.

SEC. 706. ASSESSMENT OF DUTY.

(a) PUBLICATION OF COUNTERVAILING DUTY ORDER.—Within 7 days after being notified by the Commission of an affirmative determination under section 705(b), the administering authority shall publish a countervailing duty order which—

(1) directs customs officers to assess a countervailing duty equal to the amount of the net subsidy determined or estimated to exist, within 6 months after the date on which the administering authority receives satisfactory information upon which the assessment

may be based, but in no event later than 12 months after the end of the annual accounting period of the manufacturer or exporter within which the merchandise is entered, or withdrawn from warehouse, for consumption,

(2) includes a description of the class or kind of merchandise to which it applies, in such detail as the administering authority deems necessary, and

(3) requires the deposit of estimated countervailing duties pending liquidation of entries of merchandise at the same time as estimated normal customs duties on that merchandise are deposited.

(b) IMPOSITION OF DUTIES.—

(1) GENERAL RULE.—If the Commission, in its final determination under section 705(b), finds material injury or threat of material injury which, but for the suspension of liquidation under section 703(d)(1), would have led to a finding of material injury, then entires of the merchandise subject to the countervailing duty order, the liquidation of which has been suspended under section 703(d)(1), shall be subject to the imposition of countervailing duties under section 701(a).

(2) SPECIAL RULE.—If the Commission, in its final determination under section 705(b), finds threat of material injury, other than threat of material injury described in paragraph (1), or material retardation of the establishment of an industry in the United States, then merchandise subject to a countervailing duty order which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of notice of an affirmative determination of the Commission under section 705(b) shall be subject to the imposition of countervailing duties under section 701(a), and the administering authority shall release any bond or other security, and refund any cash deposit made, to secure the payment of countervailing duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption before that date.

SEC. 707. TREATMENT OF DIFFERENCE BETWEEN DEPOSIT OF ESTIMATED COUNTERVAILING DUTY AND FINAL ASSESSED DUTY UNDER COUNTERVAILING DUTY ORDER.

(a) DEPOSIT OF ESTIMATED COUNTERVAILING DUTY UNDER SECTION 703(d)(2).—If the amount of a cash deposit, or the amount of any bond or other security, required as security for an estimated countervailing duty under section 703(d)(2) is different from the amount of the countervailing duty determined under a countervailing duty order issued under section 706, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption before notice of the affirmative determination of the Commission under section 705(b) is published shall be—

(1) disregarded, to the extent that the cash deposit, bond, or other security is lower than the duty under the order, or

(2) refunded or released, to the extent that the cash deposit, bond, or other security is higher than the duty under the order.

(b) DEPOSIT OF ESTIMATED COUNTERVAILING DUTY UNDER SECTION 706(a)(3).—If the amount of an estimated countervailing duty deposited under section 706(a)(3) is different from the amount of the coun-

tervailing duty determined under a countervailing duty order issued under section 706, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption after notice of the affirmative determination of the Commission under section 705(b) is published shall be—

(1) collected, to the extent that the deposit under section 706 (a)(3) is lower than the duty determined under the order, or

(2) refunded, to the extent that the deposit under section 706 (a)(3) is higher than the duty determined under the order,

together with interest as provided by section 778.

Subtitle B—Imposition of Antidumping Duties

SEC. 731. ANTIDUMPING DUTIES IMPOSED.

If—

(1) the administering authority determines that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value, and

(2) the Commission determines that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of that merchandise,

then there shall be imposed upon such merchandise an antidumping duty, in addition to any other duty imposed, in an amount equal to the amount by which the foreign market value exceeds the United States price for the merchandise.

SEC. 732. PROCEDURES FOR INITIATING AN ANTIDUMPING DUTY INVESTIGATION.

(a) INITIATION BY ADMINISTERING AUTHORITY.—An antidumping duty investigation shall be commenced whenever the administering authority determines, from information available to it, that a formal investigation is warranted into the question of whether the elements necessary for the imposition of a duty under section 731 exist.

(b) INITIATION BY PETITION.—

(1) PETITION REQUIREMENTS.—An antidumping proceeding shall be commenced whenever an interested party described in subparagraph (C), (D), or (E) of section 771(9) files a petition with the administering authority, on behalf of an industry, which alleges the elements necessary for the imposition of the duty imposed by section 731, and which is accompanied by information reasonably available to the petitioner supporting those allegations. The petition may be amended at such time, and upon such conditions, as the administering authority and the Commission may permit.

(2) SIMULTANEOUS FILING WITH COMMISSION.—The petition shall file a copy of the petition with the Commission on the same day as it is filed with the administering authority.

(c) PETITION DETERMINATION.—Within 20 days after the date on which a petition is filed under subsection (b), the administering authority shall—

(1) determine whether the petition alleges the elements necessary for the imposition of a duty under section 731 and contains information reasonably available to the petitioner supporting the allegations,

(2) if the determination is affirmative, commence an investigation to determine whether the class or kind of merchandise described in the petition is being, or is likely to be, sold in the United States at less than its fair value, and provide for the publication of notice of the determination in the Federal Register, and

(3) if the determination is negative, dismiss the petition, terminate the proceeding, notify the petitioner in writing of the reasons for the determination, and provide for the publication of notice of the determination in the Federal Register.

(d) NOTIFICATION TO COMMISSION OF DETERMINATION.—The administering authority shall—

(1) notify the Commission immediately of any determination it makes under subsection (a) or (c), and

(2) if the determination is affirmative, make available to the Commission such information as it may have relating to the matter under investigation, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

SEC. 733. PRELIMINARY DETERMINATIONS.

(a) DETERMINATION BY COMMISSION OF REASONABLE INDICATION OF INJURY.—Except in the case of a petition dismissed by the administering authority under section 732(c)(3), the Commission, within 45 days after the date on which a petition is filed under section 732(b) or on which it receives notice from the administering authority of an investigation commenced under section 732(a), shall make a determination, based upon the best information available to it at the time of the determination, of whether there is a reasonable indication that—

(1) an industry in the United States—

(A) is materially injured, or

(B) is threatened with material injury, or

(2) the establishment of an industry in the United States is materially retarded,

by reason of imports of the merchandise which is the subject of the investigation by the administering authority. If that determination is negative, the investigation shall be terminated.

(b) PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—

(1) PERIOD OF ANTIDUMPING DUTY INVESTIGATION.—Within 160 days after the date on which a petition is filed under section 732(b), or an investigation is commenced under section 732(a), but not before an affirmative determination by the Commission under subsection (a) of this section, the administering authority shall make a determination, based upon the best information available to it at the time of the determination, of whether there is a reasonable basis to believe or suspect that the merchandise is being sold, or is likely to be sold at less than fair value. If the determination

of the administering authority under this subsection is affirmative, the determination shall include the estimated average amount by which the foreign market value exceeds the United States price.

(2) PRELIMINARY DETERMINATION UNDER WAIVER OF VERIFICATION.—Within 75 days after the initiation of an investigation, the administering authority shall cause an official designated for such purpose to review the information concerning the case received during the first 60 days of the investigation, and, if there appears to be sufficient information available upon which the preliminary determination can reasonably be based, to disclose to the petitioner and any interested party, then a party to the proceedings that requests such disclosure, all available non-confidential information and all other information which is disclosed pursuant to section 777. Within 3 days (not counting Saturdays, Sundays, or legal public holidays) after such disclosure, the petitioner and each party which is an interested party described in subparagraph (C), (D), or (E) of section 771(9) to whom such disclosure was made may furnish to the administering authority an irrevocable written waiver of verification of the information received by the authority, and an agreement that it is willing to have a preliminary determination made on the basis of the record then available to the authority. If a timely waiver and agreement have been received from the petitioner and each party which is an interested party described in subparagraph (C), (D), or (E) of section 771 (9) to whom the disclosure was made, and the authority finds that sufficient information is then available upon which the preliminary determination can reasonably be based, a preliminary determination shall be made within 90 days after the commencement of the investigation on the basis of the record established during the first 60 days after the investigation was commenced.

(c) EXTENSION OF PERIOD IN EXTRAORDINARILY COMPLICATED CASES.—

(1) IN GENERAL.—If—

(A) the petitioner makes a timely request for an extension of the period within which the determination must be made under subsection (b)(1), or

(B) the administering authority concludes that the parties concerned are cooperating and determines that—

(i) the case is extraordinarily complicated by reason of—

(I) the number and complexity of the transactions to be investigated or adjustments to be considered,

(II) the novelty of the issues presented, or

(III) the number of firms whose activities must be investigated, and

(ii) additional time is necessary to make the preliminary determination,

then the administering authority may postpone making the preliminary determination under subsection (b)(1) until not later than the 210th day after the date on which a petition is filed under section 732(b), or an investigation is commenced under section 732(a).

(2) NOTICE OF POSTPONEMENT.—The administering authority shall notify the parties to the investigation, not later than 20 days before the date on which the preliminary determination would otherwise be required under subsection (b)(1), if it intends to postpone making the preliminary determination under paragraph (1). The notification shall include an explanation of the reasons for the postponement, and notice of the postponement shall be published in the Federal Register.

(d) EFFECT OF DETERMINATION BY THE ADMINISTERING AUTHORITY.—If the preliminary determination of the administering authority under subsection (b) is affirmative, the administering authority—

(1) shall order the suspension of liquidation of all entries of merchandise subject to the determination which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the determination in the Federal Register,

(2) shall order the posting of a cash deposit, bond, or other security, as it deems appropriate, for each entry of the merchandise concerned equal to the estimated average amount by which the foreign market value exceeds the United States price, and

(3) shall make available to the Commission all information upon which such determination was based and which the Commission considers relevant to its injury determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

(e) CRITICAL CIRCUMSTANCES DETERMINATIONS.—

(1) IN GENERAL.—If a petitioner alleges critical circumstances in its original petition, or by amendment at any time more than 20 days before the date of a final determination by the administering authority, then the administering authority shall promptly determine, on the basis of the best information available to it at that time, whether there is a reasonable basis to believe or suspect that—

(A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation, or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

(2) SUSPENSION OF LIQUIDATION.—If the determination of the administering authority under paragraph (1) is affirmative, then any suspension of liquidation ordered under subsection (d)(1) shall apply, or, if notice of such suspension of liquidation is already published, be amended to apply, to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered.

(f) NOTICE OF DETERMINATIONS.—Whenever the Commission or the administering authority makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.

SEC. 734. TERMINATION OR SUSPENSION OF INVESTIGATION.

(a) TERMINATION OF INVESTIGATION ON WITHDRAWAL OF PETITION.—An investigation under this subtitle may be terminated by either the administering authority or the Commission after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner. The Commission may not terminate an investigation under the preceding sentence before a preliminary determination is made by the administering authority under section 733(b).

(b) AGREEMENTS TO ELIMINATE COMPLETELY SALES AT LESS THAN FAIR VALUE OR TO CEASE EXPORTS OF MERCHANDISE.—The administering authority may suspend an investigation if the exporters of the merchandise which is the subject of the investigation who account for substantially all of the imports of that merchandise agree—

(1) to cease exports of the merchandise to the United States within 6 months after the date on which the investigation is suspended, or

(2) to revise their prices to eliminate completely any amount by which the foreign market value of the merchandise which is the subject of the agreement exceeds the United States price of that merchandise.

(c) AGREEMENTS ELIMINATING INJURIOUS EFFECT.—

(1) GENERAL RULE.—If the administering authority determines that extraordinary circumstances are present in a case, it may suspend an investigation upon the acceptance of an agreement to revise prices from exporters of the merchandise which is the subject of the investigation who account for substantially all of the imports of that merchandise into the United States, if the agreement will eliminate completely the injurious effect of exports to the United States of that merchandise and if—

(A) the suppression or undercutting of price levels of domestic products by imports of that merchandise will be prevented, and

(B) for each entry of each exporter the amount by which the estimated foreign market value exceeds the United States price will not exceed 15 percent of the weighted average amount by which the estimated foreign market value exceeded the United States price for all less-than-fair-value entries of the exporter examined during the course of the investigation.

(2) DEFINITION OF EXTRAORDINARY CIRCUMSTANCES.—

(A) EXTRAORDINARY CIRCUMSTANCES.—For purposes of this subsection, the term "extraordinary circumstances" means circumstances in which—

(i) suspension of an investigation will be more beneficial to the domestic industry than continuation of the investigation, and

(ii) The investigation is complex.

(B) COMPLEX.—For purposes of this paragraph, the term "complex" means—

(i) there are a large number of transactions to be investigated or adjustments to be considered,

(ii) the issues raised are novel, or

(iii) the number of firms involved is large.

(d) ADDITIONAL RULES AND CONDITIONS.—

(1) PUBLIC INTEREST; MONITORING.—The administering authority shall not accept an agreement under subsection (b) or (c) unless—

(A) it is satisfied that suspension of the investigation is in the public interest, and

(B) effective monitoring of the agreement by the United States is practicable.

(2) EXPORTS OF MERCHANDISE TO UNITED STATES NOT TO INCREASE DURING INTERIM PERIOD.—The administering authority may not accept any agreement under subsection (b)(1) unless that agreement provides a means of ensuring that the quantity of the merchandise covered by the agreement exported to the United States during the period provided for cessation of exports does not exceed the quantity of such merchandise exported to the United States during the most recent representative period determined by the administering authority.

(e) SUSPENSION OF INVESTIGATION PROCEDURE.—Before an investigation may be suspended under subsection (b) or (c) the administering authority shall—

(1) notify the petitioner of, and consult with the petitioner concerning, its intention to suspend the investigation, and notify other parties to the investigation and the Commission not less than 30 days before the date on which it suspends the investigation,

(2) provide a copy of the proposed agreement to the petitioner at the time of the notification, together with an explanation of how the agreement will be carried out and enforced, and of how the agreement will meet the requirements of subsections (b) and (d) or (c) and (d), and

(3) permit all parties to the investigation to submit comments and information for the record before the date on which notice of suspension of the investigation is published under subsection (f)(1)(A).

(f) EFFECTS OF SUSPENSION OF INVESTIGATION.—

(1) IN GENERAL.—If the administering authority determines to suspend an investigation upon acceptance of an agreement described in subsection (b) or (c), then—

(A) it shall suspend the investigation, publish notice of the investigation, and issue an affirmative preliminary determination under section 733(b) with respect to the merchandise which is the subject of the investigation, unless it has previously issued such a determination in the same investigation,

(B) the Commission shall suspend any investigation it is conducting with respect to that merchandise, and

(C) the suspension of investigation shall take effect on the day on which such notice is published.

(2) LIQUIDATION OF ENTRIES.—

(A) CESSATION OF EXPORTS; COMPLETE ELIMINATION OF DUMPING MARGIN.—If the agreement accepted by the administering authority is an agreement described in subsection (b), then—

(i) notwithstanding the affirmative preliminary determination required under paragraph (1)(A), the liquidation of entries of merchandise which is the subject of the investigation shall not be suspended under section 733(d)(1),

(ii) if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case with respect to such merchandise, that suspension of liquidation shall terminate, and

(iii) the administering authority shall refund any cash deposit and release any bond or other security deposited under section 733(d)(2).

(B) OTHER AGREEMENTS.—If the agreement accepted by the administering authority is an agreement described in subsection (c), the liquidation of entries of the merchandise subject to the investigation shall be suspended under section 733(d)(1), or, if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case, that suspension of liquidation shall continue in effect, subject to subsection (h)(3), but the security required under section 733(d)(2) may be adjusted to reflect the effect of the agreement.

(3) WHERE INVESTIGATION IS CONTINUED.—If, pursuant to subsection (g), the administering authority and the Commission continue an investigation in which an agreement has been accepted under subsection (b) or (c), then—

(A) if the final determination by the administering authority or the Commission under section 735 is negative, the agreement shall have no force or effect and the investigation shall be terminated, or

(B) if the final determinations by the administering authority and the Commission under such section are affirmative, the agreement shall remain in force, but the administering authority shall not issue an antidumping duty order in the case so long as—

(i) the agreement remains in force,

(ii) the agreement continues to meet the requirements of subsections (b) and (d), or (c) and (d), and

(iii) the parties to the agreement carry out their obligations under the agreement in accordance with its terms.

(g) INVESTIGATION TO BE CONTINUED UPON REQUEST.—If the administering authority, within 20 days after the date of publication of the notice of suspension of an investigation, receives a request for the continuation of the investigation from—

(1) an exporter or exporters accounting for a significant proportion of exports to the United States of the merchandise which is the subject of the investigation, or

(2) an interested party described in subparagraph (C), (D), or (E) or section 771(9) which is a party to the investigation, then the administering authority and the Commission shall continue the investigation.

(h) REVIEW OF SUSPENSION.—

(1) IN GENERAL.—Within 20 days after the suspension of an investigation under subsection (c), an interested party which is a party to the investigation and which is described in subparagraph (C), (D), or (E) of section 771(9) may, by petition filed with the Commission and with notice to the administering authority, ask for a review of the suspension.

(2) COMMISSION INVESTIGATION.—Upon receipt of a review petition under paragraph (1), the Commission shall, within 75 days after the date on which the petition is filed with it, determine whether the injurious effect of imports of the merchandise which is the subject of the investigation is eliminated completely by the agreement. If the Commission's determination under this subsection is negative, the investigation shall be resumed on the date of publication of notice of such determination as if the affirmative preliminary determination under section 733(b) had been made on that date.

(3) SUSPENSION OF LIQUIDATION TO CONTINUE DURING REVIEW PERIOD.—The suspension of liquidation of entries of the merchandise which is the subject of the investigation shall terminate at the close of the 20-day period beginning on the day after the date on which notice of suspension of the investigation is published in the Federal Register, or, if a review petition is filed under paragraph (1) with respect to the suspension of the investigation, in the case of an affirmative determination by the Commission under paragraph (2), the date on which notice of an affirmative determination by the Commission is published. If the determination of the Commission under paragraph (2) is affirmative, then the administering authority shall—

(A) terminate the suspension of liquidation under section 733(d)(1), and

(B) release any bond or other security, and refund any cash deposit, required under section 733(d)(2).

(i) VIOLATION OF AGREEMENT.—

(1) IN GENERAL.—If the administering authority determines that an agreement accepted under subsection (b) or (c) is being, or has been, violated, or no longer meets the requirements of such subsection (other than the requirement, under subsection (c)(1), of elimination of injury) and subsection (d), then, on the date of publication of its determination, it shall—

(A) suspend liquidation under section 733(d)(1) of unliquidated entries of the merchandise made on the later of—

(i) the date which is 90 days before the date of publication of the notice of suspension of liquidation, or

(ii) the date on which the merchandise, the sale or export to the United States of which was in violation of the agreement, or under an agreement which no longer meets the requirements of subsections (b) and (d), or (c) and

(*d*), *was first entered, or withdrawn from warehouse, for consumption,*

(*B*) *if the investigation was not completed, resume the investigation as if its affirmative preliminary determination were made on the date of its determination under this paragraph,*

(*C*) *if the investigation was completed under subsection* (*g*), *issue an antidumping duty order under section 736*(*a*) *effective with respect to entries of merchandise liquidation of which was suspended, and*

(*D*) *notify the petitioner, interested parties who are or were parties to the investigation, and the Commission of its action under this paragraph.*

(*2*) *INTENTIONAL VIOLATION TO BE PUNISHED BY CIVIL PENALTY.—Any person who intentionally violates an agreement accepted by the administering authority under subsection* (*b*) *or* (*c*) *shall be subject to a civil penalty assessed in the same amount, in the same manner, and under the same procedures, as the penalty imposed for a fraudulent violation of section 592*(*a*) *of this Act.*

(*j*) *DETERMINATION NOT TO TAKE AGREEMENT INTO ACCOUNT.—In making a final determination under section 735, or in conducting a review under section 751, in a case in which the administering authority has terminated a suspension of investigation under subsection* (*i*) (*1*), *or continued an investigation under subsection* (*g*), *the Commission and the administering authority shall consider all of the merchandise which is the subject of the investigation without regard to the effect of any agreement under subsection* (*b*) *or* (*c*).

SEC. 735. FINAL DETERMINATIONS.

(*a*) *FINAL DETERMINATION BY ADMINISTERING AUTHORITY.—*

(*1*) *GENERAL RULE.—Within 75 days after the date of its preliminary determination under section 733*(*b*), *the administering authority shall make a final determination of whether the merchandise which was the subject of the investigation is being, or is likely to be, sold in the United States at less than its fair value.*

(*2*) *EXTENSION OF PERIOD FOR DETERMINATION.—The administering authority may postpone making the final determination under paragraph* (*1*) *until not later than the 135th day after the date on which it published notice of its preliminary determination under section 733*(*b*) *if a request in writing for such a postponement is made by—*

(*A*) *exporters who account for a significant proportion of exports of the merchandise which is the subject of the investigation, in proceeding in which the preliminary determination by the administering authority under section 733*(*b*) *was affirmative, or*

(*B*) *the petitioner, in a proceeding in which the preliminary determination by the administering authority under section 733*(*b*) *was negative.*

(*3*) *CRITICAL CIRCUMSTANCES DETERMINATIONS.—If the final determination of the administering authority is affirmative, then that determination, in any investigation in which the presence of*

critical circumstances has been alleged under section 733(e), shall also contain a finding of whether—

(A) (i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) there have been massive imports of the merchandise which is the subject of the investigation over a relatively short period.

(b) FINAL DETERMINATION BY COMMISSION.—

(1) IN GENERAL.—The Commission shall make a final determination of whether—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a)(1).

(2) PERIOD FOR INJURY DETERMINATION FOLLOWING AFFIRMATIVE PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—If the preliminary determination by the administering authority under section 733(b) is affirmative, then the Commission shall make the determination required by paragraph (1) before the later of—

(A) the 120th day after the day on which the administering authority makes its affirmative preliminary determination under section 733(b), or

(B) the 45th day after the day on which the administering authority makes its affirmative final determination under subsection (a).

(3) PERIOD FOR INJURY DETERMINATION FOLLOWING NEGATIVE PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—If the preliminary determination by the administering authority under section 733(b) is negative, and its final determination under subsection (a) is affirmative, then the final determination by the Commission under this subsection shall be made within 75 days after the date of that affirmative final determination.

(4) CERTAIN ADDITIONAL FINDINGS.—

(A) If the finding of the administering authority under subsection (a)(2) is affirmative, then the final determination of the Commission shall include a finding as to whether the material injury is by reason of massive imports described in subsection (a)(3) to an extent that, in order to prevent such matherial injury from recurring, it is necessary to impose the duty imposed by section 731 retroactively on those imports.

(B) If the final determination of the Commission is that there is no material injury but that there is threat of material

injury, then its determination shall also include a finding as to whether material injury by reason of the imports of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a) would have been found but for any suspension of liquidation of entries of the merchandise.

(c) EFFECT OF FINAL DETERMINATIONS.—

(1) EFFECT OF AFFIRMATIVE DETERMINATION BY THE ADMINISTERING AUTHORITY.—If the determination of the administering authority under subsection (a) is affirmative, then—

(A) the administering authority shall make available to the Commission all information upon which such determination was based and which the Commission considers relevant to its determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order of any information as to which confidential treatment has been given by the administering authority, and

(B) in cases where the preliminary determination by the administering authority under section 773(b) was negative, the administering authority shall order under paragraphs (1) and (2) of section 733(d) the suspension of liquidation and the posting of a cash deposit, bond, or other security.

(2) ISSUANCE OF ORDER; EFFECT OF NEGATIVE DETERMINATION.—If the determinations of the administering authority and the Commission under subsections (a)(1) and (b)(1) are affirmative, then the administering authority shall issue an antidumping duty order under section 736(a). If either of such determinations is negative, the investigation shall be terminated upon the publication of notice of that negative determination and the administering authority shall—

(A) terminate the suspension of liquidation under section 703(d)(1), and

(B) release any bond or other security, and refund any cash deposit, required under section 733(d)(2).

(3) EFFECT OF NEGATIVE DETERMINATIONS UNDER SUBSECTIONS (a)(3) AND (b)(4)(A).—If the determination of the administering authority or the Commission under subsection (a)(3) or (b)(4)(A), respectively, is negative, then the administering authority shall—

(A) terminate any retroactive suspension of liquidation required under section 733(e)(2), and

(B) release any bond or other security, and refund any cash deposit required, under section 733(d)(2) with respect to entries of the merchandise the liquidation of which was suspended retroactively under section 773(e)(2).

(d) PUBLICATION OF NOTICE OF DETERMINATIONS.—Whenever the administering authority or the Commission makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.

SEC. 736. ASSESSMENT OF DUTY.

(a) PUBLICATION OF ANTIDUMPING DUTY ORDER.—Within 7 days after being notified by the Commission of an affirmative determination under section 735(b), the administering authority shall publish an antidumping duty order which—

(1) directs customs officers to assess an antidumping duty equal to the amount by which the foreign market value of the merchandise exceeds the United States price of the merchandise, within 6 months after the date on which the administering authority receives satisfactory information upon which the assessment may be based, but in no event later than—

(A) 12 months after the end of the annual accounting period of the manufacturer or exporter within which the merchanise is entered, or withdrawn from warehouse, for consumption, or

(B) in the case of merchandise not sold prior to its importation into the United States, 12 months after the end of the annual accounting period of the manufacturer or exporter within which it is sold in the United States to a person who is not the exporter of that merchandise,

(2) includes a description of the class or kind of merchandise to which it applies, in such detail as the administering authority deems necessary, and

(3) requires the deposit of estimated antidumping duties pending liquidation of entries of merchandise at the same time as estimated normal customs duties on that merchandise are deposited.

(b) IMPOSITION OF DUTY.—

(1) GENERAL RULE.—If the Commission, in it final determination under section 735(b), finds material injury or threat of material injury which, but for the suspension of liquidation under section 733(d)(1) would have led to a finding of material injury, then entries of the merchandise subject to the antidumping duty order, the liquidation of which has been suspended under section 733(d)(1), shall be subject to the imposition of antidumping duties under section 731.

(2) SPECIAL RULE.—If the Commission, in its final determination under section 735(b), finds threat of material injury, other than threat of material injury described in paragraph (1), or material retardation of the establishment of an industry in the United States, then merchandise subject to an antidumping duty order which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of notice of an affirmative determination of the Commission under section 735(b) shall be subject to the assessment of antidumping duties under section 731, and the administering authority shall release any bond or other security, and refund any cash deposit made, to secure the payment of antidumping duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption before that date.

(c) SECURITY IN LIEU OF ESTIMATED DUTY PENDING EARLY DETERMINATION OF DUTY.—

(1) CONDITIONS FOR WAIVER OF DEPOSIT OF ESTIMATED DUTIES.—The administering authority may permit, for not more than 90 days after the date of publication of an order under subsection (a), the posting of a bond or other security in lieu of the deposit of estimated antidumping duties required under subsection (a)(3) if, on the basis of information presented to it by any manufacturer, producer, or exporter in such form and within such time as it may require, it is satisfied that it will be able to determine, within 90 days after the date of publication of an order under subsection (a), the foreign market value and the United States price for all merchandise of such manufacturer, producer, or exporter described in that order which was entered, or withdrawn from warehouse, for consumption on or after the date of publication of—

(A) an affirmative preliminary determination by the administering authority under section 733(b), or

(B) if its determination under section 733(b) was negative, an affirmative final determination by the administering authority under section 735(a),

and before the date of publication of the affirmative final determination by the Commission under section 735(b).

(2) NOTICE; HEARING.—If the administering authority permitted the posting of a bond or other security in lieu of the deposit of estimated antidumping duties under paragraph (1), it shall—

(A) publish notice of its action in the Federal Register, and

(B) upon the request of any interested party, hold a hearing in accordance with section 774 before determining the foreign market value and the United States price of the merchandise.

(3) DETERMINATIONS TO BE BASIS OF ANTIDUMPING DUTY.—The administering authority shall publish notice in the Federal Register of the results of its determination of foreign market value and United States price, and that determination shall be the basis for the assessment of antidumping duties on entries of merchandise to which the notice under this subsection applies and also shall be the basis for the deposit of estimated antidumping duties or future entries of merchandise of manufacturers, producers, or exporters described in paragraph (1) to which the order issued under subsection (a) applies.

SEC. 737. TREATMENT OF DIFFERENCE BETWEEN DEPOSIT OF ESTIMATED ANTIDUMPING DUTY AND FINAL ASSESSED DUTY UNDER ANTIDUMPING DUTY ORDER.

(a) DEPOSIT OF ESTIMATED ANTIDUMPING DUTY UNDER SECTION 733(d)(2).—If the amount of a cash deposit collected as security for an estimated antidumping duty under section 733(d)(2) is different from the amount of the antidumping duty determined under an antidumping duty order published under section 736, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption before notice of the affirmative determination of the Commission under section 735(b) is published shall be—

(1) disregarded, to the extent the cash deposit collected is lower than the duty under the order, or

(2) refunded, to the extent the cash deposit is higher than the duty under the order.

(b) DEPOSIT OF ESTIMATED ANTIDUMPING DUTY UNDER SECTION 736(a)(3).—If the amount of an estimated antidumping duty deposited under section 736(a)(3) is different from the amount of the antidumping duty determined under an antidumping duty order published under section 736, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption after notice of the affirmative determination of the Commission under section 735(b) is published shall be—

(1) collected, to the extent that the deposit under section 736(a)(3) is lower than the duty determined under the order, or

(2) refunded, to the extent that the deposit under section 736(a)(3) is higher than the duty determined under the order,

together with interest as provided by section 778.

SEC. 738. CONDITIONAL PAYMENT OF ANTIDUMPING DUTY.

(a) GENERAL RULE.—For all entries, or withdrawals from warehouse, for consumption of merchandise subject to an antidumping duty order on or after the date of publication of such order, no customs officer may deliver merchandise of that class or kind to the person by whom or for whose account it was imported unless that person complies with the requirements of subsection (b) and deposits with the appropriate customs officer an estimated antidumping duty in an amount determined by the administering authority.

(b) IMPORTER REQUIREMENTS.—In order to meet the requirements of this subsection, a person shall—

(1) furnish, or arrange to have furnished, to the appropriate customs officer such information as the administering authority deems necessary for determining the United States price of the merchandise imported by or for the account of that person, and such other information as the administering authority deems necessary for ascertaining any antidumping duty to be imposed under this title;

(2) maintain and furnish to the customs officer such records concerning the sale of the merchandise as the administering authority, by regulation, requires;

(3) state under oath before the customs officer that he is not an exporter, or if he is an exporter, declare under oath at the time of entry the exporter's sales price of the merchandise to the customs officer if it is then known, or, if not, so declare within 30 days after the merchandise has been sold, or has been made the subject of an agreement to be sold, in the United States; and

(4) pay, or agree to pay on demand, to the customs officer the amount of antidumping duty imposed under section 731 on that merchandise.

SEC. 739. DUTIES OF CUSTOMS OFFICERS.

In the case of all imported merchandise of a class or kind as to which the administering authority has published an antidumping duty order under section 736 under which entries have not been liquidated, the appropriate customs officer shall, by all reasonable ways and means and consistently with the provisions of this title, ascertain and determine, or estimate, the foreign market value, the United States price and any

other information which the administering authority deems necessary for the purposes of administering this title.

SEC. 740. ANTIDUMPING DUTY TREATED AS REGULAR DUTY FOR DRAWBACK PURPOSES.

The antidumping duty imposed by section 731 shall be treated in all respects as a normal customs duty for the purpose of any law relating to the drawback of customs duties.

Subtitle C—Review of Determinations

SEC. 751. ADMINISTRATIVE REVIEW OF DETERMINATIONS.

(a) PERIODIC REVIEW OF AMOUNT OF DUTY.—

(1) IN GENERAL.—At least once during each 12-month period beginning on the anniversary of the date of publication of a countervailing duty order under this title or under section 303 of this Act, an antidumping duty order under this title or a finding under the Antidumping Act, 1921, or a notice of the suspension of an investigation, the administering authority, after publication of notice of such review in the Federal Register, shall—

(A) review and determine the amount of any net subsidy,

(B) review, and determine (in accordance with paragraph (2)), the amount of any antidumping duty, and

(C) review the current status of, and compliance with, any agreement by reason of which an investigation was suspended, and review the amount of any net subsidy or margin of sales at less than fair value involved in the agreement,

and shall publish the results of such review, together with notice of any duty to be assessed, estimated duty to be deposited, or investigation to be resumed in the Federal Register.

(2) DETERMINATION OF ANTIDUMPING DUTIES.—For the purpose of paragraph (1)(B), the administering authority shall determine—

(A) the foreign market value and United States price of each entry of merchandise subject to the antidumping duty order and included within that determination, and

(B) the amount, if any, by which the foreign market value of each such entry exceeds the United States price of the entry.

The administering authority, without revealing confidential information, shall publish notice of the results of the determination of antidumping duties in the Federal Register, and that determination shall be the basis for the assessment of antidumping duties on entries of the merchandise included within the determination and for deposits of estimated duties.

(b) REVIEWS UPON INFORMATION OR REQUEST.—

(1) IN GENERAL.—Whenever the administering authority or the Commission receives information concerning, or a request for the review of, an agreement accepted under section 704 or 734 or an affirmative determination made under section 704(h)(2), 705(a) 705(b), 734(h)(2), 735(a), or 735(b), which shows changed circumstances sufficient to warrant a review of such determination, it shall conduct such a review after publishing notice of the review in the Federal Register. In reviewing its determination un-

der section 704(h)(2), the Commission shall consider whether, in the light of changed circumstances, an agreement accepted under section 704(c) or 734(c) continues to eliminate completely the injurious effects of imports of the merchandise.

(2) LIMITATION ON PERIOD FOR REVIEW.—In the absence of good cause shown—

(A) the Commission may not review a determination under section 705(b) or 735(b), and

(B) the administering authority may not review a determination under section 705(a) or 735(a), or the suspension of an investigation suspended under section 704 or 734,

less than 24 months after the date of publication of notice of that determination or suspension.

(c) REVOCATION OF COUNTERVAILING DUTY ORDER OR ANTIDUMPING DUTY ORDER.—The administering authority may revoke, in whole or in part, a countervailing duty order or an antidumping duty order, or terminate a suspended investigation, after, review under this section. Any such revocation or termination shall apply with respect to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on and after a date determined by the administering authority.

(d) HEARINGS.—Whenever the administering authority or the Commission conducts a review under this section it shall, upon the request of any interested party, hold a hearing in accordance with section 774(b) in connection with that review.

(e) DETERMINATION THAT BASIS FOR SUSPENSION NO LONGER EXISTS.—If the determination of the Commission under the last sentence of subsection (b)(1) is negative, the agreement shall be treated as not accepted, beginning on the date of the publication of the Commission's determination, and the administering authority and the Commission shall proceed, under section 704(i) or 734(i), as if the agreement had been violated on that date, except that no duty under any order subsequently issued shall be assessed on merchandise entered, or withdrawn from warehouse, for consumption before that date.

Subtitle D—General Provisions

SEC. 771. DEFINITIONS; SPECIAL RULES.

For purposes of this title—

(1) ADMINISTERINGG AUTHORITY.—The term "administering authority" means the Secretary of the Treasury, or any other officer of the United States to whom the responsibility for carrying out the duties of the administering authority under this title are transferred by law.

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

(3) COUNTRY.—The term "country" means a foreign country, a political subdivision, dependent territory, or possession of a foreign country, and, except for the purpose of antidumping proceedings, may include an association of 2 or more foreign countries political subdivisions, dependent territories, or possessions of countries into a customs union outside the United States.

(4) INDUSTRY.—

(A) IN GENERAL.—The term "industry" means the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product.

(B) RELATED PARTIES.—When some producers are related to the exporters or importers, or are themselves importers of the allegedly subsidized or dumped merchandise, the term "industry" may be applied in appropriate circumstances by excluding such producers from those included in that industry.

(C) REGIONAL INDUSTRIES.—In appropriate circumstances, the United States, for a particular product market, may be divided into 2 or more markets and the producers within each market may be treated as if they were a separate industry if—

(i) the producers within such market sell all or almost all of their production of the like product in question in that market, and

(ii) the demand in that market is not supplied, to any substantial degree, by producers of the product in question located elsewhere in the United States.

In such appropriate circumstances, material injury, the threat of material injury, or material retardation of the establishment of an industry may be found to exist with respect to an industry even if the domestic industry as a whole, or those producers whose collective output of a like product constitutes a major proportion of the total domestic production of that product, is not injured, if there is a concentration of subsidized or dumped imports into such an isolated market and if the producers of all, or almost all, of the production within that market are being materially injured or threatened by the material injury, or if the establishment of an industry is being materially retarded, by reason of the subsidized or dumped imports.

(D) PRODUCTS LINES.—The effect of subsidized or dumped imports shall be assessed in relation to the United States production of a like product if available data permit the separate identification of production in terms of such criteria as the production process or the producer's profits. If the domestic production of the like product has no separate identity in terms of such criteria, then the effect of the subsidized or dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes a like product, for which the necessary information can be provided.

(5) SUBSIDY.—The term "subsidy" has the same meeaning as the term 'bounty or grant' as that term is used in section 303 of this Act, and includes, but is not limited to, the following:

(A) Any export subsidy described in Annex A to the Agreement (relating to illustrative list of export subsidies).

(B) The following domestic subsidies, if provided or required by government action to a specific enterprise or industry, or group of enterprises or industries, whether publicly or privately owned, and whether paid or bestowed directly or indirectly on the manufacture, production, or export of any class or kind of merchandise:

(i) The provision of capital, loans, or loan guarantees on terms inconsistent with commercial considerations.

(ii) The provision of goods or services at preferential rates.

(iii) The grant of funds or forgiveness of debt to cover operating losses sustained by a specific industry.

(iv) The assumption of any costs or expenses of manufacture, production, or distribution.

(6) NET SUBSIDY.—For the purpose of determining the net subsidy, the administering authority may subtract from the gross subsidy the amount of—

(A) any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the subsidy,

(B) any loss in the value of the subsidy resulting from its deferred receipt, if the deferral is mandated by Government order, and

(C) export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the subsidy received.

(7) MATERIAL INJURY.—

(A) IN GENERAL.—The term "material injury" means harm which is not inconsequential, immaterial, or unimportant.

(B) VOLUME AND CONSEQUENT IMPACT.—In making its determinations under sections 703(a), 705(b), 733(a), and 735(b), the Commission shall consider, among other factors—

(i) the volume of imports of the merchandise which is the subject of the investigation,

(ii) the effect of imports of that merchandise on prices in the United States for like products, and

(iii) the impact of imports of such merchandise on domestic producers of like products.

(C) EVALUATION OF VOLUME AND OF PRICE EFFECTS.—For purpose of subparagraph (B)—

(i) VOLUME.—In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.

(ii) PRICE.—In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether—

(I) there has been significant price undercutting by the imported merchandise as compared with the price of like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.

(iii) IMPACT ON AFFECTED INDUSTRY.—In examining the impact on the affected industry, the Commission shall shall evaluate all relevant economic factors which have a bearing on the state of the industry, including, but not limited to—

(I) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,

(II) factors affecting domestic prices, and

(III) actual and potetial negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment.

(D) SPECIAL RULES FOR AGRICULTURAL PRODUCTS.—

(i) The Commission shall not determine that there is no material injury or threat of material injury to United States producers of an agricultural commodity merely because the prevailing market price is at or above the minimum support price.

(ii) In the case of agricultural products, the Commission shall consider any increased burden on government income or price support programs.

(E) SPECIAL RULES.—For purposes of this paragraph—

(i) NATURE OF SUBSIDY.—In determining whether there is a threat of material injury, the Commission shall consider such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement) provided by a foreign country and the effects likely to be caused by the subsidy.

(ii) STANDARD FOR DETERMINATION.—The presence or absence of any factor which the Commission is required to evaluate under subparagraph (C) or (D) shall not necessarily give decisive guidance with respect to the determination by the Commission of material injury.

(8) AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES; AGREEMENT.—The terms "Agreement on Subsidies and Countervailing Measures" and "Agreement" mean the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (relating to subsidies and countervailing measures) approved under section 2(a) of the Trade Agreements Act of 1979.

(9) INTERESTED PARTY.—The term "interested party" means—

(A) a foreign manufacturer, producer, or exporter, or the United States importer, of merchandise which is the subject of an investigation under this title or a trade or business association a majority of the members of which are importers of such merchandise,

(B) the government of a country in which such merchandise is produced or manufactured,

(C) a manufacturer, producer, or wholesaler in the United States of a like product,

(D) a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a like product, and

(E) a trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States.

(10) LIKE PRODUCT.—The term "like product" means a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.

(11) AFFIRMATIVE DETERMINATIONS BY DIVIDED COMMISSION.—If the Commissioners voting on a determination by the Commission are evenly divided as to whether the determination should be affirmative or negative, the Commission shall be deemed to have made an affirmative determination. For the purpose of applying this paragraph when the issue before the Commission is to determine whether there is—

(A) material injury to an industry in the United States,

(B) threat of material injury to such an industry, or

(C) material retardation of the establishment of an industry in the United States,

by reason of imports of the merchandise, an affirmative vote on any of the issues shall be treated as a vote that the determination should be affirmative.

(12) ATTRIBUTION OF MERCHANDISE TO COUNTRY OF MANUFACTURE OR PRODUCTION.—For purposes of subtitle A, merchandise shall be treated as the product of the country in which it was manufactured or produced without regard to whether it is imported directly from that country and without regard to whether it is imported in the same condition as when exported from that country or in a changed condition by reason of remanufacture or otherwise.

(13) EXPORTER.—For the purpose of determining United States price, the term 'exporter' includes the person by whom or for whose account the merchandise is imported into the United States if—

(A) such person is the agent or principal of the exporter, manufacturer, or producer;

(B) such person owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business of the exporter, manufacturer, or producer;

(C) the exporter, manufacturer, or producer owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in any business conducted by such person; or

(D) any person or persons, jointly or severally, directly or indirectly, through stock ownership or control or otherwise,

own or control in the aggregate 20 percent or more of the voting power or control in the business carried on by the person by whom or for whose account the merchandise is imported into the United States, and also 20 percent or more of such power or control in the business of the exporter, manufacturer, or producer.

(14) SOLD OR, IN THE ABSENCE OF SALES, OFFERED FOR SALE.—The term "sold or, in the absence of sales, offered for sale" means sold or, in the absence of sales, offered—

(A) to all purchasers at wholesale, or

(B) in the ordinary course of trade to one or more selected purchasers at wholesale at a price which fairly reflects the market value of the merchandise,

without regard to restrictions as to the disposition or use of the merchandise by the purchaser except that, where such restrictions are found to affect the market value of the merchandise, adjustment shall be made therefor in calculating the price at which the merchandise is sold or offered for sale.

(15) ORDINARY COURSE OF TRADE.—The term "ordinary course of trade" means the conditions and practices which, for a reasonable time prior to the exportation of the merchandise which is the subject of an investigation, have been normal in the trade under consideration with respect to merchandise of the same class or kind.

(16) SUCH OR SIMILAR MERCHANDISE.—The term "such or similar merchandise" means merchandise in the first of the following categories in respect of which a determination for the purposes of subtitle B of this title can be satisfactorily made:

(A) The merchandise which is the subject of an investigation and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, that merchandise.

(B) Merchandise—

(i) produced in the same country and by the same person as the merchandise which is the subject of the investigation,

(ii) like that merchandise in component material or materials and in the purposes for which used, and

(iii) approximately equal in commercial value to that merchandise.

(C) Merchandise—

(i) produced in the same country and by the same person and of the same general class or kind as the merchandise which is the subject of the investigation,

(ii) like that merchandise in the purposes for which used, and

(iii) which the administering authority determines may reasonably be compared with that merchandise.

(17) USUAL WHOLESALE QUANTITIES.—The term "usual wholesale quantities", in any case in which the merchandise which is the subject of the investigation is sold in the market under consideration at different prices for different quantities, means the quan-

tities in which such merchandise is there sold at the price or prices for one quantity in an aggregate volume which is greater than the aggregate volume sold at the price or prices for any other quantity.

SEC. 772. UNITED STATES PRICE.

(a) UNITED STATES PRICE.—For purposes of this title, the term "United States price" means the purchase price, or the exporter's sales price, of the merchandise, whichever is appropriate.

(b) PURCHASE PRICE.—For purposes of this section, the term "purchase price" means the price at which merchandise is purchased, or agreed to be purchased, prior to the date of importation, from the manufacturer or producer of the merchandise for exportation to the United States. Appropriate adjustments for costs and expenses under subsection (d) shall be made if they are not reflected in the price paid by the person by whom, or for whose account, the merchandise is imported.

(c) EXPORTER'S SALES PRICE.—For purposes of this section, the term "exporter's sales price" means the price at which merchandise is sold or agreed to be sold in the United States, before or after the time of importation, by or for the account of the exporter, as adjusted under subsections (d) and (e).

(d) ADJUSTMENTS TO PURCHASE PRICE AND EXPORTER'S SALES PRICE.—The purchase price and the exporter's sales price shall be adjusted by being—

(1) increased by—

(A) when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States,

(B) the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States;

(C) the amount of any taxes imposed in the country of exportation directly upon the exported merchandise or components thereof, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States, but only to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation; and

(D) the amount of any countervailing duty imposed on the merchandise under subtitle A of this title or section 303 of this Act to offset an export subsidy, and

(2) reduced by—

(A) except as provided in paragraph (1)(D), the amount, if any, included in such price, attributable to any additional costs, charges, and expenses, and United States import duties, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States; and

(B) the amount, if included in such price, of any export tax, duty, or other charge imposed by the country of exportation on the exportation of the merchandise to the United

States other than an export tax, duty, or other charge described in section 771(6)(C).

(*e*) ADDITIONAL ADJUSTMENTS TO EXPORTER'S SALES PRICE.—*For purposes of this section, the exporter's sales price shall also be adjusted by being reduced by the amount, if any, of—*

(1) commissions for selling in the United States the particular merchandise under consideration,

(2) expenses generally incurred by or for the account of the exporter in the United States in selling identical or substaantially identical merchandise, and

(3) any increased value, including additional material and labor, resulting from a process of manufacture or assembly performed on the imported merchandise after the importation of the merchandise and before its sale to a person who is not the exporter of the merchandise.

SEC. 773. FOREIGN MARKET VALUE.

(*a*) *DETERMINATION; FICTITIOUS MARKET; SALES AGENCIES.—For purposes of this title—*

(1) IN GENERAL.—The foreign market value of imported merchandise shall be the price, at the time of exportation of such merchandise to the United States—

(A) at which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade for home consumption, or

(B) if not so sold or offered for sale for home consumption, or if the administering authority determines that the quantity sold for home consumption is so small in relation to the quantity sold for exportation to countries other than the United States as to form an inadequate basis for comparison, then the price at which so sold or offered for sale for exportation to countries other than the United States,

increased by, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses, incident to placing the merchandise in condition packed ready for shipment to the United States, except that in the case of merchandise purchased or agreed to be purchased by the person by whom or for whose account the merchandise is imported, prior to the time of importation, the foreign market value shall be ascertained as of the date of such purchase or agreement to purchase. In the ascertainment of foreign market value for the purposes of this title no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account.

(2) USE OF CONSTRUCTED VALUE.—If the administering authority determines that the foreign market value of imported merchandise cannot be determined under paragraph (1)(A), then, notwithstanding paragraph (1)(B), the foreign market value of the merchandise may be the constructed value of that merchandise, as determined under subsection (e).

(3) INDIRECT SALES AND OFFERS FOR SALE.—If such or similar merchandise is sold or, in the absence of sales, offered for sale through a sales agency or other organization related to the seller in any of the respects described in section 771(13), the prices at which such or similar merchandise is sold or, in the absence of sales, offered for sale by such sales agency or other organization may be used in determining the foreign market value.

(4) OTHER ADUSTMENTS.—In determining foreign market value, if it is established to the satisfaction of the administering authority that the amount of any difference between the United States price and the foreign market value (or that the fact that the United States price is the same as the foreign market value) is wholly or partly due to—

(A) the fact that the wholesale quantities, in which such or similar merchandise is sold or, in the absence of sales, offered for sale, for exportation to, or in the principal markets of, the United States, as appropriate, in the ordinary course of trade, are less or are greater than the wholesale quantities in which such or similar merchandise is sold or, in the absence of sales, offered for sale, in the principal markets of the country of exportation in the ordinary course of trade for home consumption (or, if not so sold for home consumption, then for exportation to countries other than the United States);

(B) other differences in circumstances of sale; or

(C) the fact that merchandiese described in paragraph (B) or (C) of section 771(16) is used in determining foreign market valuee,

then due allowance shall be made therefor.

(b) SALES AT LESS THAN COST OF PRODUCTION.—Whenever the administering authority has reasonable grounds to beelieve or suspeect that sales in the home market of the country of exportation, or, as appropriate, to countries other than the United States, have been made at prices which represent less than the cost of producing the merchandise in question, it shall determine whether, in fact, such sales were made at less than the cost of producing the merchandise. If the administering authority determines that sales made at less than cost of production—

(1) have been made over an extended period of time and in substantial quantities, and

(2) are not at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade,

such sales shall be disregarded in the determination of foreign market value. Whenever sales are disregarded by virtue of having been made at less than the cost of production and the remaining sales, made at not less than cost of production, are determined to be inadequate as a basis for the determination of foreign market value under subsection (a), the administering authority shall employ the constructed value of the merchandise to determine its foreign market value.

(c) STATE-CONTROLLED ECONOMIES.—If available information indicates to the administering authority that the economy of the country from which the merchandise is exported is State-controlled to an extent

that sales or offers of sales of such or similar merchandise in that country or to countries other than the United States do not permit a determination of foreign market value under subsection (a) of this section, the administering authority shall determine the foreign market value of the merchandise on the basis of the normal costs, expenses, and profits as reflected by either—

(1) the prices, determined in accordance with subsection (a) of this section, at which such or similar merchandise of a non-State-controlled-economy country or countries is sold either—

(A) for consumption in the home market of that country or countries, or

(B) to other countries, including the United States; or

(2) the constructed value of such or similar merchandise in a non-State-controlled-economy country or countries as determined under subsection (e).

(d) SPECIAL RULE FOR CERTAIN MULTINATIONAL CORPORATIONS.—Whenever, in the course of an investigation under this title, the administering authority determines that—

(1) merchandise exported to the United States is being produced in facilities which are owned or controlled, directly or indirectly, by a person, firm or corporation which also owns or controls, directly or indirectly, other facilities for the production of such or similar merchandise which are located in another country or countries;

(2) the sales of such or similar merchandise by the company concerned in the home market of the exporting country are nonexistent or inadequate as a basis for comparison with the sales of the merchandise to the United States; and

(3) the foreign market value of such or similar merchandise produced in one or more of the facilities outside the country of exportation is higher than the foreign market value of such or similar merchandise produced in the facilities located in the country of exportation,

it shall determine the foreign market value of such merchandise by reference to the foreign market value at which such or similar merchandise is sold in substantial quantities by one or more facilities outside the country of exportation. The administering authority, in making any determination under this paragraph, shall make adjustments for the difference between the costs of production (including taxes, labor, materials, and overhead) of such or similar merchandise produced in facilities outside the country of exportation and costs of production of such or similar merchandise produced in the facilities in the country of exportation, if such differences are demonstrated to its satisfaction. For the puroses of this subsection, in determining foreign market value of such or similar merchandise produced in a country outside of the country of exportation, the administering authority shall determine its price at the time of exportation from the country of exportation and shall make any adjustments required by subsection (a) of this section for the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States by reference to such costs in the country of exportation.

(e) CONSTRUCTED VALUE.—

(1) DETERMINATION.—For the purposes of this title, the constructed value of imported merchandise shall be the sum of—

(A) the cost of materials (exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the article in the production of which such materials are used) and of fabrication or other processing of any kind employed in producing such or similar merchandise, at a time preceding the date of exportation of the merchandise under consideration which would ordinarily permit the production of that particular merchandise in the ordinary course of business;

(B) an amount for general expenses and profit equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise under consideration which are made by producers in the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, except that—

(i) the amount for general expenses shall not be less than 10 percent of the cost as defined in subparagraph (A), and

(ii) the amount for profit shall not be less than 8 percent of the sum of such general expenses and cost; and

(C) the cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the merchandise under consideration in condition, packed ready for shipment to the United States.

(2) TRANSACTIONS DISREGARDED; BEST EVIDENCE.—For the purposes of this subsection, a transaction directly or indirectly between persons specified in any one of the subparagraphs in paragraph (3) of this subsection may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales in the market under consideration of merchandise under consideration. If a transaction is disregarded under the preceding sentence and there are no other transactions available for consideration, then the determination of the amount required to be considered shall be based on the best evidence available as to what the amount would have been if the transaction had occurred between persons not specified in any one of the subparagraphs in paragraph (3) of this section.

(3) RELATED PARTIES.—The persons referred to in paragraph (2) of this subsection are:

(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(B) Any officer or director of an organization and such organization.

(C) Partners.

(D) Employer and employee.

(E) *Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.*

(F) *Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.*

(f) AUTHORITY TO USE SAMPLING TECHNIQUES AND TO DISREGARD INSIGNIFICANT ADJUSTMENTS.—*For the purpose of determining foreign market value under this section, the administering authority may—*

(1) *use average or generally recognized sampling techniques whenever a significant volume of sales is involved or a significant number of adjustments to prices is required, and*

(2) *decline to take into account adjustments which are insignificant in relation to the price or value of the merchandise.*

SEC. 774. HEARINGS.

(a) INVESTIGATION HEARINGS.—*The administering authority and Commission shall each hold a hearing in the course of an investigation upon the request of any party to the investigation before making a final determination under section 705 or 735.*

(b) PROCEDURES.—*Any hearing required or permitted under this title shall be conducted after notice published in the Federal Register, and a transcript of the hearing shall be prepared and made available to the public. The hearing shall not be subject to the provisions of subchapter II of chapter 5 of title 5, United States Code, or to section 702 of such title.*

SEC. 775. SUBSIDY PRACTICES DISCOVERED DURING AN INVESTIGATION.

If, in the course of an investigation under this title, the administering authority discovers a practice which appears to be a subsidy, but was not included in the matters alleged in a countervailing duty petition, then the administering authority—

(1) *shall include the practice in the investigation if it appears to be a subsidy with respect to the merchandise which is the subject of the investigation, or*

(2) *shall transfer the information concerning the practice (other than confidential information) to the library maintained under section 777(a)(1), if the practice appears to be a subsidy with respect to any other merchandise.*

SEC. 776. VERIFICATION OF INFORMATION.

(a) GENERAL RULE.—*Except with respect to information the verification of which is waived under section 733(b)(2), the administering authority shall verify all information relied upon in making a final determination in an investigation. In publishing such a determination, the administering authority shall report the methods and procedures used to verify such information. If the administering authority is unable to verify the accuracy of the information submitted, it shall use the best information available to it as the basis for its determination, which may include the information submitted in support of the petition.*

(b) DETERMINATIONS TO BE MADE ON BEST INFORMATION AVAILABLE.—*In making their determinations under this title, the adminis-*

tering authority and the Commission shall, whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation, use the best information otherwise available.

SEC. 777. ACCESS TO INFORMATION.

(a) INFORMATION GENERALLY MADE AVAILABLE.—

(1) PUBLIC INFORMATION FUNCTION.—There shall be established a library of information relating to foreign subsidy practices and countervailing measures. Copies of material in the library shall be made available to the public upon payment of the costs of preparing such copies.

(2) PROGRESS OF INVESTIGATION REPORTS.—The administering authority and the Commission shall, from time to time upon request, inform the parties to an investigation of the progress of that investigation.

(3) EX PARTE MEETINGS.—The administering authority and the Commission shall maintain a record of ex parte meetings between—

(A) interested parties or other persons providing factual information in connection with an investigation, and

(B) the person charged with making the determination, and any person charged with making a final recommendation to that person, in connection with that investigation.

The record of the ex parte meeting shall include the identity of the persons present at the meeting, the date, time, and place of the meeting, and a summary of the matters discussed or submitted. The record of the ex parte meeting shall be included in the record of the proceeding.

(4) SUMMARIES; NONCONFIDENTIAL SUBMISSIONS.—The administering authority and the Commission may disclose—

(A) any confidential information received in the course of a proceeding if it is disclosed in a form which cannot be associated with, or otherwise be used to identify, operations of a particular person, and

(B) any information submitted in connection with a proceeding which is not designated as confidenial by the person submitting it.

(b) CONFIDENTIAL INFORMATION.—

(1) CONFIDENTIALITY MAINTAINED.—Except as provided in subsection (a)(4)(A) and subsection (c), information submitted to the administering authority or the Commission which is designated as confidential by the person submitting it shall not be disclosed to any person (other than an officer or employee of the administering authority or the Commission who is directly concerned with carrying out the investigation in connection with which the information is submitted) without the consent of the person submitting it. The administering authority and the Commission may require that information for which confidential treatment is requested be accompanied by a non-confidential summary in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence, or a state-

ment that the information is not susceptible to summary, accompanied by a statement of the reasons in support of the contention.

(2) UNWARRANTED DESIGNATION.—If the administering authority or the Commission determines, on the basis of the nature and extent of the information or its availability from public sources, that designation of any information as confidential is unwarranted, then it shall notify the person who submitted it and ask for an explanation of the reasons for the designation. Unless that person persuades the administering authority or the Commission that the designation is warranted, or withdraws the designation, the administering authority or the Commission, as the case may be, shall return it to the party submitting it.

(c) LIMITED DISCLOSURE OF CERTAIN CONFIDENTIAL INFORMATION UNDER PROTECTIVE ORDER.—

(1) DISCLOSURE BY ADMINISTERING AUTHORITY OR COMMISSION.—

(A) IN GENERAL.—Upon receipt of an application, which describes with particularity the information requested and sets forth the reasons for the request, the administering authority and the Commission may make confidential information submitted by any other party to the investigation available under a protective order described in subparagraph (B).

(B) PROTECTIVE ORDER.—The protective order under which information is made available shall contain such requirements as the administering authority or the Commission may determine by regulation to be appropriate. The administering authority and the Commission shall provide by regulation for such sanctions as the administering authority and the Commission determine to be appropriate, including disbarment from practice before the agency.

(2) DISCLOSURE UNDER COURT ORDER.—If the administering authority denies a request for information under paragraph (1), or the Commission denies a request for confidential information submitted by the petitioner or an interested party in support of the petitioner concerning the domestic price or cost of production of the like product, then application may be made to the United States Customs Court for an order directing the administering authority or the Commission to make the information available. After notification of all parties to the investigation and after an opportunity for a hearing on the record, the court may issue an order, under such conditions as the court deems appropriate, which shall not have the effect of stopping or suspending the investigation, directing the administering authority or the Commission to make all or a portion of the requested information described in the preceding sentence available under a protective order and setting forth sanctions for violation of such order if the court finds that, under the standards applicable in proceedings of the court, such an order is warranted, and that—

(A) the administering authority or the Commission has denied access to the information under subsection (b)(1),

(B) the person on whose behalf the information is requested is an interested party who is a party to the investigation in connection with which the information was obtained or developed, and

(C) the party which submitted the information to which the request relates has been notified, in advance of the hearing, of the request made under this section and of its right to appear and be heard.

SEC. 778. INTEREST ON CERTAIN OVERPAYMENTS AND UNDERPAYMENTS.

(a) GENERAL RULE.—Interest shall be payable on overpayments and underpayments of amounts deposited on merchandise entered, or withdrawn from warehouse, for consumption on and after the date on which notice of an affirmative determination by the Commission under section 705(b) or 735(b) with respect to such merchandise is published.

(b) RATE.—The rate at which such interest is payable shall be 8 percent per annum, or, if higher, the rate in effect under section 6621 of the Internal Revenue Code of 1954 on the date on which the rate or amount of the duty is finally determined.

ANTIDUMPING ACT, 1921

[DUMPING INVESTIGATION

[SEC. 201. (a) Whenever the Secretary of the Treasury (hereinafter called the "Secretary"), determines that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States or elsewhere at less than its fair value, he shall so advise the United States International Trade Commission (hereinafter called the "Commission"), and the Commission shall determine within three months thereafter whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States. The Commission, after such investigation as it deems necessary, shall notify the Secretary of its determination, and, if that determination is in the affirmative, the Secretary shall make public a notice (hereinafter in this Act called a "finding") of his determination and the determination of the Commission. For the purposes of this subsection, the Commission shall be deemed to have made an affirmative determination if the Commissioners of the Commission voting are evenly divided as to whether its determination should be in the affirmative or in the negative. The Secretary's finding shall include a description of the class or kind of merchandise to which it applies in such detail as he shall deem necessary for the guidance of customs officers.

[(b) (1) In the case of any imported merchandise of a class or kind as to which the Secretary has not so made public a finding, he shall, within six months after the publication under subsection (c) (1) of a notice of initiation of an investigation—

[(A) determine whether there is reason to believe or suspect, from the invoice or other papers or from information presented to him or to any other person to whom authority under this section has been delegated, that the purchase price is less, or that the exporter's sales price is less or likely to be less, than the foreign

market value (or, in the absence of such value, than the constructed value); and

[(B) if his determination is affirmative, publish a notice of that fact in the Federal Register, and require, under such regulations as he may prescribe, the withholding of appraisement as to such merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of that notice in the Federal Register (or such earlier date, not more than one hundred and twenty days before the date of publication under subsection (c)(1) of notice of initiation of the investigation, as the Secretary may prescribe), until the further order of the Secretary, or until the Secretary has made public a finding as provided for in subsection (a) in regard to such merchandise; or

[(C) if his determination is negative (or if he tentatively determines that the investigation should be discontinued), publish notice of that fact in the Federal Register.

[(2) If in the course of an investigation under this subsection the Secretary concludes that the determination provided for in paragraph (1) cannot reasonably be made within six months, he shall publish notice of this in the Federal Register, together with a statement of reasons therefor, in which case the determination shall be made within nine months after the publication in the Federal Register of the notice of initiation of the investigation.

[(3) Within three months after publication in the Federal Register of a determination under paragraph (1), the Secretary shall make a final determination whether the foreign merchandise in question is being or is likely to be sold in the United States at less than its fair value (or a final discontinuance of the investigation).

[(c)(1) The Secretary shall, within thirty days of the receipt of information alleging that a particular class or kind of merchandise is being or is likely to be sold in the United States or elsewhere at less than its fair value and that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States, determine whether to initiate an investigation into the question of whether such merchandise in fact is being or is likely to be sold in the United States or elsewhere at less than its fair value. If his determination is affirmative he shall publish notice of the initiation of such an investigation in the Federal Register. If it is negative the inquiry shall be closed.

[(2) If, in the course of making a determination under paragraph (1), the Secretary concludes, from the information available to him, that there is substantial doubt whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States, he shall forward to the Commission the reasons for such substantial doubt and a preliminary indication, based upon whatever price information is available, concerning possible sales at less than fair value, including possible margins of dumping and the volume of trade. If within thirty days after receipt of such information from the Secretary, the Commission, after conducting such inquiry as it deems appropriate, determines there is no reasonable indication that an indus-

try in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States, it shall advise the Secretary of its determination and any investigation under subsection (b) then in progress shall be terminated.

[(d)(1) Before making any determination under subsection (a), the Secretary or the Commission, as the case may be, shall, at the request of any foreign manufacturer or exporter, or any domestic importer, of the foreign merchandise in question, or of any domestic manufacturer, producer, or wholesaler of merchandise of the same class or kind, conduct a hearing at which—

[(A) any such person shall have the right to appear by counsel or in person; and

[(B) any other person, firm, or corporation may make application and, upon good cause shown, may be allowed by the Secretary or the Commission, as the case may be, to intervene and appear at such hearing by counsel or in person.

[(2) The Secretary, upon determining whether foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value, and the Commission, upon making its determination under subsection (a), shall publish in the Federal Register such determination, whether affirmative or negative, together with a complete statement of findings and conclusions, and the reasons or bases therefor, on all the material issues of fact or law presented (consistent with confidential treatment granted by the Secretary or the Commission, as the case may be, in the course of making its determination).

[(3) The hearings provided for under this section shall be exempt from sections 554, 555, 556, 557, and 702 of title 5 of the United States Code. The transcript of any hearing, together with all information developed in connection with the investigation (other than items to which confidential treatment has been granted by the Secretary or the Commission, as the case may be), shall be made available in the manner and to the extent provided in section 552(b) of such title.

[SPECIAL DUMPING DUTY

[SEC. 202. (a) In the case of all imported merchandise, whether dutiable or free of duty, of a class or kind as to which the Secretary of the Treasury has made public a finding as provided for in section 201, entered, or withdrawn from warehouse, for consumption, not more than one hundred and twenty days before the question of dumping was raised by or presented to the Secretary or any person to whom authority under section 201 has been delegated, and as to which no appraisement has been made before such finding has been so made public, if the purchase price or the exporter's sales price is less than the foreign market value (or, in the absence of such value, than the constructed value) there shall be levied, collected, and paid, in addition to any other duties imposed thereon by law, a special dumping duty in an amount equal to such difference.

[(b) In determining the foreign market value for the purposes of subsection (a), if it is established to the satisfaction of the Secretary or his delegate that the amount of any difference between the pur-

chase price and the foreign market value (or that the fact that the purchase price is the same as the foreign market value) is wholly or partly due to—

[(1) the fact that the wholesale quantities, in which such or similar merchandise is sold or, in the absence of sales, offered for sale for exportation to the United States in the ordinary course of trade, are less or are greater than the wholesale quantities in which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the country of exportation in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, then for exportation to countries other than the United States),

[(2) other differences in circumstances of sale, or

[(3) the fact that merchandise described in subdivision (C), (D), (E), or (F) of section 212 (3) is used in determining foreign market value,

then due allowance shall be made therefor.

[(c) In determining the foreign market value for the purposes of subsection (a), if it is established to the satisfaction of the Secretary or his delegate that the amount of any difference between the exporter's sales price and the foreign market value (or that the fact that the exporter's sales price is the same as the foreign market value) is wholly or partly due to—

[(1) the fact that the wholesale quantities in which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the United States in the ordinary course of trade, are less or are greater than the wholesale quantities in which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the country of exportation in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, then for exportation to countries other than the United States),

[(2) other differences in circumstances of sale, or

[(3) the fact that merchandise described in subdivision (C), (D), (E), or (F) of section 212(3) is used in determining foreign market value,

then due allowance shall be made therefor.

[PURCHASE PRICE

[SEC. 203. For the purposes of this title, the purchase price of imported merchandise shall be the price at which such merchandise has been purchased or agreed to be purchased, prior to the time of exportation, by the person by whom or for whose account the merchandise is imported, plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States, less the amount, if any, included in such price, attributable to any additional costs, charges, and expenses, and United States import duties, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States; and less the amount, if

included in such price, of any export tax imposed by the country of exportation on the exportation of the merchandise to the United States; and plus the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States; and plus the amount of any taxes imposed in the country of exportation directly upon the exported merchandise or components thereof, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States, but only to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation; and plus the amount of any taxes rebated or not collected, by reason of the exportation of the merchandise to the United States, which rebate or noncollection has been determined by the Secretary to be a bounty or grant within the meaning of section 303 of the Tariff Act of 1930.

[EXPORTER'S SALES PRICE

[SEC. 204. For the purposes of this title, the exporter's sale price of imported merchandise shall be the price at which such merchandise is sold or agreed to be sold in the United States, before or after the time of importation, by or for the account of the exporter, plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States, less (1) the amount, if any, included in such price, attributable to any additional costs, charges, and expenses, and United States import duties, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States, (2) the amount of the commissions, if any, for selling in the United States the particular merchandise under consideration, (3) an amount equal to the expenses, if any, generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise, (4) the amount of any export tax imposed by the country of exportation on the exportation of the merchandise to the United States, and (5) the amount of any increased value, including additional material and labor, resulting from a process of manufacture or assembly performed on the imported merchandise after the importation of the merchandise and before its sale to a person who is not the exporter of the merchandise within the meaning of section 207; and plus the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States; and plus the amount of any taxes imposed in the country of exportation directly upon the exported merchandise or components thereof, which have been related, or which have not been collected, by reason of the exportation of the merchandise to the United States, but only to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation; and plus the amount of any taxes rebated, or not collected, by reason of

the exportation of the merchandise to the United States, which rebate or noncollection has been determined by the Secretary to be a bounty or grant within the meaning of section 303 of the Tariff Act of 1930.

[FOREIGN MARKET VALUE

[SEC. 205. (a) For the purposes of this title, the foreign market value of imported merchandise shall be the price, at the time of exportation of such merchandise to the United States, at which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, or if the Secretary determines that the quantity sold for home consumption is so small in relation to the quantity sold for exportation to countries other than the United States as to form an inadequate basis for comparison, then the price at which so sold or offered for sale for exportation to countries other than the United States), plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States, except that in the case of merchandise purchased or agreed to be purchased by the person by whom or for whose account the merchandise is imported, prior to the time of exportation, the foreign market value shall be ascertained as of the date of such purchase or agreement to purchase. In the ascertainment of foreign market value for the purposes of this title no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account. If such or similar merchandise is sold or, in the absence of sales, offered for sale through a sales agency or other organization related to the seller in any of the respects described in section 207, the prices at which such or similar merchandise is sold or, in the absence of sales, offered for sale by such sales agency or other organization may be used in determining the foreign market value.

[(b) Whenever the Secretary has reasonable grounds to believe or suspect that sales in the home market of the country of exportation, or, as appropriate, to countries other than the United States, have been made at prices which represent less than the cost of producing the merchandise in question, he shall determine whether, in fact, such sales were made at less than the cost of producing the merchandise. If the Secretary determines that sales made at less than cost of production (1) have been made over an extended period of time and in substantial quantities, and (2) are not at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade, such sales shall be disregarded in the determination of foreign market value. Whenever sales are disregarded by virtue of having been made at less than the cost of production and the remaining sales, made at not less than cost of production, are determined to be inadequate as a basis for the determination of foreign market value, the Secretary shall determine that no foreign market value exists and employ the constructed value of the merchandise in question.

[(c) If available information indicates to the Secretary that the economy of the country from which the merchandise is exported is state-controlled to an extent that sales or offers of sales of such or similar merchandise in that country or to countries other than the United States do not permit a determination of foreign market value under subsection (a), the Secretary shall determine the foreign market value of the merchandise on the basis of the normal costs, expenses, and profits as reflected by either—

[(1) the prices, determined in accordance with subsection (a) and section 202, at which such or similar merchandise of a non-state-controlled-economy country or countries is sold either (A) for consumption in the home market of that country or countries, or (B) to other countries, including the United States; or

[(2) the constructed value of such or similar merchandise in a non-state-controlled-economy country or countries as determined under section 206.

[(d) Whenever, in the course of an investigation under this Act, the Secretary determines that—

[(1) merchandise exported to the United States is being produced in facilities which are owned or controlled, directly or indirectly, by a person, firm, or corporation which also owns or controls, directly or indirectly, other facilities for the production of such or similar merchandise which are located in another country or countries;

[(2) the sales of such or similar merchandise by the company concerned in the home market of the exporting country are non-existent or inadequate as a basis for comparison with the sales of the merchandise to the United States; and

[(3) the foreign market value of such or similar merchandise produced in one or more of the facilities outside the country of exportation is higher than the foreign market value, or, if there is no foreign market value, the constructed value, of such or similar merchandise produced in the facilities located in the country of exportation,

he shall determine the foreign market value of such merchandise by reference to the foreign market value at which such or similar merchandise is sold in substantial quantities by one or more facilities outside the country of exportation. The Secretary in making any determination under this paragraph, shall make adjustments for the difference between the costs of production (including taxes, labor, materials, and overhead) of such or similar merchandise produced in facilities outside the country of exportation and costs of production of such or similar merchandise produced in the facilities in the country of exportation, if such differences are demonstrated to his satisfaction. For the purpose of this subsection, in determining foreign market value of such or similar merchandise produced in a country outside of the country of exportation, the Secretary shall determine its price at the time of exportation from the country of exportation and shall make any adjustments required by section 205(a) for the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States by referene to such costs in the country of exportation.

[CONSTRUCTED VALUE

[SEC. 206. (a) For the purposes of this title, the constructed value of imported merchandise shall be the sum of—

[(1) the cost of materials (exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the article in the production of which such materials are used) and of fabrication or other processing of any kind employed in producing such or similar merchandise, at a time preceding the date of exportation of the merchandise under consideration which would ordinarily permit the production of that particular merchandise in the ordinary course of business;

[(2) an amount for general expenses and profit equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise under consideration which are made by producers in the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, except that (A) the amount for general expenses shall not be less than 10 per centum of the cost as defined in paragraph (1), and (B) the amount for profit shall not be less than 8 per centum of the sum of such general expenses and cost; and

[(3) the cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the merchandise under consideration in condition, packed ready for shipment to the United States.

[(b) For the purposes of this section, a transaction directly or indirectly between persons specified in any one of the paragraphs in subsection (c) of this section may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales in the market under consideration of merchandise of the same general class or kind as the merchandise under consideration. If a transaction is disregarded under the preceding sentence and there are no other transactions available for consideration, then the determination of the amount required to be considered shall be based on the best evidence available as to what the amount would have been if the transaction had occurred between persons not specified in any one of the paragraphs in subsection (c).

[(c) The persons referred to in subsection (b) are:

[(1) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants;

[(2) Any officer or director of an organization and such organization;

[(3) Partners;

[(4) Employer and employee;

[(5) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting stock or shares of any organization and such organization; and

[(6) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

[EXPORTER

[SEC. 207. That for the purposes of this title the exporter of imported merchandise shall be the person by whom or for whose account the merchandise is imported into the United States:

[(1) If such person is the agent or principal of the exporter, manufactuurer, or producer; or

[(2) If such person owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business of the exporter, manufacturer, or producer; or

[(3) If the exporter, manufacturer, or producer owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in any business conducted by such person; or

[(4) If any person or persons, jointly or severally, directly or indirectly, through stock ownership or control or otherwise, own or control in the aggregate 20 per centum or more of the voting power or control in the business carried on by the person by whom or for whom account the merchandise is imported into the United States, and also 20 per centum or more, of such power or control in the business of the exporter, manufacturer, or producer.

[OATHS AND BONDS ON ENTRY

[SEC. 208. That in the case of all imported merchandise, whether dutiable or free of duty, of a class or kind as to which the Secretary has made public a finding as provided in section 201, and delivery of which has not been made by the appropriate customs officer before such finding has been so made public, unless the person by whom or for whose account such merchandise is imported makes oath before such customs officer, under regulations prescribed by the Secretary, that he is not an exporter, or unless such person declares under oath at the time of entry, under regulations prescribed by the Secretary, the exporter's sales price of such merchandise, it shall be unlawful for such customs officer to deliver the merchandise until such person has made oath before such customs officer, under regulations prescribed by the Secretary, that the merchandise has not been sold or agreed to be sold by such person, and has given bond to such customs officer, under regulations prescribed by the Secretary, with sureties approved by such customs officer, in an amount equal to the estimated value of the merchandise, conditioned: (1) that he will report to such customs officer the exporter's sales price of the merchandise within 30 days after such merchandise has been sold or agreed to be sold in the United States, (2) that he will pay on demand from such customs officer the amount of special dumping duty, if any, imposed by this title upon such merchandise, and (3) that he will furnish to such customs officer such information as may be in his possession and as may be necessary for the ascertainment of such duty, and will keep such records as to the sale of such merchandise as the Secretary may by regulation prescribe.

[DUTIES OF APPRAISERS

[SEC. 209. That in the case of all imported mechandise, whether dutiable or free of duty, of a class or kind as to which the Secretary has made public a finding as provided in section 201, and as to which

the appropriate customs officer has made no appraisement before such finding has been so made public, it shall be the duty of such customs officer, by all reasonable ways and means to ascertain, estimate, and appraise (any invoice or affidavit thereto or statement of contructed value to the contrary notwithstanding) the foreign market value or the constructed value, as the case may be, the purchase price, and the exporter's sales price, and any other facts which the Secretary may deem necessary for the purposes of this title.

[APPEALS AND PROTESTS

[SEC. 210. That for the purposes of this title the determination of the appropriate customs officer as to the foreign market value or the constructed value, as the case may be, the purchase price, and the exporter's sales price, and the action of such customs officer in assessing special dumping duty, shall have the same force and effect and be subject to the same right of protest, under the same conditions and subject to the same limitations; and the general appraisers, the Board of General Appraisers, and the Court of Customs Appeals shall have the same jurisdiction, powers, and duties in connection with such protests as in the case of appeals and protests relating to customs duties under existing law.

[DRAWBACKS

[SEC. 211. That the special dumping duty imposed by this title shall be treated in all respects as regular customs duties within the meaning of all laws relating to the drawback of customs duties.

[DEFINITIONS

[SEC. 212. For the purposes of this title—

[(1) The term "sold or, in the absence of sales, offered for sale" means sold or, in the absence of sales, offered—

[(A) to all purchasers at wholesale, or

[(B) in the ordinary course of trade to one or more selected purchasers at wholesale at a price which fairly reflects the market value of the merchandise,

without regard to restrictions as to the disposition or use of the merchandise by the purchaser except that, where such restrictions are found to affect the market value of the merchandise, adjustment shall be made therefor in calculating the price at which the merchandise is sold or offered for sale.

[(2) The term "ordinary course of trade" means the conditions and practices which, for a reasonable time prior to the exportation of the merchandise under consideration, have been normal in the trade under consideration with respect to merchandise of the same class or kind as the merchandise under consideration.

[(3) The term "such or similar merchandise" means merchandise in the first of the following categories in respect of which a determination for the purposes of this title can be satisfactorily made:

[(A) The merchandise under consideration and other merchandise which is identical in physical characteristics with,

and was produced in the same country by the same person as, the merchandise under consideration.

[(B) Merchandise (i) produced in the same country and by the same person as the merchandise under consideration, (ii) like the merchandise under consideration in component material or materials and in the purposes for which used, and (iii) approximately equal in commercial value to the merchandise under consideration.

[(c) Merchandise (i) produced in the same country and by the same person and of the same general class or kind as the merchandise under consideration, (ii) like the merchandise under consideration in the purposes for which used, and (iii) which the Secretary or his designate determines may reasonably be compared for the purposes of this title with the merchandise under consideration.

[(4) The term "usual wholesale quantities", in any case in which the merchandise in respect of which value is being determined is sold in the market under consideration at different prices for different quantities, means the quantities in which such merchandise is there sold at the price or prices for one quantity in an aggregate volume which is greater than the aggregate volume sold at the price or prices for any other quantity.

[SHORT TITLE

[SEC. 213. That this title may be cited as the "Antidumping Act, 1921." (Renumbered by §5, Act of Aug. 14, 1958 (72 Stat. 585).)]

TARIFF SCHEDULES OF THE UNITED STATES

GENERAL HEADNOTES AND RULES OF INTERPRETATION

1. Tariff Treatment of Imported Articles. All articles imported into the customs territory of the United States from outside thereof are subject to duty or exempt therefrom as prescribed in general headnote 3.

2. Customs Territory of the United States. The term "customs territory of the United States", as used in the schedules, includes only the States, the District of Columbia, and Puerto Rico.

3. Rates of Duty. The rates of duty in the "Rates of Duty" columns numbered 1 and 2 of the schedules apply to articles imported into the customs territory of the United States as hereinafter provided in this headnote:

(a) Products of Insular Possessions.

(i) Except as provided in headnote 6 of schedule 7, part 2, subpart E, *and* except as provided in headnote 4 of schedule 7, part 7, subpart A, articles imported from insular possessions of the United States which are outside the customs territory of the United States are subject to the rates of duty set forth in column numbered 1 of the schedules, except that all such articles the growth or product of any such possession, or manufactured or produced in any such possession from materials the growth, product, or manufacture of any such possession

or of the customs territory of the United States, or of both, which do not contain foreign materials to the value of more than 50 percent of their total value (or more than 70 percent of their total value with respect to watches and watch movements), coming to the customs territory of the United States directly from any such possession, and all articles previously imported into the customs territory of the United States with payment of all applicable duties and taxes imposed upon or by reason of importation which were shipped from the United States, without remission, refund, or drawback of such duties or taxes, directly to the possession from which they are being returned by direct shipment, are exempt from duty.

* * * * * * *

(e) Products of Communist Countries. Notwithstanding any of the foregoing provisions of this headnote, the rates of duty shown in column numbered 2 shall apply to products, whether imported directly or indirectly, of the following countries and areas pursuant to section 401 of the Tariff Classification Act of 1962. to section 231 or 257(e)(2) of the Trade Expansion Act of 1962, or to action taken by the President thereunder: [1, 2]

Albania
Bulgaria
China (any part of which may be under Communist domination or control)
Cuba [3]
Czechoslovakia
Estonia
[Germany (the Soviet zone and the Soviet sector of Berlin)]
German Democratic Republic and East Berlin
Indochina (any part of Cambodia, Laos, or Vietnam which may be under Communist domination or control)
Korea (any part of which may be under Communist domination or control)
Kurile Islands
Latvia
Lithuania
Outer Mongolia
Southern Sakhalin
Tanna Tuva
Tibet
Union of Soviet Socialist Republics and the area in East Prussia under the provisional administration of the Union of Soviet Socialist Republics.

* * * * * * *

6. Containers or Holders for Imported Merchandise. For the purposes of the tariff schedules, containers or holders are subject to tariff treatment as follows:

(a) Imported Empty: Containers or holders if imported empty are subject to tariff treatment as imported articles and as such

are subject to duty unless they are within the purview of a provision which specifically exempts them from duty.

(b) Not Imported Empty: Containers or holders if imported containing or holding articles are subject to tariff treatment as follows:

(i) The usual or ordinary types of shipping or transportation containers or holders, if not designed for, or capable of, reuse, and containers of usual types ordinarily sold at retail with their contents, are not subject to treatment as imported articles. Their cost, however, is, under section 402 [or section 402a] of the tariff act, a part of value of their contents and if their contents are subject to an ad valorem rate of duty such containers or holders are, in effect, dutiable at the same rate as their contents, except that their cost is deductible from dutiable value upon submission of satisfactory proof that they are products of the United States which are being returned without having been advanced in value or improved in condition by any means while abroad.

(ii) The usual or ordinary types of shipping or transportation containers or holders, if designed for, or capable of, reuse, are subject to treatment as imported articles separate and distinct from their contents. Such holders or containers are not part of the dutiable value of their contents and are separately subject to duty upon each and every importation into the customs territory of the United States unless within the scope of a provision specifically exempting them from duty.

(iii) In the absence of context which requires otherwise, all other containers or holders are subject to the same treatment as specified in (ii) above for usual or ordinary types of shipping or transportation containers or holders designed for, or capable of, reuse.

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SCHEDULE 1.—ANIMAL AND VEGETABLE PRODUCTS

Item	Articles	Rates of duty 1	Rates of duty 2
	PART 2.—MEATS		
*	* * * * * *		
	Subpart B.—Meats Other Than Bird Meat		
	Subpart B headnote: 1. For the purposes of this subpart— (a) The term *"fresh, chilled, or frozen"* covers meats even though completely detendonized and deboned, but does not cover meats which have been prepared or preserved; and (b) the term *"prepared or preserved"* covers meats even if in a fresh, chilled, or frozen state if such meats have been ground or comminuted, diced or cut into sizes for stew meat or similar uses, rolled and skewered, or specially processed into fancy cuts, special shapes, or otherwise made ready for particular uses by the retail consumer; and also covers meats which have been subjected to processes such as drying, curing, smoking, cooking, seasoning, flavoring, or to any combination of such processes.		

SCHEDULE 1.—ANIMAL AND VEGETABLE PRODUCTS—Continued

Item	Articles	Rates of duty 1	Rates of duty 2
	Meats (except meat offal), fresh, chilled, or frozen, of all animals (except birds):		
106.10	Cattle	3¢ per lb	6¢ per lb.
	Beef, with bone:		
	Fresh or chilled		
	Frozen		
	Beef, without bone		
	Other (veal)		
106.20	Goats and sheep (except lambs)	2.5¢ per lb	5¢ per lb.
	Mutton		
	Goat meat		
106.22	*Sheep (except lambs)*	*2.5¢ per lb*	*5¢ per lb.*
106.25	*Goats*	*2.5¢ per lb*	*5¢ per lb.*
*	* * * * *	*	*
107.60	Valued over 30 cents per pound prepared, whether fresh, chilled, or frozen, but not otherwise preserved.	10% ad val	20% ad val.
	Other		
	Valued over 30 cents per pound:		
	Prepared, whether fresh, chilled or frozen, but not otherwise preserved:		
107.61	*Beef specially processed into fancy cuts, special shapes, or otherwise made ready for particular uses by the retail consumer (but not ground or comminuted, diced or cut into sizes for stew meat or similar uses, or rolled or skewered), which meets the specifications in regulations issued by the U.S. Department of Agriculture for Prime or Choice beef, and which has been so certified prior to exportation by an official of the government of the exporting country, in accordance with regulations issued by the Secretary of the Treasury after consultation with the Secretary of Agriculture.*	*10% ad val*	*20% ad val.*
107.62	*Other*	*10% ad val*	*20% ad val.*
107.63	*Other*	*10% ad val*	*20% ad val.*

PART 3.—FISH AND SHELLFISH

*	*	*	*	*	*	*	

Subpart E.—Shellfish

Subpart E headnote:

1. Subject to the provisions of section 336(f) of this Act, the merchandise provided for in item 114.05 shall be subject to duty upon the basis of the American selling price of like or similar articles produced in the United States.

	Shellfish, fresh, chilled, frozen, prepared, or preserved (including pastes and sauces):		
	Clams:		
	In airtight containers:		
114.01	Razor clams (*Siliqua patula*)	3.5% ad val	23% ad val.
114.05	Other	14% ad val	35% ad val.
	Other:		
114.04	*Boiled clams, whether whole, minced, or chopped, and whether or not salted, but not otherwise prepared or preserved, in immediate containers the contents of which do not exceed 24 ounces gross weight.*	*22.2% ad val*	*110% ad val.*
114.06	*Other*	*14% ad val*	*35% ad val.*
*	* * * * *	*	*

SCHEDULE 1.—ANIMAL AND VEGETABLE PRODUCTS—Continued

Item	Articles	Rates of duty 1	Rates of duty 2
	PART —.—VEGETABLES		
	Subpart A.—Vegetables, Fresh, Chilled, or Frozen		
	Subpart A headnotes: 1. In the assessment of duty on any kind of vegetables, any foreign matter or impurities mixed therewith shall not be segregated nor shall any allowance therefor be made. 2. For the purposes of item 137.25 in this part, if for any calendar year the production of white or Irish potatoes, including seed potatoes, in the United States, according to the estimate of the Department of Agriculture made as of September 1, is less than 21,000,000,000 pounds, an additional quantity of potatoes equal to the amount by which such estimated production is less than the said 21,000,000,000 pounds shall be added to the 45,000,000 pounds provided for in the said item 137.25 for the year beginning the following September 15. Potatoes, the product of Cuba, covered by item 137.25 or 137.26 shall not be charged against the quota quantity provided for in item 137.25.		
	Vegetables, fresh, chilled, or frozen (but not reduced in size nor otherwise prepared or preserved):		
	Beans:		
	Lima beans:		
135.10	If entered during the period from June 1 to October 31, inclusive, in any year.	3.5¢ per lb	3.5¢ per lb.
*	* * * * * * *		
	Carrots:		
135.41	Under 4 inches long	[6% ad val.] *1¢ per lb.*	[50% ad val. *8¢ per lb.*
135.42	Other	[6% ad val.] *0.5¢ per lb.*	[50% ad val. *4¢ per lb.*
*	* * * * * * *		
	PART 12.—BEVERAGES		
	Part 12 headnotes: 1. This part covers only products which are fit for use as beverages or for beverage purposes. 2. [Each and every gauge or wine gallon of measurement is counted as at least one proof gallon; and the standard for determining the proof of brandy and other spirits or liquors of any kind when imported is the same as that which is defined in the laws relating to internal revenue.] *The standard for determining the proof of brandy and other spirits or liquors of kind when imported is the same as that which is defined in the laws relating to internal revenue.* The Secretary of the Treasury, in his discretion, may authorize the ascertainment of the proof of wines, cordials, or other liquors and fruit juices by distillation or otherwise, when it is impracticable to ascertain such proof by the means prescribed by existing law or regulations. 3. The duties prescribed on products covered by this part are in addition to the internal-revenue taxes imposed under existing law or any subsequent Act. The duties imposed on products covered by this part which are subject also to internal-revenue taxes are imposed only on the quantities subject to such taxes; except that, in the case of distilled spirits transferred to the bonded premises of a distilled spirits plant under the provisions of section 5232 of the Internal Revenue Code of 1954, the duties are imposed on the quantity withdrawn from customs custody. 4. Provisions for the free entry of certain samples of alcoholic beverages are covered by part 5 of schedule 8.		
*	* * * * * * *		
	Subpart D.—Spirits, Spirituous Beverages and Beverage Preparations		
	Subpart D headnote: 1. No lower rate or amount of duty shall be levied, collected, and paid on the articles enumerated in this subpart than that fixed by law for the description of first proof; and the rate or amount of duty shall be increased in proportion for any greater strength than the strength of first proof.		

SCHEDULE 1.—ANIMAL AND VEGETABLE PRODUCTS—Continued

Item	Articles	Rates of duty 1	2
168.05	Aquavit	42¢ per gal.	$5 per gal.
168.10	Arrack	$1 per gal.	$5 per gal.
	Bitters of all kinds containing spirits:		
168.15	Not fit for use as beverages	94¢ per gal.	$5 per gal.
168.17	Fit for use as beverages	50¢ per gal.	$5 per gal.
	Brandy:		
	Pisco and singani:		
	In containers each holding not over 1 gallon:		
168.18	Valued not over $9 per gallon	62¢ per gal.	$5 per gal.
168.23	Valued over $9 per gallon	$1.25 per gal.	$5 per gal.
	In containers each holding over 1 gallon:		
168.24	Valued not over $9 per gallon	50¢ per gal.	$5 per gal.
168.26	Valued over $9 per gallon	$1 per gal.	$5 per gal.
	Other:		
	In containers each holding not over 1 gallon:		
168.27	Valued not over $9 per gallon	62¢ per gal.	$5 per gal.
168.28	Valued over $9 per gallon	$1.25 per gal.	$5 per gal.
	Valued not over $13 per gallon		
	Valued over $13 per gallon, but not over $17 per gallon (provided for in item 945.17).		
	Valued over $17 per gallon (provided for in item 945.18).		
	In containers each holding over 1 gallon:		
168.29	Valued not over $9 per gallon	50¢ per gal.	$5 per gal.
168.32	Valued over $9 per gallon	$1 per gal.	$5 per gal.
	Valued not over $17 per gallon provided for in item 945.19).		
	Valued over $17 per gallon (provided for in item 945.20).		
168.33	Cordials, liqueurs, kirschwasser, and ratafia	50¢ per gal.	$5 per gal.
	In containers each holding not over 1 gallon		
	In containers each holding over 1 gallon		
168.34	Ethyl alcohol for beverage purposes	$1.12 per gal.	$5 per gal.
168.35	Gin	50¢ per gal.	$5 per gal.
	In containers each holding not over 1 gallon		
	In containers each holding over 1 gallon		
168.40	Rum (including *cane paraguaya*)	$1.75 per gal.	$5 per gal.
	In containers each holding not over 1 gallon		
	In containers each holding over 1 gallon		
	Whiskey:		
168.45	Irish and Scotch	51¢ per gal.	$5 per gal.
	In containers each holding not over 1 gallon		
	In containers each holding over 1 gallon		
168.46	Other	62¢ per gal.	$5 per gal.
	In containers each holding not over 1 gallon		
	In containers each holding over 1 gallon		
	Tequila:		
168.47	In containers each holding not over 1 gallon	$1.25 per gal.	$5 per gal.
168.48	In containers each holding over 1 gallon	$1.25 per gal.	$5 per gal.
	Other spirits, and preparations in chief value of distilled spirits, fit for use as beverages or for beverage purposes:		
168.52	Spirits	$1.25 per gal.	$5 per gal.
168.55	Other	$1.25 per gal.	$5 per gal.
168.90	Imitations of brandy and other spirituous beverages	$2.50 per gal.	$5 per gal.
168.04	*Aquavit:* *In containers each holding not over 1 gallon*	*$2.20 per proof gal.*	*$7.52 per proof gal.*
168.06	*In containers each holding over 1 gallon*	*42¢ per proof gal.*	*$5.00 per proof gal.*
168.09	*Arrack:* *In containers each holding not over 1 gallon*	*$2.28 per proof gal.*	*$6.72 per proof gal.*
168.11	*In containers each holding over 1 gallon*	*$1.00 per proof gal.*	*$5.00 per proof gal.*
	Bitters of all kinds containing spirits:		
	Not fit for use as beverages:		
168.12	*In containers each holding not over 1 gallon*	*$1.04 per proof gal.*	*$5.56 per proof gal.*
168.13	*In containers each holding over 1 gallon*	*94¢ per proof gal.*	*$5.00 per proof gal.*
	Fit for use as beverages:		
168.14	*In containers each holding not over 1 gallon*	*$16.34 per proof gal.*	*$27.32 per proof gal.*
168.16	*In containers each holding over 1 gallon*	*50¢ per proof gal.*	*$5.00 per proof gal.*

SCHEDULE 1.—ANIMAL AND VEGETABLE PRODUCTS—Continued

Item	Articles	Rates of duty 1	Rates of duty 2
	Brandy:		
	Pisco and Singani:		
	In containers each holding not over 1 gallon:		
168.36	*Valued not over $9 per gallon*	$1.86 per proof gal.	$6.72 per proof gal.
168.37	*Valued over $9 per gallon*	$2.56 per proof gal.	$6.72 per proof gal.
	In containers each holding over 1 gallon:		
168.39	*Valued not over $9 per gallon*	50¢ per proof gal.	$5.00 per proof gal.
168.41	*Valued over $9 per gallon*	$1.00 per proof gal.	$5.00 per proof gal.
	Other:		
	In containers each holding not over 1 gallon:		
168.43	*Valued not over $9 per gallon*	$3.40 per proof gal.	$8.88 per proof gal.
168.44	*Valued over $9 but not over $13 per gallon*	$4.19 per proof gal.	$8.88 per proof gal.
168.49	*Valued over $13 per gallon*	$4.19 per proof gal.	$8.88 per proof gal.
	In containers each holding over 1 gallon:		
168.51	*Valued not over $9 per gallon*	50¢ per proof gal.	$5.00 per proof gal.
168.53	*Valued over $9 per gallon*	$1.00 per proof gal.	$5.00 per proof gal.
	Cordials, liqueurs, kirschwasser, and ratafia:		
168.56	*In containers each holding not over 1 gallon*	$5.21 per proof gal.	$11.64 per proof gal.
168.58	*In containers each holding over 1 gallon*	50¢ per proof gal.	$5.00 per proof gal.
168.60	*Ethyl alcohol for beverage purposes*	$1.12 per proof gal.	$5.00 per proof gal.
	Gin:		
168.62	*In containers each holding not over 1 gallon*	$2.29 per proof gal.	$7.52 per proof gal.
168.63	*In containers each holding over 1 gallon*	50¢ per proof gal.	$5.00 per proof gal.
	Rum (including cana paraguaya):		
168.65	*In containers each holding not over 1 gallon*	$3.74 per proof gal.	$7.52 per proof gal.
168.67	*In containers each holding over 1 gallon*	$1.75 per proof gal.	$5.00 per proof gal.
	Whiskey:		
	Irish and Scotch:		
168.69	*In containers each holding not over 1 gallon*	$2.30 per proof gal.	$7.52 per proof gal.
168.71	*In containers each holding over 1 gallon*	51¢ per proof gal.	$5.00 per proof gal.
	Other:		
168.73	*In containers each holding not over 1 gallon*	$2.59 per proof gal.	$7.74 per proof gal.
168.75	*In containers each holding over 1 gallon*	62½¢ per proof gal.	$5.00 per proof gal.
	Tequila:		
168.77	*In containers each holding not over 1 gallon*	$2.27 per proof gal.	$6.35 per proof gal.
168.79	*In containers each holding over 1 gallon*	$1.25 per proof gal.	$5.00 per proof gal.
	Vodka:		
	In containers each holding not over 1 gallon:		
168.81	*Valued not over $7.75 per gallon*	$2.56 per proof gal.	$6.72 per proof gal.
168.83	*Valued over $7.75 per gallon*	$2.56 per proof gal.	$6.72 per proof gal.
168.85	*In containers each holding over 1 gallon*	$1.25 per proof gal.	$5.00 per proof gal.
	Other spirits and preparations in chief value of distilled spirits, fit for use as beverages or for beverage purposes:		
	Spirits:		
168.87	*In containers each holding not over 1 gallon*	$2.56 per proof gal.	$6.72 per proof gal.
168.89	*In containers each holding over 1 gallon*	$1.25 per proof gal.	$5.00 per proof gal.
	Other:		
168.91	*In containers each holding not over 1 gallon*	$9.08 per proof gal.	$15.33 per proof gal.
168.93	*In containers each holding over 1 gallon*	$1.25 per proof gal.	$5.00 per proof gal.
	Imitations of brandy and other spiritous beverages:		
168.95	*In containers each holding not over 1 gallon*	$5.75 per proof gal.	$8.88 per proof gal.
168.97	*In containers each holding over 1 gallon*	$2.50 per proof gal.	$5.00 per proof gal.

SCHEDULE 1.—ANIMAL AND VEGETABLE PRODUCTS—Continued

Item	Articles	Rates of duty 1	Rates of duty 2

PART 13.—TOBACCO AND TOBACCO PRODUCTS

Part 13 headnotes

1. The term *"wrapper tobacco"*, as used in this part, means that quality of leaf tobacco which has the requisite color, texture, and burn, and is of sufficient size for cigar wrappers, and the term *"filler tobacco"* means all other leaf tobacco.

2. The percentage of wrapper tobacco in a bale, box package, or other shipping unit is the ratio of the number of leaves of wrapper tobacco in such unit to the total number of leaves therein. In determining such percentage for classification purposes, the appraiser shall examine at least ten hands, and shall count the leaves in at least two hands, from each shipping unit designated for examination.

[5.] *3.* The dutiable weight of cigars and cigarettes includes the weight of all materials which are integral parts thereof.

[6.] *4.* Provisions for the free entry of certain samples of tobacco products are covered by part 5 of schedule 8.

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SCHEDULE 3.—TEXTILE FIBERS AND TEXTILE PRODUCTS

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Schedule 3 headnotes:

1. This schedule does not cover—* * *

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8. In the case of each item in this schedule and schedule 7 on which the United States has agreed to reduce the rate of duty, pursuant to a trade agreement entered into under section 101 of the Trade Act of 1974 before January 3, 1980, on any cotton, wool, or manmade fiber textile product as defined in the Arrangement Regarding International Trade in Textiles, as extended on December 14, 1977 (the Arrangement), if the Arrangement, or or a substitute arrangement, including unilateral import restrictions or bilateral agreements, determined by the President to be suitable, ceases to be in effect with respect to the United States before the total reduction in the rate of duty for such item under sections 101 and 109 of the Trade Act of 1974 has become effective, then the President shall proclaim the rate of duty in rate column numbered 1 for such item existing on January 1, 1975, to be the rate of duty effective, with respect to articles entered, or withdrawn from warehouse, for consumption, within 90 days after such cessation and until the President proclaims the continuation of such reduction under the next sentence. If subsequently the Arrangement, or a substitute arrangement, including unilateral import restrictions or bilateral agreements, determined by the President to be suitable, is in effect with respect to the United States, then the President shall proclaim the continuation of the reduction of such rate of duty pursuant to such trade agreement. For purposes of section 109(c)(2) of the Trade Act of 1974, any time when a rate of duty existing on January 1, 1975, is in effect under this headnote shall be time when part of such reduction is not in effect by reason of legislation of the United States or action thereunder.

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SCHEDULE 4.—CHEMICALS AND RELATED PRODUCTS

Item	Articles	Rates of duty 1	2

PART 1.—BENZENOID CHEMICALS AND PRODUCTS

Part 1 headnotes:

1. Except as specifically set forth in the headnotes to other parts of this schedule, all products described in this part shall be classified hereunder even if more specifically described elsewhere in this schedule. Any product described in both subparts B and C of this part shall be classified in subpart C.

2. For the purposes of this part, the term "*modified benzenoid*" describes a molecular structure having at least one six-membered heterocyclic ring which contains at least four carbon atoms and having an arrangement of molecular bonds as in the benzene ring or in the quinone ring, but does not include any such molecular structure in which one or more pyrimidine rings are the only modified benzenoid rings present.

3. With the exception of the natural products provided for in subpart C, this part does not cover cyclic organic chemical products (such as, but not limited to, tannic, gallic and pyrogallic acids; estrone, estradiol, and corticosteroids; morphine, ergot, and cinchona alkaloids; rotenone; phenylalanine; tyrosine; epinephrine; and thymols) having a benzenoid, quinoid, or modified benzenoid structure, which are produced from animal or vegetable products in which such structure occurs naturally, unless such cyclic organic chemical products were obtained, derived, or manufactured in part from any product provided for in subpart A, B or C of this part.

[4. The ad valorem rates provided in this part shall be based upon the American selling price, as defined in section 402 or 402a of this Act, of any similar competitive article manufactured or produced in the United States. If there is no similar competitive article manufactured or produced in the United States then the ad valorem rate shall be based upon the United States value, as defined in the said section 402 or 402a.

[5. For the purposes of this part, any product provided for in this part shall be considered similar to, or competitive with, any imported product which accomplishes results substantially equal to those accomplished by the domestic product when used in substantially the same manner.]

Subpart A.—Organic Chemical Crudes

*	*	*	*
401.36	[Fluoranthrene] *Fluoranthene*	Free	Free.
*	*	*	*

Subpart B.—Industrial Organic Chemicals

Subpart B headnote:

1. The provisions of items 402.02 to 403.60, inclusive, in this subpart shall apply not only to the products described therein when obtained, derived, or manufactured in whole or in part from products described in subpart A of this part, but shall also apply to products of like chemical composition having a benzenoid, guinoid, or modified benzenoid structure artificially produced by synthesis, whether or not obtained, derived, or manufactured in whole or in part from products described in said subpart A.

SCHEDULE 4.—CHEMICALS AND RELATED PRODUCTS—Continued

Item	Articles	Rates of duty 1	Rates of duty 2
	Subpart B statistical headnote; 1. For the purpose of statistical reporting of merchandise provided for under item 403.60, the following provisions shall govern: (a) The term "*derivatives*" refers to only those derivatives which may be obtained by one or more of the following processes: Halogenation, nitration, nitrosation, or sulfonation, and is to be understood to include sulfonyl halides. (b) A compound with functional groups described in two or more statistical reporting numbers under item 403.60 is to be classified in the latest applicable reporting number. For example, 4-acetamido-2-aminophenol, which contains three functional groups, will be classified in 403.6070 (Amides), rather than in 403.6065 (Aminophenols), or in 403.6061 (Amines), or in 403.6031 (Phenols). When applicable, statistical reporting should be made in accordance with the following principles: (i) Salts of organic acids (including phenols) with inorganic bases and salts or organic bases with inorganic acids are to be classified under the same superior heading as the organic acid or base; salts of organic acids with organic bases are to be classified either under the superior heading which describes the functional groups present in the free acid or under the one which describes the functional groups present in the free base, whichever is listed later. (ii) Esters of organic acids are to be classified either under the superior heading which describes the functional groups present in the free acid or under the one which describes the functional groups present in the free alcohol or phenol, whichever is listed later. (iii) The above provisions apply also in cases where the component having the functional groups described under the later superior heading is not of benzenoid origin. For example, benzyl acetate is classified under carboxylic acids (403.6045) rather then under alcohols (403.6031).		
	Cyclic organic chemical products in any physical form having a benzenoid, quinoid, or modified benzenoid structure, not provided for in subpart A or C of this part:		
403.02	Anthracene having a purity of 30% or more by weight	1.4¢ per lb.+8% ad val.	7¢ per lb.+40% ad val.
403.04	Carbazole having a purity of 65% or more by weight	1.7¢ per lb.+12.5% ad val.	7¢ per lb.+40% ad val.
403.06	Naphthalene which after the removal of all water present has a solidifying point of 79° C. or above.	0.7¢ per lb.+4% ad val.	7¢ per lb.+40% ad val.
403.08	Phthalic anhydride	1.2¢ per lb.+7% ad val.	7¢ per lb.+40% ad val.
403.10	Styrene	1.4¢ per lb.+9% ad val.	7¢ per lb.+45% ad val.
	All distillates of coal tar, blast-furnace tar, oil-gas tar, and water-gas tar, which on being subjected to distillation yield in the portion distilling below 190° C. a quantity of tar acids equal to or more than 5% by weight of the original distillate or which on being subjected to distillation yield in the portion distilling below 215° C. a quantity of tar acids equal to or more than 75% by weight of the original distillate:		
403.40	Phenol (carbolic acid) which on being subjected to distillation yields in the portion distilling below 190° C. a quantity of tar acids equal to or more than 5% by weight of the original distillate.	1.5¢ per lb.+8.5% ad val.	3.5¢ per lb.+20% ad val.
403.42	Cresylic acid which on being subjected to distillation yields in the portion distilling below 215° C. a quantity of tar acids equal to or more than 75% by weight of the original distillate.	0.85¢ per lb.+5% ad val.	3.5¢ per lb.+20% ad val.
403.44	Metacresol, orthocresol, paracresol, and metaparacresol, all the foregoing having a purity of 75% or more by weight.	0.8¢ per lb.+5% ad val.	7¢ per lb.+40% ad val.
403.46	Other	1.7¢ per lb.+10% ad val.	7¢ per lb.+40% ad val.

SCHEDULE 4.—CHEMICALS AND RELATED PRODUCTS—Continued

Item	Articles	Rates of duty 1	Rates of duty 2
403.48	2-Acetamido-3-chloroanthraquinone; o-Acetoacetanisidide; o-Acetoacetotoluidide; 2', 4'-Acetoacetoxylidide; 3'-Aminoacetophenone; 1-Amino-5-benzamidoanthraquinone; o-Anisidine; p-Anisidine; 6-Chloro-m-cresol [OH=1]; m-Diethlaminophenol; 4-Chloro-2, 5-dimethoxyaniline [NH_2=1]; 1, 8-Dihydroxy-4, 5-dinitroanthraquinone; 2, 4-Dimethoxyaniline; 3-Ethylamino-p-cresol; Iminodianthraquinone; 5-Methoxy-m-phenylenediamine; N-Methylaniline; dl-Phenylephrine base; Phenylsulfone; 2-Pyridinecarboxaldehyde; Sodium tetraphenylboron; 2, 4, 6-Trimethylaniline (mesidine); and Vinylcarbazole, mons.	1.5¢ per lb.+ 10% ad val.	7¢ per lb.+40% ad val.
403.50	p-Aminobenzoic acid; 7-Amino-1,3-naphthalenedisulfonic acid and its salts; 5-Amino-2-naphthalenesulfonic acid and its salts; 8-Amino-1-napthalenesulfonic acid and its salts; 8-Amino-2-napthalenesulfonic acid and its salts; 6-Amino-1-naphthol-3-sulfonic acid and its salts; 8-Amino-1-naphthol-5-sulfonic acid and its salts; 4-Amino-2-stilbenesulfonic acid and its salts; Biligrafin acid; 3,5-Diacetamido-2,4,6-triiodobenzoic acid; 2,3-Dichloro-1,4-naphthoquinone; m-Dimethylaminophenol; Gentisic acid; p-Hydroxybenzoic acid; 1-Hydroxy-2-carbazolecarboxylic acid; Hydroxycinnamic acid and its salts; 2-Hydroxy-3-dibenzofurancarboxylic acid; 2-Naphthol-3,6-disulfonic acid and its salts; 7-Nitronaphth [1,2]oxadiazole-5-sulfonic acid and its salts; p-Nitrotoluene; p-Phenetidine; m-Phenylenediamine; o-Phenylenediamine; N-Phenyl-2-naphthylamine; 2,4,4',5'-Tetrachlorophenylsulfone; Toluene-2,4-diamine; o-Toluenesulfonamide; and 2,4-Xylidine.	1.4 ¢ per lb. + 10% ad val.	7¢ per lb. + 40% ad val.
	Other:		
403.58	Ethoxyquin (1,2-Dihydro-6-ethoxy-2,2,4-trimethylquinoline).	1.7 ¢ per lb. + 12.5% ad val.	7¢ per lb. + 40% ad val.
403.60	Other	1.7¢ per lb. + 12.5% ad val.	7¢ per lb. + 40% ad val.
	Hydrocarbons:		
	Alkylbenzenes and polyalkylbenzenes		
	Bi- and polyphenyls		
	S-Methylstyrene		
	Vinyltoluene		
	Other		
	Halogenated hydrocarbons:		
	Benzyl chloride (α-Chlorotoluene)		
	Benzotrichloride (α,α,α,-Trichlorotoluene		
	Chlorobenzenes, mono-,di-, and tri-		
	Chlorinated biphenyl		
	Other		
	Hydrocarbon derivatives:		
	Monochloromononitrobenzenes		
	4,4'-Dinitrostilbene-2,2'-disulfonic acid		
	Nitrated benzene, toluene, or naphthalene		
	Nitrotoluenesulfonic acids		
	p-Toluenesulfonyl chloride		
	Other		
	Alcohols, phenols, ethers (including epoxides and acetals), aldehydes, ketones, alcohol peroxides, ketone peroxides, and their derivatives:		
	Alkyl cresols		
	Alkyl phenols		
	Naphthols		
	Nitrophenols		
	Resorcinol		
	Other		
	Carboxylic acids, anhydrides, halides, acyl peroxides, peroxyacids, and their derivatives:		
	1,2,4-Benzenetricarboxylic acid, 1,2-dianhydride (Trimellitic anhydride).		
	Benzoic acid		
	Benzoyl chloride		
	Isophthalic acid		
	Terephthalic acid		
	Terephthalic acid, dimethyl ester		
	Other		
	Esters of inorganic acids (except hydrocyanic acid, hydrogen halides, and hydrogen sulfide) and their derivatives:		
	Triphenyl phosphate		
	Trixylyl phosphate		
	Other		

SCHEDULE 4.—CHEMICALS AND RELATED PRODUCTS—Continued

Item	Articles	Rates of duty 1	Rates of duty 2
	Amines and their derivatives:		
	Aniline		
	4,4'-Diamino-2,2'-stilbenedisulfonic acid		
	N,N-Dimethylaniline		
	4,4'-Methylenedianiline		
	Nitrodiphenylamine		
	Other		
	Amines having one or more oxygen functions, and their derivatives.		
	Amides and their derivatives:		
	4-Acetamido-2-aminophenol		
	Benzanilide		
	Other		
	Other nitrogen-function compounds (except those in which the only nitrogen function is a nitro (-NO^2) or a nitroso (-NO) group, or an ammonium salt of an organic acid) and their derivatives:		
	Benzonitrile		
	Diazoaminobenzene (1,3-diphenyltriazene)		
	Toluenediisocyanates		
	Other		
	Organo-inorganic compounds (i.e., compounds having an atom other than carbon, hydrogen, oxygen, nitrogen, chlorine or other halogen attached directly to a carbon atom), and their derivatives:		
	Benzenethiol (Thiophenol)		
	Other		
	Heterocyclic compounds and their derivatives (including lactones and lactams but excluding epoxides with three membered rings, anhydrides and imides of polybasic acids, and cyclic esters of polyhydric alcohols with polybasic acids):		
	1,2-Dihydro-2,2,4-trimethylquinoline		
	2,2'-Dithiobisbenzothiazole		
	2-Mercaptobenzothiazole, sodium salt (2-Benzothiazolethiol, sodium salt).		
	Other		
	Sulfonamides, sultones, sultams, and other organic compounds:		
	N-Oxydiethylene-2-benzothiazole sulfenamide		
	Boron trifluoride-phenol complex, sodium salt.		
	Copper phthalocyanine ([Phthalocyanato (2-)] copper).		
	Quinhydrone		
	Other		
	All other products, by whatever name known, not provided for in subpart A or C of this part, including acyclic organic chemical products, which are obtained, derived, or manufactured in whole or in part from any of the cyclic products having a benzenoid, quinoid, or modified benzenoid structure provided for in the foregoing provisions of this subpart or in subpart A of this part:		
403.70	Caprolactam monomer	1.5¢ per lb.+ 10% ad val.	7¢ per lb.+ 40% ad val.
403.75	Hexamethylene adipamide	1.5¢ per lb.+ 10% ad val.	7¢ per lb.+ 40% ad val.
403.78	Methylcyclohexanone	1.5¢ per lb.+ 10% ad val.	7¢ per lb.+ 40% ad val.
	Other:		
403.79	Maleic anhydride	1.7¢ per lb.+ 12.5% ad val.	7¢ per lb.+ 40% ad val.
403.80	Other	1.7¢ per lb.+ 12.5% ad val.	7¢ per lb.+ 40% ad val.
	Acetone		
	Adipic acid		
	Cyclohexane		
	Cyclohexanone		
	Fumaric acid		
	Hexamethylenediamine		
	Other		
403.90	Mixtures in whole or in part of any of the products provided for in this subpart.	1.7¢ per lb.+ 12.5% ad val.	7¢ per lb.+ 40% ad val.

Note: For explanation of the symbol "A" or "A*" in the column entitled "GSP", see general headnote 3(c).

SCHEDULE 4.—CHEMICALS AND RELATED PRODUCTS—Continued

Item	Articles	Rates of duty 1	Rates of duty 2

Subpart C.—Finished Organic Chemical Products

Subpart C headnotes:

1. The provisions of this subpart providing for products obtained, derived, or manufactured in whole or in part from products described in subparts A or B of this part shall also apply to products of like chemical composition having a benzenoid, quinoid, or modified benzenoid structure artificially produced by synthesis, whether or not obtained, derived, or manufactured in whole or in part from products described in the said subpart A or B.

2. The term *"pesticides"* in item 405.15 means products, such as insecticides, rodenticides, fungicides, herbicides fumigants, and seed disinfectants, chiefly used to destroy undesired animal or plant life.

3. The term *"plastics materials"* in item 405.25 embraces products formed by the condensation, polymerization, or copolymerization of organic chemicals and to which plasticizers, fillers, colors, or extenders may have been added. The term includes, but is not limited to, phenolic and other tar-acid resins, styrene resins, alkyd and polyester resins based on phthalic anhydride, coumarone-indene resins, urethane, epoxy, toluene sulfonamide, maleic, fumaric, aniline, and polymide resins, and other synthetic resins. The plastic materials may be in solid, semi-solid, or liquid condition, such as flakes, powders, pellets, granules, solutions, emulsions, and other basic forms not further processed.

4. The term *"plasticizers"* in item 405.40 means substances which may be incorporated into a material (usually a plastic, resin material, or an elastomer) to increase its softness, flexibility, workability, or distensibility.

5. The term *"drugs"* in this subpart means those substances having therapeutic or medicinal properties and chiefly used as medicines or as ingredients in medicines.

6. For the purposes of the provisions of this subpart relating to "Colors, dyes, stains, and related products" (except products provided for in item 406.80)—

(a) the specific duties shall be based on standards of strength which shall be established by the Secretary of the Treasury, and upon all importations of such articles which exceed such standards of strenght the specific duty shall be computed on the weight which the article would have if it were diluted to the standard strenght, but in no case shall any such articles of whatever strength be subject to a less specific duty than that provided in the respective items of this subpart;

(b) it shall be unlawful to import or bring into the United States any such product unless the invoice shall bear a plain, conspicuous, and truly descriptive statement of the identity and precentage, exclusive of diluents, of such product;

(c) it shall be unlawful to import or bring into the United States any such product, if the immediate container or the invoice bears any statement, design, or device regarding the product or the ingredients or substances contained therein which is false, fraudulent, or misleading in any particular; and

(d) in the enforcement of the foregoing provisions of this headnote the Secretary of the Treasury shall adopt a standard of strength for each dye or other product which shall conform as nearly as practicable to the commercial strength in ordinary use in the United States prior to July 1, 1914. If a dye or other product has been introduced into commercial use since said date then the standard of strength for such dye or other product shall conform as nearly as practicable to the commercial strength in ordinary use. If a dye or other product was or is ordinarily used in more than one commercial strength, then the lowest commercial strength shall be adopted as the standard of strength for such dye or other product.

SCHEDULE 4.—CHEMICALS AND RELATED PRODUCTS—Continued

Item	Articles	Rates of duty 1	Rates of duty 2
	Subpart C statistical headnote:		
	1. For statistical reporting purposes, the quantity reported for "Colors, dyes, stains, and related products", subject to headnote 6(a) of this subpart, shall be the quantity on which the specific duty is assessed.		
	2. For the purposes of the statistical reporting of merchandise provided for under item 405.25, the following provisions shall apply:		
	(a) The term *"thermoplastic resins"* means those materials in unfinished forms which in their final state as finished articles are capable of being repeatedly softened by increase of temperature and hardened by decrease of temperature.		
	(b) The term *"thermosetting resins"* (or thermosets) means those materials in unfinished forms which in their final state as finished articles are substantially infusible. Thermosetting resins are often liquids at some stage in their manufacture or processing and are cured by heat, catalysis, or other chemical means. After being fully cured, thermosets cannot be resoftened by heat.		
	(c) Copolymers and terpolymers not specially provided for shall be classified as if they consisted entirely of that monomer which is present in the largest amount by weight on a resin content basis (i.e., excluding the weight of plasticizers, liquid diluents, fillers, or other additives). Any polymer consisting of two or more monomers which are present in equal amounts shall be classified as if it consisted entirely of that monomer whose polymer is listed first under the thermoplastic or thermosetting resins, as appropriate.		
	3. Any product described in two or more of the statistical reporting numbers of item 407.85 is to be classified in the first applicable reporting number.		
	4. For statistical reporting purposes in this subpart—		
	(a) The term *"surface-active agents"*, means synthetic organic chemical compounds, or mixtures thereof, which function as surface tension modifiers and are chiefly used for any one or combination of the following purposes: As detergents, wetting agents, emulsifiers, dispersants, or foaming agents.		
	(b) The term *"synthetic detergents"* embraces formulated materials which are used chiefly for household, laundry, and industrial cleaning purposes, and which consist of one or more surface-active agents as the active ingredients in combination with colors, brighteners, perfumes, inert diluents, builders, and extenders such as inorganic salts, polyphosphates, polysilicates or sodium carboxymethylcellulose.		
	Products obtained, derived, or manufactured in whole or in part from any product provided for in subpart A or B of this part:		
	Explosives:		
	Trinitrotoluene:		
405.04	Valued not over 15 cents per pound	1.7¢ per lb.+ 11% ad val.	7¢ per lb. + 45% ad val.
405.05	Valued over 15 cents per pound	Free	7¢ per lb. + 45% ad val.
405.06	Other	1.7¢ per lb. + 11% ad val.	7¢ per lb. + 45% ad val.
405.10	Ink powders	1.7¢ per lb. + 11% ad val.	7¢ per lb. + 45% ad val.
405.15	Pesticides	1.7¢ per lb. + 12.5% ad val.	7¢ per lb. + 40% ad val.
	Not artificially mixed:		
	Fungicides		
	Herbicides (including plant growth regulators)		
	Insecticides		
	Other		
	Other		

SCHEDULE 4.—CHEMICALS AND RELATED PRODUCTS—Continued

Item	Articles	Rates of duty 1	Rates of duty 2
405.20	Photographic chemicals	3¢ per lb. + 19% ad val.	7¢ per lb. + 45% ad val.
	Not artificially mixed		
	Other		
405.25	Plastics materials	1.4¢ per lb. + 9% ad val.	7¢ per lb. + 45% ad val.
	Concentrated dispersions of pigments in plastics materials.		
	Paints and enamel paints		
	Varnishes and lacquers		
	Other:		
	Thermoplastic resins:		
	Petroleum hydrocarbon and coumarone-indene resins.		
	Polyamide resins, nylon type		
	Polycarbonate resins		
	Polyester resins, saturated		
	Acrylonitrile-butadiene-styrene (ABS) resins		
	Methyl methacrylate-butadiene-styrene (NBS) resins.		
	Styrene-acrylonitrile (SAN) resins		
	Polystyrene resins and styrene copolymers, terpolymers (except ABS, MBS, and SAN resins).		
	Other		
	Thermosetting resins:		
	Alkyd resins		
	Allyl resisns (e.g., diallyl phthalate)		
	Expoxy resins		
	Phenolic resins		
	Polyester resins, unsaturated		
	Polyurethane resins		
	Other		
405.30	Products chiefly used as assistants in preparing or finishing textiles.	1.4¢ per lb.+8% ad val.	7¢ per lb.+40% ad val.
	Surface-active agents and synthetic detergents:		
	Surface-active agents, anionic		
	Surface-active agents, cationic and amphoteric		
	Surface-active agents, nonionic		
	Synthetic detergents		
	Other		
405.35	Products (except those in item 405.30) chiefly used for any one or combination of the following purposes: as detergents, wetting agents, emulsifiers, dispersants, or foaming agents.	1.7¢ per lb.+ 12.5% ad val.	7¢ per lb.+ 40% ad val.
	Surface-active agents, anionic		
	Surface-active agents, cationic and amphoteric		
	Surface-active agents, nonionic		
	Other		
405.40	Products chiefly used as plasticizers	1.7¢ per lb.+ 12.5% ad val.	7¢ per lb.+ 40% ad val.
	Phthalic acid esters		
	Other		
405.45	Sodium benzoate	1.5¢ per lb.+ 10.5% ad val.	7¢ per lb.+ 45% ad val.
405.55	Synthetic tanning materials	3.5¢ per lb.+ 22.5% ad val.	7¢ per lb.+ 45% ad val.
	Colors, dyes, stains, and related products:		
406.02	Sulfur black, "Colour Index Nos. 53185, 53190, and 53195"	1.5¢ per lb. + 10% ad val.	3¢ per lb. + 20% ad val.
406.04	Vat blue 1 (synthetic indigo), "Colour Index No. 73000"	1.5¢ per lb. + 10% ad val.	3¢ per lb. + 20% ad val.
406.10	Acid black 31, 50, 94, 129; acid blue 45, 54, 106, 127, 129, 143; acid brown 44, 46, 48, 58, 188, 189; acid green 40; acid red 130, 145, 174, 211; acid violet 19, 31, 41, 48; acid yellow 2, 75, 116; basic blue 3; basic orange 22; basic red 13, 14; basic yellow 1, 11, 13; direct black 62, 91; direct blue 86, 92, 106, 108, 109, 160, 172; direct brown 103, 115, 116; direct green 5, 29, 31; direct orange 37; direct red 83; direct yellow 28; disperse blue 30; disperse red 4; fluorescent brightening agent 18, 24, 32; ingrain blue 2; mordant black 8; mordant green 47; mordant red 17, 27; reactive black 1; reactive blue 1, 2, 4; reactive orange 1; reactive red 1, 2, 3, 5, 6; reactive yellow 1; solvent orange 11; solvent yellow 25; vat blue 2; vat brown 3; vat orange 2, 7; vat red 44; vat violet 9, 13; vat solubilized orange 3; and vat yellow 4, 20: all the foregoing obtained, derived, or manufactured in whole or in part from any product provided for in subpart A or B of this part.	16% ad val.	7¢ per lb. + 45% ad val.

SCHEDULE 4.—CHEMICALS AND RELATED PRODUCTS—Continued

Item	Articles	Rates of duty 1	Rates of duty 2
	Specified acid dyes		
	Specified basic dyes		
	Specified direct dyes		
	Specified vat dyes		
	Other		
406.50	Colors, dyes, and stains (except toners), whether soluble or not in water, obtained, derived, or manufactured in whole or in part from any product provided for in subpart A or B of this part.	20% ad val.	7¢ per lb. + 45% ad val.
	Acid dyes		
	Basic dyes		
	Direct dyes		
	Disperse dyes		
	Fluorescent brighteners		
	Solvent dyes		
	Reactive dyes		
	Vat dyes		
	Other		
406.60	Natural alizarin and natural indigo; colors, dyes, and stains (except toners), whether soluble or not in water, obtained, derived, or manufactured in whole or in part from natural alizarin or natural indigo; color acids, color bases, indoxyl, indoxyl compounds, and leuco-compounds (whether colorless or not), obtained, derived, or manufactured in whole or in part from natural alizarin, natural indigo, or any product provided for in subpart A or B of this part.	2.8¢ per lb. + 18% ad val.	7¢ per lb. + 45% ad val.
	Color acids, color bases, indoxyl, indoxyl compounds, and leuco-compounds (whether colorless or not), obtained, derived, or manufactured in whole or in part from any product provided for in subpart A or B of this part.		
	Other	20% ad val.	7¢ per lb. + 45% ad val.
406.70	Color lakes and toners, obtained, derived, or manufactured in whole or in part from natural alizarin, natural indigo, or any product provided for in subpart A or B of this part.		
	Concentrated dispersions		
	Other:		
	Yellow		
	Red		
	Violet		
	Blue		
	Other		
406.80	Fast color bases, fast color salts, and Naphthol AS and its derivatives.	1.7¢ per lb. + 10% ad val.	7¢ per lb. + 40% ad val.
	Fast color salts		
	Fast color bases		
	Naphthol AS and derivatives		
	Products suitable for medicinal use, and drugs:		
	Obtained, derived, or manufactured in whole or in part from any product provided for in subpart A or B of this part:		
	Products suitable for medicinal use:		
407.02	Acetanilide	1.7¢ per lb. + 12.5% ad val.	7¢ per lb. + 45% ad val.
407.04	Benzaldehyde	1.7¢ per lb. + 12.5% ad val.	7¢ per lb. + 45% ad val.
407.06	Benzoic acid	1.7¢ per lb. + 12.5% ad val.	7¢ per lb. + 45% ad val.
407.08	2-Naphthol (beta-naphthol)	1.7¢ per lb. + 12.5% ad val.	7¢ per lb. + 45% ad val.
407.10	Resorcinol	1.7¢ per lb. + 12.5% ad val.	7¢ per lb. + 45% ad val.
407.12	Salicylic acid and its salts	1.7¢ per lb. + 12.5% ad val.	7¢ per lb. + 45% ad val.
	Drugs:		
407.20	Acetphenetidine (phenacetin)	1.4¢ per lb. + 10% ad val.	7¢ per lb. + 45% ad val.
407.25	Acetylaslicylic acid (aspirin)	1.7¢ per lb. + 12.5% ad val.	7¢ per lb. + 45% ad val.
407.30	Antipyrine	1.7¢ per lb. + 12.5% ad val.	7¢ per lb. + 45% ad val.
407.32	5-Chloro-7-iodo-8-quinolinol and 2-[1-(p-chlorophenyl)-3-dimethyl-aminopropyl] pyridine maleate.	1.4¢ per lb. + 10% ad val.	7¢ per lb. + 45% ad val.
407.35	Diethylaminoacetoxylidide (xylocaine)	1.7¢ per lb. + 11% ad val.	7¢ per lb. + 45% ad val.

SCHEDULE 4.—CHEMICALS AND RELATED PRODUCTS—Continued

Item	Articles	Rates of duty 1	Rates of duty 2
407.40	5-Ethyl-5-phenylhexahydropyrimidine-4,6-dione	1.2¢ per lb.+ 8.5% ad val.	7¢ per lb.+ 45% ad val.
	Hydantoin derivatives:		
407.45	Methylphenethylhydantoin	1.4¢ per lb.+ 9% ad val.	7¢ per lb.+ 45% ad val.
407.50	Other	1.4¢ per lb.+ 9% ad val.	7¢ per lb.+ 45% ad val.
	Imidazoline derivatives:		
407.55	2-Benzyl-4,5-imidazoline hydrochloride	1.4¢ per lb.+ 9% ad val.	7¢ per lb.+ 45% ad val.
407.60	Phenylbenzylaminoethylimidazoline hydrochloride.	1.4¢ per lb.+9% ad val.	7¢ per lb.+45% ad val.
407.70	Other	1.4¢ per lb.+9% ad val.	7¢ per lb.+45% ad val.
407.72	Phenylephrine hydrochloride; sulfadiazine; sulfaguanidine; sulfamerazine; sulfamethazine; sulfapyridine; and salicylazosulfapyridine.	1.4¢ per lb.+ 10% ad val.	7¢ per lb.+ 45% ad val.
	Phenylephrine hydrochloride		
	Sulfamethazine		
	Sulfadiazine, sulfaguanidine, sulfamerazine, sulfapyridine, and salicylazosulfapyridine.		
407.75	Phenolphthalein	1.7¢ per lb.+ 12.5% ad val.	7¢ per lb.+ 45% ad val.
407.80	Salol	1.7¢ per lb.+ 12.5% ad val.	7¢ per lb.+ 45% ad val.
407.85	Other	1.7¢ per lb.+ 12.5% ad val.	7¢ per lb.+ 45% ad val.
	Alkaloids and their salts and other derivatives:		
	Ephedrine, pseudoephedrine, racephedrine, and their salts.		
	Papaverine and its salts		
	Other		
	Antihistamines, including those chiefly used as antinauseants.		
	Anti-infective agents:		
	Antibiotics:		
	Ampicillin and its salts		
	Penicillin G, potassium		
	Penicillin G, procaine		
	Phenoxymethylpenicillin, potassium		
	Other		
	Anti-infective sulfonamides:		
	Sulfathiazole and sulfathiazole sodium.		
	Other		
	Anti-infective agents, not specially provided for.		
	Autonomic drugs, except alkaloids and their derivatives.		
	Cardiovascular drugs, except alkaloids and their derivatives.		
	Dermatological agents and local anesthetics		
	Drugs primarily affecting the central nervous system, except alkaloids and their derivatives:		
	Analgesics, antipyretics, and nonhormonal anti-inflammatory agents:		
	Propoxyphene hydrochloride		
	Other		
	Anticonvulsants, hypnotics, and sedatives.		
	Antidepressants, tranquilizers, and other psychotherapeutic agents.		
	Other		
	Hormones, synthetic substitutes, and antagonists.		
	Vitamins, provitamins, and their analogs and derivatives used primarily for their vitamin activity:		
	Vitamin B_2 (riboflavin and its salts and esters).		
	Vitamin B_{12} (cyanocobalamin and related compounds with vitamin B_{12} activity).		
	Vitamin E (dl-α-tocopherol and its esters)		
	Other		
	Other		
	Drugs, from whatever source obtained, produced or manufactured:		

SCHEDULE 4.—CHEMICALS AND RELATED PRODUCTS—Continued

Item	Articles	Rates of duty 1	Rates of duty 2
407.90	Guaiacol and its derivatives	1.7¢ per lb. + 12.5% ad val.	7¢ per lb. + 45% ad val.
	Aromatic or odoriferous compounds including flavors, not marketable as cosmetics, perfumery, or toilet preparations, and not mixed, and not containing alcohol:		
	Obtained, derived, or manufactured in whole or in part from any product provided for in subpart A or B of this part:		
408.05	Benzyl acetate	3.5¢ per lb. + 22.5% ad val.	7¢ per lb. + 45% ad val.
408.10	Benzyl benzoate	3.5¢ per lb. + 22.5% ad val.	7¢ per lb. + 45% ad val.
408.15	Diphenyl oxide	3.5¢ per lb. + 22.5% ad val.	7¢ per lb. + 45% ad val.
408.20	Heliotropin	1.7¢ per lb. + 11% ad val.	7¢ per lb. + 45% ad val.
408.25	Methyl anthranilate	3.5¢ per lb. + 22.5% ad val.	7¢ per lb. + 45% ad val.
408.30	Musk, artificial	2.8¢ per lb. + 9% ad val.	7¢ per lb. + 45% ad val.
408.35	Phenylacetaldehyde	3.5¢ per lb. + 22.5% ad val.	7¢ per lb. + 45% ad val.
408.40	Phenethyl alcohol	3.5¢ per lb. + 22.5% ad val.	7¢ per lb. + 45% ad val.
408.45	Saccharin	1.5¢ per lb. + 9.5% ad val.	7¢ per lb. + 45% ad val.
408.60	Other compounds	3.5¢ per lb. + 22.5% ad val.	7¢ per lb. + 45% ad val.
	p-Anisaldehyde		
	Ethyl vanillin		
	α-Methylbenzyl alcohol		
	α-Pentylcinnamaldehyde		
	Other		
	From whatever source obtained, derived, or manufactured:		
408.70	Coumarin	3.5¢ per lb. + 22.5% ad val.	7¢ per lb. + 45% ad val.
408.75	Methyl salicylate	3.5¢ per lb. + 22.5% ad val.	7¢ per lb. + 45% ad val.
408.80	Vanillin	1.5¢ per lb. + 9.5% ad val.	7¢ per lb. + 45% ad val.
409.00	Mixtures in whole or in part of any of the products provided for in this subpart.	3.5¢ per lb. + 22.5% ad val.	7¢ per lb. + 45% ad val.

Subpart B.—Industrial Organic Chemicals

Subpart B headnotes:

1. The provisions of items 402.00 to 406.61, inclusive, in this subpart shall apply not only to the products described therein when obtained, derived, or manufactured in whole or in part from products described in subpart A of this part, but shall also apply to products of like chemical composition having a benzenoid, quinoid, or modified benzenoid structure artificially produced by synthesis, whether or not obtained, derived, or manufactured in whole or in part from products described in said subpart A.

2. For the purpose of classification of merchandise provided for under items 402.36 to 406.61, inclusive, the following provisions shall govern:

(a) The term "derivatives" refers to only those derivatives which may be obtained by one or more of the following processes: Halogenation, nitration, nitrosation, or sulfonation, and is to be understood to include sulfonyl halides.

(b) a compound with functional groups described in two or more items under items 402.36 to 406.61, inclusive, is to be classified in the latest applicable item. For example, 4-acetamido-2-aminophenol, which contains three functional groups, will be classified in 405.12 (Amides), rather than in 404.92 to 405.08, inclusive (Aminophenols), or in 404.84 and 404.88 (Amines), or in 403.51 (Phenols). When applicable, classification should be made in accordance with the following principles:

(i) Salts of organic acids (including phenols) with inorganic bases and salts of organic bases with inorganic acids are to be classified under the same superior heading as the organic acid or base; salts of organic acids with organic bases are to be classified either under the superior heading which describes the functional groups present in the free acid or under the one which describes the functional groups present in the free base, whichever is listed later.

SCHEDULE 4.—CHEMICALS AND RELATED PRODUCTS—Continued

Item	Articles	Rates of duty 1	Rates of duty 2
	Subpart B.—Industrial Organic Chemicals—Continued		
	Subpart B headnotes:		
	(ii) *Esters of organic acids are to be classified either under the superior heading which describes the functional groups present in the free acid or under the one which describes the functional groups present in the free alcohol or phenol, whichever is listed later.* (iii) *The above provisions apply also in cases where the component having the functional groups described under the later superior heading is not of benzenoid origin. For example, benzylacetate is classified under carboxylic acids (404.24 to 404.46, inclusive) rather than under alcohols (403.45).*		
	Cyclic organic chemical products in any physical form having a benzenoid, quinoid, or modified benzenoid structure, not provided for in subpart A or C of this part;		
402.00	*Anthracene having a purity of 30% or more by weight*	*1.4¢ per lb. +9.5% ad val.*	*7¢ per lb. +46.5% ad val.*
402.04	*Carbazole having a purity of 65% or more by weight*	*1.7¢ per lb. +12.5% ad val.*	*7¢ per lb. +40% ad val.*
402.08	*Napthahlene which after the removal of all water present has a solidifying point of 79 C. or above*	*0.7¢ per lb. +4% ad val.*	*7¢ per lb. +40% ad val.*
402.12	*Phthalic anhydride*	*1.2¢ per lb. +8.6% ad val.*	*7¢ per lb. +49% ad val.*
402.16	*Styrene*	*1.4¢ per lb. +9% ad val.*	*7¢ per lb. +45% ad val.*
	All distillates of coal tar, blast-furnace tar, oil-gas tar, and water-gas tar, which on being subjected to distillation yield in the portion distilling below 190 C. a quantity of tar acids equal to or more than 5% by weight of the original distillate or which on being subjected to distillation yield in the portion distilling below 215 C. a quantity of tar acids equal to or more than 75% by weight of the original distillate:		
402.20	*Phenol (carbolic acid) which on being subjected to distillation yields in the portion distilling below 190 C. a quantity of tar acids equal to or more than 5% by weight of the original distillate*	*1.5¢ per lb. +12.5% ad val.*	*3.5¢ per lb. +29.5% ad val.*
402.24	*Cresylic acid which on being subjected to distillation yields in the portion distilling below 215 C. a quantity of tar acids equal to or more than 75% by weight of the original distillate*	*0.85¢ per lb. +5% ad val.*	*3.5¢ per lb. +20% ad val.*
402.28	*Metacresol, orthocresol, paracresol, and metaparacresol, all the foregoing having a purity of 75% or more by weight*	*0.8¢ per lb. +5.3% ad val.*	*7¢ per lb. +42.5% ad val.*
402.32	*Other*	*1.7¢ per lb. +8.4% ad val.*	*7¢ per lb. +33.5% ad val.*
	Other:		
	Hydrocarbons;		
402.36	*Alkylbenzenes and polyalkylbenzenes*	*1.7¢ per lb. +17.3% ad val.*	*7¢ per lb. +55% ad val.*
402.40	*Bi- and polyphenyls*	*1.7¢ per lb. +12.5% ad val.*	*7¢ per lb. +40% ad val.*
402.44	*α-Methylstyrene*	*1.7¢ per lb. +12.5% ad val.*	*7¢ per lb. +40% ad val.*
402.48	*Vinyltoluene*	*1.7¢ per lb. +12.5% ad val.*	*7¢ per lb. +40% ad val.*
402.52	*Other*	*1.7¢ per lb. +21.4% ad val.*	*7¢ per lb. +68.5% ad val.*
	Halogenated hydrocarbons:		
402.56	*Benzyl chloride (α-Chlorotoluene)*	*1.7¢ per lb. +12.5% ad val.*	*7¢ per lb. +40% ad val.*

SCHEDULE 4.—CHEMICALS AND RELATED PRODUCTS—Continued

Item	Articles	Rates of duty 1	Rates of duty 2
402.60	Benzotrichloride (α, α, α,-Trichloro-toluene)	1.7¢ per lb. +15.2% ad val.	7¢ per lb. +48% ad val.
	Chlorobenzenes, mono, di-, and tri-:		
402.64	Monochlorbenzene	1.7¢ per lb. +23.6% ad val.	7¢ per lb. 91.5% ad val.
402.68	Orthodichlorobenzene	1.7¢ per lb. +26.3% ad val.	7¢ per lb. +84% ad val.
402.72	Other	1.7¢ per lb. +12.6% ad val.	7¢ per lb. +40.5% ad val.
402.76	Chlorinated biphenyl	1.7¢ per lb. +12.1% ad val.	7¢ per lb. +39% ad val.
402.80	Other	1.7¢ per lb. +22.3% ad val.	7¢ per lb. +71% ad val.
	Hydrocarbon derivatives;		
402.84	Monochloromononitrobenzenes	1.7¢ per lb. +18.4% ad val.	7¢ per lb. +59% ad val.
402.88	4,4' - Dinitrostilbene - 2,2' - disulfonic acid	1.7¢ per lb. +15.6% ad val.	7¢ per lb. +50% ad val.
	Nitrated benzene, toluene, or namphthalene:		
402.96	p-Nitrotoluene	1.4¢ per lb. +10% ad val.	7¢ per lb. +40% ad val.
402.98	Other	1.7¢ per lb. +12.5% ad val.	7¢ per lb. +40% val val.
403.00	Nitrotoluenesulfonic acids	1.7¢ per lb. +23.3% ad val.	7¢ per lb. +74.5% ad val.
403.05	p-Toluenesulfonyl chloride	1.7¢ per lb. +13% ad val.	7¢ per lb. +41.5% ad val.
	Other:		
403.09	m-Benzenedisulfonic acid, sodium salt; 1-Bromo-2-nitrobenzene; 1-Chloro-3,4-dinitrobenzene; 1,2-Dichloro-4-nitrobenzene; o-Fluoronitrobenzene; 1,5-Naphthalene-dinulfonic acid; p-Nitro-o-xylene; and o-(and p)-Toluenesulfonic acid, methyl ester.	1.7¢ per lb. +12.6% ad val.	7¢ per lb. +40 ad val.
403.12	Other	1.7¢ per lb. +15.9% ad val.	7¢ per lb. +51% ad val.
	Alcohols, phenols, ethers (including epoxides and acetals), aldehydes, ketones, alcohol peroxides, ether peroxides, ketone peroxides, and their derivatives:		
403.16	Alkyl cresols	1.7¢ per lb. + 12.6% ad val.	7¢ per lb. + 40.5% ad val.
403.20	Alkyl phenols	1.7¢ per lb. + 26% ad val.	7¢ per lb. + 80% ad val-
403.24	6-Chloro-m-cresol [OH=1]	1.5¢ per lb. + 10.2% ad val.	7¢ per lb. + 41% ad val.
403.28	Naphthols	1.7¢ per lb. + 22.7% ad val.	7¢ per lb. + 75% ad val.
403.32	2-Naphthol-3, 6-disulfonic acid and its salts	1.4¢ per lb. + 13.5% ad val.	7¢ per lb. +54% ad val.
403.36	Nitrophenols	1.7¢ per lb. + 16.1% ad val.	7¢ per lb. + 51.5% ad val.
403.41	Resorcinol	1.7¢ per lb. + 12.5% ad val.	7¢ per lb. +40% ad val.
	Other:		
403.45	Alcohols	1.7¢ per lb. + 12.5% ad val.	7¢ per lb. +40% ad val.
403.49	Phenols and phenol-alcohols; 4,4'-Isopropylidenediphenol (Bisphenol A)	1.7¢ per lb. + 13.7% ad val.	7¢ per lb. +44% ad val.

SCHEDULE 4.—CHEMICALS AND RELATED PRODUCTS—Continued

Item	Articles	Rates of duty 1	Rates of duty 2
403.51	Other	1.7¢ per lb. + 13.7% ad val.	7¢ per lb. +44% ad val.
	Halogenated, sulfonated, nitrated, or nitrosated derivatives of phenols or phenol-alcohols:		
	m-Chlorophenol; 2,5-Dihydroxybenzene-sulfonic acid, potassium salt; 3,6-Dihydroxy-2,7-naphthalenedisulfonic acid; 3,6-Dihydroxy-2,7-naphthalenedisulfonic acid, sodium salt; Dinitro-o-cresol; 4-Hydoxy-1-naphthalene-sulfonic acid; 4-Hydroxy-1-naphthalene-sulfonic acid, sodium salt (1-Naphthol-4-sulfonic acid); 1-Naphthol-3,6-disulfonic acid; and 4-Nitro-m-cresol.	1.7¢ per lb. + 14.3% ad val.	7¢ per lb. + 45.5% ad val.
403.56	Other	1.7¢ per lb. + 19.4% ad val.	7¢ per lb. +62% ad val.
	Ethers, other-alcohols, ether-phenols, ether-alcohol-phenols, peroxides of alcohols, ethers, and ketones, and their halogenated, sulfonated, nitrated, or nitrosated derivatives:		
403.61	5-Chloro-2-nitroanisole; Dimethyl diphenyl ether; 4-Ethylguaiacol; 2-(a-Hydroxyethoxy) phenol; and Nitrochlorohydroquinone, dimethl ester.	1.7¢ per lb. + 12.5% ad val.	7¢ per. lb. + 40% ad val.
403.64	Other	1.7¢ per lb. + 22% ad val.	7¢ per lb. +70.5% ad val.
403.68	Expoxides, epoxyalcohols, epoxyphenols, and epoxyethers, with a three- or four-member ring, and their halogenated, sulfonated, nitrated, or nitrosated derivatives.	1.7¢ per lb. + 12.5% ad val.	7¢ per lb. + 40% ad val.
403.72	Acetals and hemiacetals and single and complex oxygen function acetals and hemiacetals, and their halogenated, sulfonated, nitrated, or nitrosated derivatives.	1.7¢ per lb. + 13% ad val.	7¢ per lb. + 41.5% ad val.
403.76	Aldehydes, aldehyde-alcohols, aldehyde-ethers, aldehyde-phenols, and other single or complex oxygen-function aldehydes; cyclic polymers of aldehydes and paraformaldehyde.	1.7¢ per lb. + 12.9% ad val.	7¢ per lb. + 41% ad val.
403.81	Halogenated, sulfonated, nitrated, or nitrosated derivatives of aldehydes, aldehyde-alcohols, aldehyde-ethers, aldehyde-phenols, and other single or complex oxygen-function aldehydes, cyclic polymers of aldehydes and paraformaldehyde.	1.7¢ per lb. + 24.3% ad val.	7¢ per lb. + 77.5% ad val.
	Ketones, ketone-alcohols, ketone-phenols, ketone-aldehydes, quinones, quinone-alcohols, quinone-phenols, quinone-aldehydes, and other single or complex oxygen-function ketones and quinones, and their halogenated, sulfonated, nitrated, or nitrosated derivatives:		
403.88	2,3-Dichloro-1,4-naphthoquinone	1.4¢ per lb. + 13% ad val.	7¢ per lb. + 52% ad val.
403.92	1,8-Dihydroxy-4,5-dinitroanthraquinone	1.5¢ per lb. +10.8% ad val.	7¢ per lb. +43% ad val.
403.96	Other	1.7¢ per lb. +13.1% ad val.	7¢ per lb. +42% ad val.
	Carboxylic acids, anhydrides, halides, acyl peroxides, peroxyacids, and their derivatives:		
404.00	1,2,4-Benzenetricarboxylic acid, 1,2-dianhydride (Trimellitic anhydride).	1.7¢ per lb. +12.5% ad val.	7¢ per lb. +40% ad val.
404.04	Benzoic acid	1.7¢ per lb. +12.5% ad val.	7¢ per lb. +40% ad val.
404.08	Benzoyl chloride	1.7¢ per lb. +13.7% ad val.	7¢ per lb. +44% ad val.
404.12	Isophthalic acid	1.7¢ per lb. +12.5% ad val.	7¢ per lb. +40% ad val.
404.16	Terephthalic acid	1.7¢ per lb. +24% ad val.	7¢ per lb. +77% ad val.

SCHEDULE 4.—CHEMICALS AND RELATED PRODUCTS—Continued

Item	Articles	Rates of duty 1	Rates of duty 2
404.20	*Terephthalic acid, dimethyl ester*	1.7¢ per lb. +13.1% ad val.	7¢ per lb. +42% ad val.
	Other:		
	Monocarboxylic acids and their anhydrides, halides, peroxides, and peracids, and their halogenated, sulfonated, nitrated, or nitrosated derivatives:		
404.24	*Benzoic anhydride; tert-Butyl peroxybenzoate; 4-Chloro-3-nitrobenzoic acid; m-Chloroperoxybenzoic acid; Metrizoic acid; p-Nitrobenzoyl chloride; 2-Nitrobenzoyl chloride; 2-Nitro-m-toluic acid; 3-Nitro-o-toluic acid; and Phenylacetic acid (α-Toluic acid).*	1.7¢ per lb. +12.6% ad val.	7¢ per lb. +40.5% ad val.
404.28	*Other*	1.7¢ per lb. +17.9% ad val.	7¢ per lb. +57% ad val.
	Polycarboxylic acids and their anhydrides, halides, peroxides, and peracids, and their halogenated, sulfonated, nitrated, or nitrosated derivatives:		
404.32	*Naphthalic anhydride; Phthalic acid; 4-Sulfo-1,8-naphthalic anhydride; and Terephthalaldehyde.*	1.7¢ per lb. +11.6% ad val.	7¢ per lb. +37% ad val.
404.36	*Other*	1.7¢ per lb. +22.7% ad val.	7¢ per lb. +73% ad val.
	Carboxylic acids with alcohol, phenol, aldehyde, or ketone function and other single or complex oxygen-function carboxylic acids and their anhydrides, halides, peroxides, and peracids, and their halogenated, sulfonated, nitrated, or nitrosated derivatives:		
404.40	*p-Anisic acid; Benzilic acid; Benzilic acid, methyl ester; 2,3-Cresotic acid; m-Hyrdoxybenzoic acid; 2-Hydroxybenzoic acid, calcium salt; 1-Hydroxy-2-naphthoic acid; 3-Hydroxy-1-naphthoic acid: 1-Hydroxy-2-naphthoic acid, phenyl ester; 3-Phenoxybenzoic acid; α-Resorcylic acid; Γ-Resorcylic acid; and 5-Sulfosalicylic acid.*	1.7¢ per lb. +12.5% ad val.	7¢ per lb. +40% ad val.
404.44	*Gentisic acid; p-Hydroxybenzoic acid; and Hydroxycinnamic acid and its salts.*	1.4¢ per lb. +12.1% ad val.	7¢ per lb. +48.5% ad val.
404.46	*Other*	1.7¢ per lb. +17.9% ad val.	7¢ per lb. +57% ad val.
404.48	*Esters of inorganic acids (except hydrocyanic acid, hydrogen halides, and hydrogen sulfide) and their derivatives.*	1.7¢ per lb. +13.4% ad val.	7¢ per lb. +43% ad val.
	Amines and their derivatives:		
404.52	*7-Amino-1,3-naphthalenedisulfonic acid and its salts; 5-Amino-2-naphthalenesulfonic acid and its salts; 8-Amino-1-naphthalenesulfonic acid and its salts; 4-Amino-2-stilbenesulfonic acid and its salts; m-Phenylenediamine; o-Phenylenediamine; N-Phenyl-2-naphthylamine; Toluene-2,4-diamine; and 2,4-Xylidine.*	1.4¢ per lb. +12.1% ad val.	7¢ per lb. +48.5% ad val.
404.56	*8-Amino-2-naphthalenesulfonic acid and its salts*	1.4¢ per lb. +9.7% ad val.	7¢ per lb. +39% ad val.
404.60	*Aniline*	1.7¢ per lb. +13.6% ad val.	7¢ per lb. +43.5% ad val.
404.64	*4,4'-Diamino-2,2'-stilbenedisulfonic acid*	1.7¢ per lb. +25% ad val.	7¢ per lb. +80% ad val.
404.68	*N,N-Dimethylaniline*	1.7¢ per lb. +12.5% ad val.	7¢ per lb. +40% ad val.
404.72	*N-Methylaniline; and 2,4,6-Trimethylaniline (Mesidine)*	1.5¢ per lb. +9.3% ad val.	7¢ per lb. +37% ad val.
404.76	*4,4'-Methylenedianiline*	1.7¢ per lb. +12.5% ad val.	7¢ per lb. + 40% ad val.
404.80	*Nitrodiphenylamine*	1.7¢ per lb. +12.5% ad val.	7¢ per lb. +40% ad val.

SCHEDULE 4.—CHEMICALS AND RELATED PRODUCTS—Continued

Item	Articles	Rates of duty 1	Rates of duty 2
	Other:		
404.84	*5-Amino-2-(p-aminoanilino) benzenesulfonic acid; o-Aminobenzenesulfonic acid (Orthanilic acid); p-Aminobenzoylamino-naphthalene-sulfonic acid; 3-Amino-2,7-naphthalene-disulfonic acid; 4-Amino-1-napthalene-sulfonic acid, sodium salt; 5-Amino-1-naphthalene-sulfonic acid (Laurent's acid); 7-Amino-1,3,6-naphthalene-trisulfonic acid; Aminophenol, substituted; 8-Anilino-1-naphthalene-sulfonic acid (Phenyl Peri acid); 6-Chlorometanilic acid; 2-Chloro-5-nitroaniline; 4-Chloro-3-nitroaniline; 4-Chloro-0-nitroaniline; 4-Chloro-o-toluidine [NH2=1] and hydrochloride; 5-Chloro-o-toluidine [NH2=1] (Chloro-o-toluidine [CH3=1]); 6-Chloro-o-toluidine [NH2=1]; 4,4'-Diamino-3-biphenyl-sulfonic acid (3-benzidine-sulfonic acid); 2,3-Dichloro-aniline; 2,4-Dichloroaniline; 3,5-Dichloro-aniline; 2,6-Dichloro-m-toluidine; N,N-Diethylmetanilic acid; 2,4-Difluoroaniline; 3,3'-Dimethylbenzidine (o-Tolidine); 3,3'-Dimethylbenzidine hydrochloride; N,N-Dimethyl-p-toluidine; p-Ethylaniline; 3-(N-Ethylanilino) propionic acid, methyl-ester; N-Ethyl-N-benzyl-m-toluidine; N-Ethyl-N,N'-dimethyl-N'-phenylethy-lenediamine; N-Ethyl-1-naphthylamine; p-Fluoroaniline; 4,4'-Methylenebis[2-chloroaniline]; 1,8-Naphthalenediamine; m-Nitroaniline; 1-(p-Nitrophenyl)-2-amino-1,3-propane diol; 4-Nitro-m-phenylenediamine; Toluene-2,5-diamine; Toluidine carbonate; 2,4,5-Trichloroaniline; 2,3-Xylidine; and 3,4-Xylidine.*	*1.7¢ per lb. +12.4% ad val.*	*7¢ per lb. +39.5% ad val.*
404.88	*Other*	*1.7¢ per lb. +18.8% ad val.*	*7¢ per lb. +60% ad val.*
	Amines having one or more oxygen functions, and their derivatives:		
409.92	*p-Acetaminobenzaldehyde; 2'-Aminoacetophenone; m-Aminobenzoic acid, technical; Aminobisphenol ester; 2-Amino-4-chlorophenol; 2-Amino-4-chlorophenol hydrochloride; 2-Amino-p-cresol; 4-Amino-o-cresol; 6-Amino-2,4-dichloro-3-methylphenol; 4-Amino-5-hydroxy-1,3-naphthalenedisulfonic acid (Chicago acid); 4-Amino-5-hydroxy-1,3-naphthalenesulfonic acid, potassium salt; 4-Amino-5-hydroxy-2,7-naphthalenedisulfonic acid, potassium salt (H acid, monopotassium salt); 4-Amino-5-hydroxy-2,7-naphthalenedisulfonic acid, monosodium salt (H acid, monosodium salt); 4-Amino-5-hydroxy-1,3-naphthalenedisulfonic acid, sodium salt; 4-Amino-3-hydroxy-1-naphthalenesulfonic acid; 2-(3-Amino-4-hydroxyphenyl-sulfonyl)ethanol; 2-Amino-4-nitrophenol; 2-Amino-5-nitrophenol; 2-Amino-4-nitrophenol, sodium salt; m-Aminophenol; 2-(4'-Aminophenoxy)ethylsulfate; 1,4-Bis[1-anthraquinonylamino]-anthraquinone; 4,4',-Bis(dimethylamino)benzhydrol (Michler's hydrol); 5-Chloro-2[2',4'-dichlorophenoxy]-aniline; 3,5-Diaminobenzoic acid; DL-3-(3,4-Dihydroxyphenyl)-alanine; 1,4-Dimesidinoanthraquinone; 3,4-Dimethoxyphenethylamine (Homoveratrylamine); 4-Dimethylaminobenzaldehyde; 2-Hydroxy-5-nitrometanilic acid; B-(B-Methoxyethoxyethyl)-4-aminobenzoate; 4-Methoxymetanilic acid; 6'-Methoxymetanilic acid; 4-Methoxy-m-phenylenadiamine; 5-Methoxy-m-phenylenediamine sulfate; 6-(Methylamino)-1-naphthol-3-sulfonic acid; 7-(Methylamino)-1-naphthol-3-sulfonic acid; 2-Methyl-p-anisidine [NH2=1]; Nitra acid amide (1-amino-9,10-dihydro-N-(3-methoxypropyl)-4-nitro-9,10-dioxo-2-anthram-ide); and L-Phenylalanine.*	*1.7¢ per lb. + 12.2% ad val.*	*7¢ per lb. + 39% ad val.*

SCHEDULE 4.—CHEMICALS AND RELATED PRODUCTS—Continued

Item	Articles	Rates of duty 1	Rates of duty 2
404.96	3'-Aminoacetophenone; o-Anisidine; p-Anisidine; m-Diethylaminophenol; 3-Ethylamino-p-cresol; Iminodianthraquinone; 5-Methoxy-m-phenylenediamine; and dl-Phenylephrine base.	1.5¢ per lb. +16.2% ad val.	7¢ per lb. +65% ad val.
405.00	p-Aminobenzoic acid; 6-Amino-1-naphthol-3-sulfonic acid and its salts; 8-Amino-1-naphthol-5-sulfonic acid and its salts; m-Dimethylaminophenol; and p-Phenetidine.	1.4¢ per lb. +12.7% ad val.	7¢ per lb. +61% ad val.
405.03	4-Chloro-2,5-dimethoxyaniline [$NH_2=1$]; and 2,4-Dimethoxyaniline.	1.5¢ per lb. +10.4 ad val.	7¢ per lb. +41.5% ad val.
405.08	Other	1.7¢ per lb. +15.6% ad val.	7¢ per lb. +50% ad val.
	Amides and their derivatives:		
405.12	4-Acetamido-2-aminophenol	1.7¢ per lb. +12.5% ad val.	7¢ per lb. +40% ad val.
405.16	2-Acetamido-3-chloroanthraquinone; o-Acetoacetanisidide; o-Acetoacetotoluidide; 2',4'-Acetoacetoxylidide; and 1-Amino-5-benzamidoanthraquinone.	1.5¢ per lb.+ 13.2% ad val.	7¢ per lb.+53% ad val.
405.21	Benzanilide	1.7¢ per lb.+ 12.5% ad val.	7¢ per lb.+40% ad val.
405.24	Biligrafin acid; and 3,5-Diacetamido-2,4,6-triiodobenzoic acid.	1.4¢ per lb.+ 8.5% ad val.	7¢ per lb.+34% ad val.
	Other:		
405.28	p-Acetanisidide; Acetoacetbenzylamide; Acetoacet-5-chloro-2-toluidide; p-Acetoacetophenetidide; N-Acetyl-2,6-xylidine (N-Acetyl-2,6-dimethylaniline); p-Aminobenzoic acid isooctylamide; 2-Amino-4-chlorobenzamide; 4-Aminohippuric acid; 4'-Amino-N-methylacetanilide; p-Aminophenyl urethane; 1-Benzamido-4-chloroanthraquinone; 1-Benzamido-5-chloroanthraquinone; 4'-Chloroacetoacetanilide; 3-(N,N-Dihydroxyethylamino) benzanilide; 2,5-Dihydroxy-N-(2-hydroxyethyl)benzamide; 2,5-Dimethoxyacetanilide; Gentisamide; N-(7-Hydroxy-1-naphthyl)-acetamide; and Phenacetin, technical.	1.7¢ per lb.+ 12.4% ad val.	7¢ per lb.+ 39.5% ad val.
405.32	Other	1.7¢ per lb.+ 18.1% ad val.	7¢ per lb.+58% ad val.
	Other nitrogen-function compounds (except those in which the only nitrogen function is a nitro ($-NO_2$) or a nitroso ($-NO$) group, or an ammonium salt of an organic acid) and their derivatives:		
405.36	Benzonitrile	1.7¢ per lb.+ 12.5% ad val.	7¢ per lb.+40% ad val.
405.41	Diazoaminobenzene (1,3-Diphenyltriazene)	1.7¢ per lb.+ 12.5% ad val.	7¢ per lb.+40% ad val.
405.44	Toluenediisocyanates (unmixed)	1.7¢ per lb.+ 12.5% ad val.	7¢ per lb.+40% ad val.
	Other:		
405.48	Quaternary ammonium salts and hydroxides	1.7¢ per lb.+ 11.2% ad val.	7¢ per lb.+36% ad val.
405.52	Carboxyimide-function compounds (including orthobenzoic sulfimide and its salts) and imine-function compounds.	1.7¢ per lb. +19.1% ad val.	7¢ per lb. +61% ad val.
	Nitrile-function compounds:		
405.56	2-Amino-4-chlorobenzonitrile (5-Chloro-2-cyanoaniline); 2-Amino-5-chlorobenzonitrile; 4-Amino-2-chlorobenzonitrile; 2-Amino-5-nitzobenzonitrile; (Cyanoethyl)(hydroxyethyl)-m-toluidine; 2-Cyano-4-nitzoaniline; Dichlorobenzonitrile; Phthalonitrile; and Tetrachloro-3-cyanobenzoic acid methyl ester.	1.7¢ per lb. +12.7% ad val.	7¢ per lb. +41.% ad val.
405.60	Other	1.7¢ per lb. +20.6% ad val.	7¢ per lb. +65.5% ad val.
	Diazo-, azo-, and azoxy-compounds:		

SCHEDULE 4.—CHEMICALS AND RELATED PRODUCTS—Continued

Item	Articles	Rates of duty 1	Rates of duty 2
405.64	*p-Aminoazobenzenedisulfonic acid; 4-Aminoazobenzenedisulfonic acid, monosodium salt; 6-Amino-5,4'-azodibenzenesulfonic acid (C.I. acid yellow 9); and 6-Bromo-5-methyl-1H-imidazo [4,5-b]pyridine.*	1.7¢ per lb. +12.6% ad val.	7¢ per lb. +40.5% ad val.
405.68	*Other*	1.7¢ per lb. +19.9% ad val.	7¢ per lb. +63.5% ad val.
405.72	*Organic derivatives of hydrazine or hydroxylamine.*	1.7¢ per lb. +13.6% ad val.	7¢ per lb. +43.5% ad val.
	Compounds with other nitrogen functions:		
405.76	*Bitolylene diisocyanate (TODI); o-Isocyanic acid, o-tolyl ester; and Xylene diisocyanate.*	1.7¢ per lb. +12.5% ad val.	7¢ per lb. +40% ad val.
405.80	*Other*	1.7¢ per lb. +16.2% ad val.	7¢ per lb. +52% ad val.
	Organo-inorganic compounds (i.e., compounds having an atom other than carbon, hydrogen, oxygen, nitrogen, chlorine or other halogen attached directly to a carbon atom), and their derivatives;		
405.84	*Benzenethiol (Thiophenol)*	1.7¢ per lb. +12% ad val.	7¢ per lb. +38.5% ad val.
405.88	*Phenylsulfone*	1.5¢ per lb. +13.3% ad val.	7¢ per lb. +53% ad val.
405.92	*Sodium tetraphenylboron*	1.5¢ per lb. +10% ad val.	7¢ per lb. +40% ad val.
405.96	*2,4,4',5'-Tetrachlorophenylsulfone*	1.4¢ per lb. +10.4% ad val.	7¢ per lb. +41.5% ad val.
	Other;		
406.00	*Organo-sulfur compounds*	1.7¢ per lb. +12.6% ad val.	7¢ per lb. +40.5% ad val.
406.05	*Organo-mercury compounds*	1.7¢ per lb. +12.5% ad val.	7¢ per lb. +40% ad val.
406.08	*Other*	1.7¢ per lb. +21.4% ad val.	7¢ per lb. +68.5% ad val.
	Heterocyclic compounds and their derivatives (including lactones and lactams but excluding epoxides with three membered rings, anhydrides and imides of polybasic acids, and cyclic esters of polyhydric alcohols with polybasic acids):		
406.12	*1,2 Dihydro-2,2,4-trimethylquinoline*	1.7¢ per lb. +12.5% ad val.	7¢ per lb. +40% a val-
406.16	*2,2'-Dithiobishbenzothiazole*	1.7¢ per lb. +17.9% ad val.	7¢ per lb. +57% ad val.
406.20	*Ethoxyquin (1,2-Lihydro-6-ethoxy-2,2,4-trimethylquinoline).*	1.7¢ per lb. +17.1% ad val.	7¢ per lb. +55% ad val.
406.24	*1-Hydroxy-2-carbazolecarboxylic acid; 2-Hydroxy-3-dibenzofuran-carboxylic acid; and 7-Nitro-naphth[1,2]oxadiazole-5-sulfonic acid and its salts.*	1.4¢ per lb, +16.6% ad val.	7¢ per lb. +66.5% ad val.
406.28	*2-Mercaptobenzothiazole, sodium salt (2-Benzothiazolethiol, sodium salt).*	1.7¢ per lb. +12.5% ad val.	7¢ per lb. +40% ad val.
406.32 +	*2-Pyridinecarboxaldehyde; and Vinylcarbazole, mono.*	1.5 per lb. +10% ad val.	7¢ per lb. +40% ad val.
	Other:		

SCHEDULE 4.—CHEMICALS AND RELATED PRODUCTS—Continued

Item	Articles	Rates of duty 1	Rates of duty 2
406.36	*4-Aminoantipyrine; 2-Amino-6-methoxybenzothiazole; 2-Amino-6-methyl-benzothiazole; Aminomethylphenylpyrazole (Phenylmethylaminopyrazole); 5-Amino-3-phenyl-1,2,4-thiadiazole (3-phenyl-5-amino-1,2,4-thiadiazole); 3-Amino-1-(2,4,6-trichlorophenyl)-5-pyrazolone; p-Chloro-2-benzylpyridine; 4-Chloro-3-(3-methyl-5-oxo-2-pyrzolin-1-yl)-benzenesulfonic acid; 4-Chloro-1-methylpiperidine hydrochloride; 1-(m-Chlorophenyl)-3-methyl-2-pyrazolin-5-one; 1-(2',5'-Dichlorophenyl)-3-methyl-2-pyrazolin-5-one; 2,3-Dichloro-6-quinoxalinecarbonyl chloride; 1,4-Dimethyl-6-hydroxy-3-cyanpyridone-2; 6-Ethoxy-2-benzothiazolethiol; o-Ethylpyrazolone; 2-Hydroxy-3-carbazolecarboxylic acid; 2-Hydroxy-3-carbazole-carboxylic acid, sodium salt; Iminodibenzyl (10,11-dihydro-5H-dibenz [b,f] azepine; 5-Imino-3-methyl-1-(m-sulfophenyl) pyrazole; 5-Imino-3-methyl-1 phenylpyrazole; Iminopyrazole-3-sulfonic acid-Indoline; Isoquinoline; 3-Methylbenzo-[f]quinoline; 3-Methylbenzothiazole-2-hydrazone; 2-Methylindoline; 1-methyl-2-phenylindole; Methylpyrazine; 8-Methylquinoline; 2-Phynlbenzimidazole; p-Phenylimidazole; 2-Phenylimidazole; 2-Phenylindole; 4-Phenylpropylpyridine; p-Phenylpyridylacetic acid, methyl ester; Picolinic acid; Primuline base; Pyrazole (3-carboxy-1-4-sulphophenylpyrazole-5-one); 2,5-Pyridinedicarboxylic acid; 3-Quinuclidinol; Tetramethylpyrazine; 1,9-Thiathrenedicarboxylic acid; Thioxanthen-9-one (Thioxanthone); 1-(2,4,6-Trichlorophenyl)-3-aminopyrazolone; 2-(Trifluoromethyl)-phenothiazine; 2,3,5-Triphenyltetrazolium chloride; DL-Tryptophan; and Xanthen-9-one.*	*1.7¢ per lb. + 12.4% ad val.*	*7¢ per lb. + 39.5% ad val.*
406.40	*Other*	*1.7¢ per lb. + 16.2% ad val.*	*7¢ per lb. + 52% ad val.*
	Sulfonamides, sultones, sultams, and other organic compounds:		
406.44	*Copper phthalocyanine ([Phthalocyanato(2-)] copper).*	*1.7¢ per lb. +20.9% ad val.*	*7¢ oer lb. +67% ad val.*
	Sulfonamides:		
406.48	*4-Amino-6-chloro-m-benzenedisulfanomide; 2-Amino-N-ethylbenzene-sulfonanilide; 5-Amino-α,α,α-trifluoro-toluene-2,4-disulfonamide; Benzenesulfonamide; Benzenesulfonyl hydrazide; 2-Chloro-4-amino-5-hydroxybenzenesulfonamide; 2,5-Dimethoxysulfanilide; and Metanilamide.*	*1.7¢ per lb. +12.8% ad val.*	*7¢ per lb. +41% ad val.*
406.52	*o-Toluenesulfonamide*	*1.4¢ per lb. +14% ad val.*	*7¢ per lb. +57.5% ad val.*
406.56	*Other*	*1.7¢ per lb. +18% ad val.*	*7¢ per lb. +57.5% ad val.*
406.61	*Other*	*1.7¢ per lb. +14.5% ad val.*	*7¢ per lb. +46.5% ad val.*
	All other products, by whatever name known, not provided for in subpart A or C of this part, including acrylic organic chemical products, which are obtained, derived, or manufactured in whole or in part from any of the cyclic products having a benzenoid, quinoid, or modified benzenoid structure provided for in the foregoing provisions of this subpart or in subpart A of this part:		
406.64	*Acetone*	*1.7¢ per lb. +18.7% ad val.*	*7¢ per lb. +60% ad val.*
406.68	*Adipic acid*	*1.7¢ per lb. +19.8% ad val.*	*7¢ Oer lb. +63% ad val.*
406.72	*Caprolactam monomer*	*1.5¢ per lb. +10% ad val.*	*7¢ per lb. +40% ad val.*

SCHEDULE 4.—CHEMICALS AND RELATED PRODUCTS—Continued

Item	Articles	Rates of duty 1	Rates of duty 2
406.76	Cyclohexane	1.7¢ per lb. +12.5% ad val.	7¢ per lb. +40% ad val.
406.81	Cyclohexanone	1.7¢ per lb. +12.5% ad val.	7¢ per lb. +40% ad val.
406.84	Fumaric acid	1.7¢ per lb. +27.2% ad val.	7¢ per lb. +87% ad val.
406.86	Hexamethylene adipamide	1.5¢ per lb. +11.5% ad val.	7¢ per lb. +46% ad val.
406.92	Hexamethylenediamine	1.7¢ per lb. +20.8% ad val.	7¢ per lb. +66.5% ad val.
406.96	Maleic anhydride	1.7¢ per lb. +15.6% ad val.	7¢ per lb. +50% ad val.
407.00	Methylcyclohexanone	1.5¢ per lb. +10% ad val.	7¢ per lb. +40% ad val.
407.05	Other	1.7¢ per lb. +16.8% ad val.	7¢ per lb. +53.5% ad val.
	Mixtures in whole or in part of any of the products provided for in this subpart;		
407.09	*Solvents which contain over 25 percent by weight of any of the products provided for in this subpart.*	1.7¢ per lb. +13.6% ad val., but not less than the highest rate applicable to any component material.	7¢ per lb. +43.5% ad val., but not less than the highest rate applicable to any component material.
407.15	Other	1.7¢ per lb. +13.6% ad val., but not less than the highest rate applicable to any component material	7¢ per lb. +43.5% ad val. but not less than the highest rate appicable to any component material.

Subpart C.—Finished Organic Chemical Products

Subpart C headnotes;

1. The provisions of this subpart providing for products obtained, derived, or manufactured in whole or in part from products described in subpart A or B of this part shall also apply to products of like chemical composition having a benzenoid, quinoid, or modified benzenoid structure artifically produced by synthesis, whether or not obtained, derived, or manufactured in whole or in part from products described in the said subpart A or B.

2. The term "pesticides" in items 408.16 to 408.36, inclusive, means products, such as insecticides, rodenticides, fungicides, herbicides, fumigants, and seed disinfectants, chiefly used to destory undesired animal or plant life.

3. The term "plastics materials" in items 408.44 to 409.18, inclusive, embraces products formed by the condensation, polymerization, or copolymerization of organic chemicals and to which plasticizers, fillers, colors, or extenders may have been added. The term includes, but is not limited to, phenolic and other tar-acid resins, styrene resins, alkyd and polyester resins based on phthalic anhydride, coumarone-indene resins, urethane, epoxy, toluene sulfonamide, maleic, fumaric, aniline, and polyamide resins, and other synthetic resins. The plastics materials may be in solid, semisolid, or liquid condition, such as flakes, powders, pellets, granules, solutions, emulsions, and other basic forms not further processed.

4. For the purpose of the classification of merchandise provided for under items 408.44 to 409.18, inclusive, the following provisions shall apply;

(a) The term "thermoplastic resins" means those materials in unfinished forms which in their final state as finished articles are capable of being repeateldy softened by increase of temperature and hardened by decrease of temperature.

(b) The term "thermosetting resins" (or thermosets) means

SCHEDULE 4.—CHEMICALS AND RELATED PRODUCTS—Continued

Item	Articles	Rates of duty 1	Rates of duty 2

those materials in unfinished forms which in their final state as finished articles are substantially infusible. Thermosetting resins are often liquids at some stage in their manufacture or processing and are cured by heat, catalysis, or other chemical means. After being fully cured, thermosets cannot be resoftened by heat.

(c) Copolymers and terpolymers not specially provided for shall be classified as if they consisted entirely of that monomer which is present in the largest amount by weight on a resin content basis (i.e., excluding the weight of plasticizers, liquid diluents, fillers, or other additives). Any polymer consisting of two or more monomers which are present in equal amounts shall be classified as if it consisted entirely of that monomer whose polymer is listed first under the thermoplastic or thermosetting resins, as appropriate.

5. The term "paints and enamel paints" in this subpart covers dispersions of pigments or pigment-like materials with a liquid (vehicle) which are suitable for application to surfaces as a thin layer, and which dry (harden) to an opaque, solid film. The vehicle of paints consists of drying oils or resins which bind the pigment particles together in the film: the vehicle of enamel paints is principally varnish. Paints and enamel paints may also contain thinners, driers, plasticizers, or other agents.

6. The term "varnishes" in this subpart covers liquid surface-coating products which contain no pigments or pigment-like materials, and which dry (harden) to a transparent or translucent film. Shellac varnishes are solutions of shellac or any other form of lac in a volatile solvent such as ethyl alcohol. Oleoresinous varhisnes consist of resins dissovled in or reacted with a drying oil, to which thinners, driers, and plasticizers may be added. Cellulose-derivative varhisnes (lacquers) are solutions of cellulose nitrate or other cellulose derivatives in a volatile solvent.

7. The term "stains" in this subpart covers liquids containing transparent or semi-transparent pigments, dyes, or chemicals, chiefly used to deepen or otherwise alter the color of wood, but which will not obscure its grain, texture, or markings.

8. For the purposes of this subpart—

(a) The term "surface-active agents" means synthetic organic compounds, or mixtures thereof, which function as surface tension modifiers and are chiefly used for any one or combination of the following purposes; as detergents, wetting agents, emulsifiers, dispersants, or foaming agents.

(b) The term "synthetic detergents" embraces formulated materials which are used chiefly for household, laundry, and industrial cleaning purposes, and which consist of one or more surface-active agents as the active ingredients in combination with colors, brighteners, perfumes, inert diluents, builders, and extenders such as inorganic salts, polyphosphates, polysilicates or sodium carboxymethylcellulose.

9. The term "plasticizers" in item 409.34 means substances which may be incorporated into a material (usually a plastic, resin material, or an elastomer) to increase its softness, flexibility, workability, or distensibility.

10. The term "drugs" in this subpart means those substances having therapeutic or medicinal properties and chiefly used as medicines or as ingredients in medicines.

11. For the purposes of the provisions of this subpart relating to "colors, dyes, stains, and related products" (except products provided for in items 410.36 to 410.44, inclusive)—

(a) the specific duties shall be based on standards of strength which shall be established by the Secretary of the Treasury, and upon all importations of such articles which exceed such standards of strength the specific duty shall be computed on the weight which the article would have if it were diluted to the standard strength, but in no case shall any such articles of whatever strength be subject to a less specific duty than that provided in the respective items of this subpart;

(b) it shall be unlawful to import or bring into the United States any such product unless the invoice shall bear a plain, conspicuous, and truly descriptive statement of the identity and percentage, exclusive of diluents, of such product;

(c) it shall be unlawful to import or bring into the United States any such product, if the immediate container or the invoice bears any statement, design, or device regarding the product or the ingredients or substances contained therein which is false, fraudulent, or misleading in any particular; and

SCHEDULE 4.—CHEMICALS AND RELATED PRODUCTS—Continued

Item	Articles	Rates of duty 1	Rates of duty 2
	(d) in the enforecment of the foregoing provisions of this headnote the Secretary of the Treasury shall adopt a standard of strength for each dye or other product which shall conform as nearly as practicable to the commercial strength in ordinary use in the United States prior to July 1, 1914. If a dye or other product has been introduced into commercial use since said said date then the standard of strength for such dye or other product shall conform as nearly as practicable to the commercial strength in ordinary use. If a dye or other product was or is ordinarily used in more than one commercial strength, then lowest commercial strength shall be adopted as the standard of strength for such dye or other product.		
	12. Any product described in two or more of the ietms under items 411.32 to 412.68, inclusive, is to be classified in the first applicable item.		
	Products obtained, derived, or manufactured in whole or in part from any product provided for in subpart A or B of this part:		
	Explosives:		
	Trinitrotoluene:		
408.00	*Valued not over 15 cents per poind*	*1.7¢ per lb. +11% ad val.*	*7¢ per lb. +45% ad val.*
408.04	*Valued over 15 cents per pound*	*Free*	*7¢ per lb. +45% ad val.*
408.08	*Other*	*1.7¢ per lb. + 11% ad val.*	*7¢ per lb. + 45% ad val.*
408.12	*Ink powders*	*1.7¢ per lb. + 11% ad val.*	*7¢ per lb. + 45% ad val.*
	Pesticides:		
	Not artificially mixed:		
408.16	*Fungicides*	*1.7¢ per lb. + 12.5% ad val.*	*7¢ per lb. + 40% ad val.*
	Herbicides (including plant growth regulators):		
408.21	*S-(4-Chlorobenzyl)-N, N-diethylthiocarbamate (Benthiocarb); 2-(4-Chloro-2-methylphenoxy) propionic acid and its salts; p-Chlorophenoxyacetic acid; 3-(p-Chlorophenyl)-1-,1-dimethylurea (Monuron); 3,5-Dibromo-4-hydroxy-benzonitrile (Bromozymil); 2-(2,4-Dichlorophenoxy)- propionic acid; 2,2-Dimethyl-1,3-benzodioxol-4-yl methylcarbamate (Bendiocarb); 1,1-Dimethyl-3-(α,α,α-trifluoro-m-tolyl)urea (Fluometuron); o-Diquat debromide (1,1'-Ethylene-2,2'-dipyridylium dibromide); 3-Ethoxycarbonylaminophenyl-N-phenylcarbamate (Desmediphan); 2-Ethoxy-2,3-dihydro-3,3-dimethyl-5-benzofuranyl-methanesulfonate; 3-Isopropyl-1H-2,1,3-benzothiadiazin-4(3H)-one-2,2-dioxide (Bentazon); Isopropyl-N-(3-chlorophenyl) carbamate (CIPC); Methyl-4-aminobenzenesulfonyl-carbamate (Asulam), and o-Paraquat dichloride.*	*1.7¢ per lb. + 12.6% ad val.*	*7¢ per kb, + 40.5% ad val.*
408.22	*Other*	*1.7¢ per lb. + 15.1% ad val.*	*7¢ per lb. + 48.5% ad val.*
	Insecticides:		
408.24	*1,2-Benzisothiazolin-3-one; N'-(4-Chloro-o-tolyl)-N,N-dimethylformamidine; 1,1-1,1-Dichloro-2,2-bis(p-ethylphenyl)ethane; o,o-Diethyl-S-[(6-chloro-2-oxo-benzoxazolin-3-yl) methyl[phosphorodithioate (Phosalone); and o,o-Dimethyl-o-(4-nitro-m-tolyl)phosphorothioate (Fenitrothion)*	*1.7¢ per lb. + 12.8% ad val.*	*7¢ per lb. + 41% ad val.*
408.28	*Other*	*1.7¢ per lb. + 20.1% ad val.*	*7¢ per lb. + 64.5% ad val.*
408.32	*Other*	*1.7¢ per lb. +12.5% ad val.*	*7¢ per lb. +40% ad val.*
408.36	*Other*	*1.7¢ per lb. +9.7% ad val.*	*7¢ per lb. +31% ad val.*
408.41	*Photographic chemicals*	*3¢ per lb. +21% ad val.*	*7¢ per lb. +50% ad val.*

SCHEDULE 4.—CHEMICALS AND RELATED PRODUCTS—Continued

Item	Articles	Rates of duty 1	Rates of duty 2
	Plastics materials:		
408.44	*Concentrated dispersions of pigments in plastics materials.*	1.4¢ per lb. +9% ad val.	7¢ per lb. +45% ad val.
408.48	*Paints and enamel paints*	1.4¢ per lb. +9% ad val.	7¢ per lb. +45% ad val.
408.52	*Varnishes and lacquers*	1.4¢ per lb. +11.4% ad val.	7¢ per lb. +57% ad val.
	Other:		
	Thermoplastic resins:		
408.54	*Petroleum hydrocarbon and coumarone-indene resins.*	1.4¢ per lb. +9.8% ad val.	7¢ per lb. +49% ad val.
408.61	*Polyamide resins, nylon type*	1.4¢ per lb. +10.3% ad val.	7¢ per lb. +51.5% ad val.
408.64	*Polycarbonate resins*	1.4¢ per lb. +9% ad val.	7¢ per lb. +45% ad val.
408.68	*Polyester resins, saturated*	1.4¢ prr lb. +9% ad val.	7¢ per lb. +45% ad val.
408.72	*Acrylonitrile-butadiene-styrene (ABS) resins*	1.4¢ per lb. +9.4% ad val.	7¢ per lb. +47% ad val.
408.76	*Methyl methacrylate-butadiene-styrene (MBS) resins.*	1.4¢ per lb. +13.5% ad val.	7¢ per lb. +67.5% ad val.
408.81	*Styrene-acylonitrile (SAN) resins*	1.4¢ per lb. +9.1% ad val.	7¢ per lb. +45.5% ad val.
408.84	*Polystyrene resins and styrene copolymers, terpolymers (except ABS, MBS, and SAN resins).*	1.4¢ per lb. +9.2% ad val.	7¢ per lb. +46% ad val.
408.88	*Other*	1.4¢ per lb. +9.8% ad val.	7¢ per lb. +49% ad val.
	Thermosetting resins:		
408.92	*Alkyd resins*	1.4¢ per lb. +9% ad val.	7¢ per lb. +45% ad val.
408.96	*Allyl resins (e.g., diallyl phthalate)*	1.4¢ per lb. +9% ad val.	7¢ per lb. +45% ad val.
409.02	*Epoxy resins*	1.4¢ per lb. +9.4% ad val.	7¢ per lb. +47% ad val.
409.06	*Phenolic resins*	1.4¢ per lb. +9.6% ad val.	7¢ per lb. +48% ad val.
409.10	*Polyester resins, unsaturated*	1.4¢ per lb. +9% ad val.	7¢ per lb. +45% ad val.
409.14	*Polyurethane resins*	1.4¢ per lb. +10.3% ad val.	7¢ per lb. +51.5% ad val.
409.18	*Other*	1.4¢ per lb. +9% ad val.	7¢ per lb. +45% ad val.
	Products chiefly used as assistants in preparing or finishing textiles:		
409.22	*Surface-active agents and synthetic detergents*	1.4¢ per lb. +10.7% ad val.	7¢ per lb. +53.5% ad val.
409.26	*Other*	1.4¢ per lb. +9.9% ad val.	7¢ per lb. +49.5% ad val.
409.30	*Products (except those in items 409.22 and 409.26) chiefly used for any one or combination of the following purposes: As detergents, wetting agents, emulsifiers, dispersants, or foaming agents.*	1.7¢ per lb. +13.9% ad val.	7¢ per lb. +44.5% ad val.
409.34	*Products chiefly used as plasticizers*	1.7¢ per lb. +17.7% ad val.	7¢ per lb. +57% ad val.
409.38	*Sodium benzoate*	1.5¢ per lb. +15.3% ad val.	7¢ per lb. +65.5% ad val.
409.42	*Synthetic tanning materials*	3.5¢ per lb. +24.4% ad val.	7¢ per lb. +48.5% ad val.
	Colors, dyes, stains, and related products:		
409.46	*Sulfur black, "Colour Index Nos. 53185, 53190, and 53195"*	1.5¢ per lb. +14% ad val.	3¢ per lb. +28% ad val.
409.50	*Vat blue 1 (synthetic indigo), "Colour Index No. 73000"*	1.5¢ per lb. +14.4% ad val.	3¢ per lb. +29% ad val.
409.54	*Acid blue 45, 106; Acid yellow 116; Basic blue 3; Basic red 14; Basic yellow 1, 11, 13; Direct blue 86; Direct red 83; Direct yellow 28; Disperse red 4; Fluorescent brightening agent 32; Solvent orange 11; Solvent yellow 25; Vat brown 3; Vat orange 2, 7, and Vat violet 9, 13; all the foregoing obtained derived, or manufacture in whole or in part from any product provided for in subpart A or B of this part.*	22.6% ad val.	7¢ per lb. +63.5% ad val.

SCHEDULE 4.—CHEMICALS AND RELATED PRODUCTS—Continued

Item	Articles	Rates of duty 1	Rates of duty 2
409.58	*Acid black 31, 50, 94, 129; Acid blue 54, 127, 129, 143; Acid brown 44, 46, 48, 58, 188, 189; Acid green 40; Acid red 130, 145, 174, 211; Acid violet 19, 31, 41, 48; Acid yellow 2, 75; Basic orange 22; Basic red 13; Direct black 62, 91; Direct blue 92, 106, 108, 109, 160, 172; Direct brown 103, 115, 116; Direct green 5, 29, 31; Direct orange 37; Disperse blue 30, Fluorescent brightening agent 18, 24; Ingrain blue 2; Mordant black 8; Mordant green 47; Mordant red 17, 27; Reactive black 1; Reactive blue 1, 2, 4; Reactive orange 1; Reactive red 1, 2, 3, 5, 6; Reactive yellow 1; Vat blue 2; Vat red 44; Vat solubilized orange 3; and Vat yellow 4, 20; all the foregoing obtained, derived, or manufactured in whole or in part from any product provided for in subpart A or B of this part.*	17.7% ad val.	7¢ per lb. + 50% ad val.
	Colors, dyes, and stains (except toners), whether soluble or not in water, obtained, derived, or manufactured in whole or in part from any product provided for in subpart A or B of this part:		
	Acid dyes:		
409.62	*Acid black 61, 63, 76, 83, 117, 127, 131, 132, 139, 164, 170, 185, 194; Acid blue 47, 60, 61, 66, 72, 81, 90, 98, 102, 112, 123, 126, 127:1, 130, 133, 140, 142, 147, 151, 172, 182, 185, 193, 204, 205, 208, 209, 221, 225, 229, 239, 242, 247, 250, 254, 260, 261, 264, 266, 268, 288, 290, 296, 317; Acid brown 10, 11, 30, 33, 45, 50, 68, 83, 100, 101, 103, 104, 105, 106, 126, 127, 147, 158, 160, 161, 162, 163, 165, 180, 191, 195, 224, 226, 227, 235, 237, 239, 248, 266, 267, 270, 276, 282, 283, 289, 290, 291, 298, 304, 311, 314, 315, 321, 322, 324, 325, 350, 351, 355, 358, 359, 360, 361, 362; Acid green 26, 28, 41, 43, 60, 68, 70, 71, 73, 80, 82, 84, 92, 93, 94, 108; Acid orange 3, 19, 28, 33, 45, 47, 61, 86, 89, 94, 102, 126, 142; Acid red 37, 42, 48, 57, 58, 92, 111, 118, 127, 131, 138, 143, 155, 161, 199, 216, 226, 227, 228, 249, 252, 257, 259, 260, 261, 263, 274, 281, 282, 283, 301, 303, 310, 315, 331, 332, 336, 357, 361, 362, 392; Acid violet 9, 54, 36, 47, 66, 75, 80, 90, 103, 109, 111, 121; Acid yellow 7, 64, 96, 111, 127, 136, 155, 167, 183, 184, 194, 218, 225; Copper phthalocyanine-3,3',4,4'-tetrasulfonic acid; and Copper phthalocyanine-4,4', 4'', 4'''-tetrasulfonic acid.*	23% ad val.	7¢ per lb. + 52% ad val.
409.66	*Other*	30.7% ad val.	7¢ per lb. + 69.5% ad val.
	Basic dyes:		
409.70	*Basic 7; Basic blue 41, 45, 48, 55, 62, 66, 71, 78, 80, 81, 141; Basic green 6, 8; Basic orange 30, 35, 36, 37, 43, 44; Basic red 23, 28, 29, 43, 46, 58, 100; Basic violet 2, 22, 25, 37, 38; and Basic yellow 19, 23, 24, 25, 39, 40, 45, 54, 56, 63, 70.*	22.6% ad val	7¢ per lb. + 51% ad val.
409.74	*Other*	30.9% ad val	7¢ per lb. + 70% ad val.
	Direct dyes:		
409.78	*Direct black 51, 69, 112, 118, 122; Direct blue 74, 77, 90, 137, 156, 158, 168: 1, 207, 211, 225, 244, 267; Direct brown 97, 113, 167, 169, 170, 200, 212, 214; Direct green 33, 59, 67, 68; Direct orange 17, 60, 105, 106, 107, 118; Direct red 9, 89, 92, 95, 111, 127, 173, 207; Direct violet 47, 93; and Direct yellow 39, 68, 93, 95, 96, 98, 109, 110, 133.*	23.8% ad val	7¢ per lb. + 53.5% ad val.
409.82	*Other*	28.6% ad val	7¢ per lb. + 64.5% ad val.
	Disperse dyes:		
409.86	*Disperse blue 19, 26, 55, 56, 58, 72, 79, 83, 84, 93, 95, 122, 125, 128, 154, 165, 180, 183, 185, 200, 284, 285, 288, 295, 296; Disperse brown 19; Disperse green 9; Disperse orange 7, 13, 20, 31, 47, 48, 56, 63, 70, 80, 96, 127, 137; Disperse red 44, 72, 73, 90, 93, 107, 118, 121, 122, 131, 133, 134, 161, 184, 202, 203, 224, 278, 282, 310; Disperse violet 25, 63; and Disperse yellow 13, 63, 65, 82, 91, 107, 119, 122, 124, 126, 139, 184.*	22.5% ad val	7¢ per lb. + 51% ad val.
409.90	*Other*	27.8% ad val	7¢ per lb. + 62.5% ad val.
409.94	*Fluorescent brighteners*	19% ad val	7¢ per lb. + 43% ad val.
	Solvent dyes:		
409.96	*Solvent black 2, 3, 27, 28, 34; Solvent blue 49, 51, 53, 67, 97; Solvent brown 1, 28, 42, 44; Solvent green 4, 5, 7, 19, 28, 213; Solvent orange 45, 54, 63, 67; Solvent red 18, 19, 23, 27, 35, 92, 110, 118, 119, 124, 125, 130, 131, 132, 160; Solvent violet 2, 25; and Solvent yellow 1, 32, 48, 64, 89, 93, 98, 160.*	19.9% ad val	7¢ per lb. + 45% ad val.

SCHEDULE 4.—CHEMICALS AND RELATED PRODUCTS—Continued

Item	Articles	Rates of duty 1	Rates of duty 2
410.00	Other	28% ad val.	7¢ per lb. + 63% ad val.
	Reactive dyes:		
410.04	Reactive black 4, 10, 13, 21, 23, 26, 34, 35, 41; Reactive blue, 7, 8, 10, 13, 18, 22, 23, 24, 26, 29, 34, 39, 40, 41, 42, 43, 44, 50, 51, 52, 55, 66, 67, 69, 74, 75, 77, 78, 79, 82, 94, 103, 104, 114, 116, 118, 136, 140, 156, 157, 160; Reactive brown 2, 5, 12, 18, 19, 23; Reactive green 5, 6, 8, 12, 15, 16; Reactive orange 5, 9, 10, 11, 15, 20, 29, 33, 34, 35, 42, 44, 45, 62, 64, 67, 69, 70, 71, 82, 84; Reactive red 4, 7, 8, 12, 13, 16, 17, 19, 21, 29, 40, 42, 45, 55, 56, 66, 78, 82, 83, 84, 86, 99, 104, 116, 119, 121, 122, 123, 124, 132, 134, 151, 152, 159; Reactive violet 3, 12, 23, 24; and Reactive yellow 4, 6, 11, 12, 15, 25, 27, 29, 35, 41, 52, 57, 58, 64, 81, 82, 85, 87, 110.	20.5% ad val.	7¢ per lb. + 46.5% ad val.
410.08	Other	27.8% ad val.	7¢ per lb. + 62.5% ad val.
	Vat dyes:		
410.12	Solubilized vat blue 5; Solubilized vat orange 1; Solubilized vat yellow 7, 45, 47; Vat black 19, 30, 31; Vat blue 19, 21, 66; Vat brown 33, 57; Vat green 28, 48; Vat orange 5, 13; Vat red 15, 41; and Vat yellow 46.	20.9% ad val.	7¢ per lb. + 47.5% ad val.
410.16	Other	32.9% ad val.	7¢ per lb. + 74.5% ad val.
410.20	Other	21.9% ad val.	7¢ per lb. + 49.5% ad val.
410.24	Natural alizarin and natural indigo; colors, dyes, and stains (except toners), whether soluble or not in water, obtained, derived, or manufactured in whole of in part from natural alizarin or natural indigo; color acids, color bases, indoxyl, indoxyl compounds, and leuco-compounds (whether colorless or not), obtained, derived, or manufactured in whole of in part from natural alizarin, natural indigo, or any product provided for in subpart A or B of this part. Color lakes and toners, obtained, derived, or manufactured in whole or in part from natural alizarin, natural indigo, or any product provided for in subpart A or B of this part.	2.8¢ per lb. +28% ad val.	7¢ per lb. +70% ad val.
410.28	Pigment black 1; Pigment blue 16, 18; Pigment brown 22, 23, 25; Pigment green 8; Pigment orange 31, 34, 36, 51; Pigment red 9, 14, 34, 48:3, 52, 112, 139, 144, 146, 151, 166, 169, 170, 171, 175, 176, 177, 178, 180, 185, 188, 192, 199, 208, 209, 220, 221; and Pigment yellow 49, 81, 97, 101, 109, 110, 117, 127.	20.4% ad val.	7¢ per lb. +46% ad val.
410.32	Other	31.8% ad val.	7¢ per lb. +70.5% ad val.
410.36	Fast color bases	1.7¢ per lb. +13.3% ad val.	7¢ per lb. +53% ad val.
410.40	Fast color salts	1.7¢ per lb. +13.6% ad val.	7¢ per lb. +54.5% ad val.
410.44	Naphthol AS as derivatives	1.7¢ per lb. +15% ad val.	7¢ per lb. +60% ad val.
	Products suitable for medicinal use, and drugs: Obtained derived, or manufactured in whole or in part from any product provided for in subpart A or B of this part: Products suitable for medicinal use:		
410.48	Acetanilide	1.7¢ per lb. +25% ad val.	7¢ per lb. +45% ad val.
410.52	Benzaldehyde	1.7¢ per lb. +12.5% ad val.	7¢ per lb. +45% ad val.
410.56	Benzoic acid	1.7¢ per lb. +19.2% ad val.	7¢ per lb. +69.5% ad val.
410.60	2-Naphthol (Beta-naphthol)	1.7¢ per lb. +12.5% ad val.	7¢ per lb. +45% ad val.
410.64	Resorcinol	1.7¢ per lb. +9.4% ad val.	7¢ per lb. +34% ad val.
410.66	Salicylic acid and its salts	1.7¢ per lb. +20% ad val.	7¢ per lb. +72% ad val.

SCHEDULE 4.—CHEMICALS AND RELATED PRODUCTS—Continued

Item	Articles	Rates of duty 1	Rates of duty 2
	Drugs:		
410.68	*Acetphenetidine (Phenacetin)*	1.4¢ per lb. +12.1% ad val.	7¢ per lb. +54.5% ad val.
410.72	*Acetylsalicylic acid (Aspirin)*	1.7¢ per lb. +22.7% ad val.	7¢ per lb. +82% ad val.
410.76	*Antipyrine*	1.7¢ per lb. +13.7% ad val.	7¢ per lb. +49.5% ad val.
410.80	*5-Chloro-7-iodo-8-quinolinol (Iodochlorhydroxyquin) and 2-[1-(p-chlorophenyl)-3-dimethyl-aminopropyl]-pyridine maleate (Chlorpheniramine maleate)*	1.4¢ per b. +16.3% ad val.	7¢ per lb. +73.5% ad val.
410.84	*Diethylaminoacetoxylidide (Lidocaine)*	1.7¢ per lb. +24.8% ad val.	7¢ per lb. +101.5% ad val.
410.88	*5-Ethyl-5-phenylhexahydro-pyrimidine-4,6-dione (Primidone)*	1.2¢ per lb. +8.5% ad val.	7¢ per lb. +45% ad val.
	Hydantoin derivatives:		
410.92	*Methylphenethylhydantoin (Mephenytoin)*	1.4¢ per lb. +12.6% ad val.	7¢ per lb. +63% ad val.
410.96	*Other*	1.4¢ per lb. +12.6% ad val.	7¢ per lb. +63% ad val.
	Imidazoline derivatives:		
411.00	*2-Benzyl-4,5-imidazoline hydrochloride (Tolazoline hydrochloride)*	1.4% per lb. +11.7% ad val.	7¢ per lb. +58.5% ad val.
411.04	*Phenylbenzylaminoethylimidazoline hydrochloride*	1.4¢ per lb. +10 2% ad val.	7¢ per lb. +51% ad val.
411.08	*Other*	1.4¢ per lb. +10.2% ad val.	7¢ per lb. +51% ad val.
411.12	*Phenolphthalein*	1.7¢ per lb. +14.8% ad val.	7¢ per lb. +63% ad val.
411.16	*Phenylephrine hydrochloride*	1.4¢ per lb. +13% ad val.	7¢ per lb. +58.5% ad val.
411.20	*Salo (Phenyl salicylate)*	1.7¢ per lb. +12.5% ad val.	7¢ per lb. +45% ad val.
411.24	*Sulfamethazine*	1.4¢ per lb. +17.8% ad val.	7¢ per lb. +80% ad val.
411.28	*Sulfadiazine, sulfaguanidine, sulfamerazine, sulfapyridine, and salicylazosulfapyridine (Sulfasalazine).*	1.4¢ per lb. +28.5% ad val.	7¢ per lb. +128.5% ad val.
	Other:		
	Alkaloids and their salts and other derivatives:		
411.32	*Ephedrine, pseudoephedrine, racephedrine, and their salts.*	1.7 per lb. +16.4% ad val.	7¢ per lb. +69% ad val.
	Papaverine and its salts:		
411.36	*Ethaverine hydrochloride*	1.7¢ per lb. +13.5% ad val.	7¢ per lb. +48.5% ad val.
411.49	*Other*	1.7¢ per lb. +28.9% ad val.	7¢ per lb. +104% ad val.
	Other:		
411.44	*Aercoline, hydrobromide; Deserpidine; Ergonovine maleate; Lobeline sulfate; Meperidine hydrochloride; Nicitinyl alcohol tartrate; and Quinacrine hydrochloride.*	1.7 per lb. +13.9% ad val.	7¢ per lb. +60% ad val.
411.48	*Other*	1.7 per lb. +24.5% ad val.	7¢ per lb. +88% ad val.
	Antihistamines, including those chiefly used as antinauseants:		
411.52	*Diphenhydramine; Promethazine hydrochloride; and Tripolidine hydrochloride.*	1.7¢ per lb. +12.5% ad val.	7¢ per lb. +45% ad val.
411.56	*Other*	1.7¢ per lb. +22.8% ad val.	7¢ per lb. +82% ad val.

SCHEDULE 4.—CHEMICALS AND RELATED PRODUCTS—Continued

Item	Articles	Rates of duty 1	Rates of duty 2
	Anti-infective agents:		
	Antibiotics:		
411.60	*Ampicillin and salts*	1.7 per lb. +13.5% ad val.	7 ¢per lb. +48.5% ad val.
411.64	*Penicillin G salts*	1.7¢ per lb. +13.6% ad val.	7¢ per lb. +49% ad val.
	Penicillin, not specially provided for:		
411.68	*Cafecillin, sodium; Cloxacillin sodium; Dicloxacillin, sodium; Flucloxacillin (floxacillin); and Oxacillin, sodium.*	1.7¢ per lb. +12.5% ad val.	7¢ per lb. +45% ad val.
411.72	*Other*	1.7¢ per lb. +15.7% ad val.	7¢ per +56.5% ad val.
411.76	*Other*	1.7¢ per lb. + 12.5% ad val.	7¢ per lb. + 45% ad val.
	Anti-infective sulfonamides:		
411.80	*Sulfathiazole and sulfathiazole sodium*	1.7¢ per lb. + 36.9% ad val.	7¢ per lb. + 133% ad val.
411.84	*Other*	1.7¢ per lb. + 26.6% ad val.	7¢ per lb. + 96% ad val.
	Anti-infective agents, not specially provided for:		
411.90	*Acriflavine; Acriflavine hydrochloride; Bunamidine hydrochloride; Carbadox; Clopidol; Crotamiton; Decoquinate; Diiodohydroxyquin; Ethionamide; Nicarbazin; Niclosamide; Oxyquinoline sulfate; Pentamidine;*	1.7¢ per lb. + 12.8% ad val.	7¢ per lb. + 46% ad val.
411.94	*Phenylmercuric nitrate; Pyrazinamide; Stibophen; Thimerosal; Thymol iodide; Tolnaftate; and Trimethoprim.*		
	Other	1.7¢ per lb. +18.7% ad val.	7¢ per lb. +67.5% ad val.
	Autonomic drugs, except alkaloids and their derivatives:		
411.98	*Cromolyn, sodium; Furosemide; Glipizide; Isoetharine hydrochloride; Isoxsuprine hydrochloride; Nylidrin hydrochloride; Procyclidine; Salbutamol (Albuterol); and Terbutaline sulfate.*	1.7¢ per lb. + 15% ad val.	7¢ per lb. + 47% ad val.
412.02	*Other*	1.7¢ per lb. + 19.9% ad val.	7¢ per lb. + 71.5% ad val.
	Cardiovascular drugs, except alkaloids and their derivatives:		
412.06	*Hydralazine hydrochloride; Sulfinpyrazone; and Warfarin, sodium.*	1.7¢ per lb. +13.1% ad val.	7¢ per lb. +47.5% ad val.
412.10	*Other*	1.7¢ per lb. + 18% ad val.	7¢ per lb. + 65% ad val.
412.14	*Dermatological agents and local anesthetics*	1.7¢ per lb + 14.3% ad val.	7¢ per lb. + 51.5% ad val.
	Drugs primarily affecting the central nervous system, except alkaloids and their derivatives:		
	Analgesics, antipyretics, and nonhormonal anti-inflammatory agents:		
412.18	*Propoxyphene hydrochloride*	1.7¢ per lb. + 33.3% ad val.	7¢ per lb. + 119.5% ad val.
412.22	*Other*	1.7¢ per lb. + 13.3% ad val.	7¢ per lb. + 47.5% ad val.
412.26	*Anticonvulsants, hypnotics, and sedatives*	1.7¢ per lb. + 13.5% ad val.	7¢ per lb. + 48.5% ad val.

SCHEDULE 4.—CHEMICALS AND RELATED PRODUCTS—Continued

Item	Articles	Rates of duty 1	Rates of duty 2
	Antidepressants, tranquilizers, and other psychotherapeutic agents:		
412.30	*Amitriptyline; Butaperazine maleate; Clozapine; Droperidol; Fluphenazine decanoate; Fluphenazine enanthate; Imipramine hydrochloride; Mesoridazine besylate; Piperacetazine; Prochlorperazine maleate; Promazine hydrochloride; and Trifluoperazine hydrochloride.*	1.7¢ per lb. + 12.6% ad val.	7¢ per lb. + 45.5% ad val.
412.34	*Other*	1.7¢ per lb. + 41.5% ad val.	7¢ per lb. + 149.5% ad val.
412.38	*Other*	1.7¢ per lb. + 16.3% ad val.	7¢ per lb. + 58.5% ad val.
412.42	*Hormones, synthetic substitutes, and antagonists:*		
	Desonide; Dienestre; Epinephrine; Epinephrine hydrochloride; Estradiol benzoate; Estradiol chclopentylpropionate (Estradiol cypionate); Nandrolone phenpropionate; and L-Thyroxine (Levothyroxine) sodium.	1.7¢ per lb. + 13.6% ad val.	7¢ per lb. +49% ad val.
412.48	*Other*	1.7¢ per lb. + 21.7% ad val.	7¢ per lb. + 78.5% ad val.
	Vitamins, provitamins, and their analogs and derivatives used primarily for their vitamin activity:		
412.52	*Vitamin B_2 (Riboflavin and its salts and esters).*	1.7¢ per lb. + 11.3% ad val.	7¢ per lb. + 62% ad val.
412.56	*Vitamin B_{12} (Cyanocobalamin and related compounds with vitamin B_{12} activity).*	1.7¢ per lb. + 40.4% ad val.	7¢ per lb. + 145.5% ad val.
412.60	*Vitamin E (dl-α-Tocopherol and its esters)*	1.7¢ per lb. + 17.6% ad val.	7¢ per lb. + 63.5% ad val.
412.64	*Other*	1.7¢ per lb. + 13.6% ad val.	7¢ per lb. + 49% ad val.
412.68	*Other*	1.7¢ per lb. + 13.6% ad val.	7¢ per lb. + 46% ad val.
	Drugs, from whatever source obtained, produced or manufactured:		
412.72	*Guaiacol and its derivatives*	1.7¢ per lb. + 21.9% ad val.	7¢ per lb. + 79% ad val.
	Aromatic or odoriferous compounds including flavors, not marketable as cosmetics perfumery, or toilet preparations, and not mixed, and not containing alcohol:		
	Obtained, derived, or manufactured in whole or in part from any product provided for in subpart A or B of this part:		
412.76	*p-Anisaldehyde*	3.5¢ per lb. +18.1% ad val.	7¢ per lb. +36% ad val.
412.80	*Benzyl acetate*	3.5¢ per lb. +52.1% ad val.	7¢ per lb. +104.5% ad val.
412.84	*Benzyl benzoate*	3.5¢ per lb. +42.1% ad val.	7¢ per lb. +84% ad val.
412.88	*Diphenyl oxide*	3.5¢ per lb. +21.1% ad val.	7¢ per lb. +42.5% ad val.
412.92	*Ethyl vanillin*	3.5¢ per lb. +40.1% ad val.	7¢ per lb. +80% ad val.
412.96	*Heliotropin*	1.7¢ per lb. +13.8% ad val.	7¢ per lb. +56.5% ad val.
413.00	*Methyl antranilate*	3.5 per lb. +11.2% ad val.	7¢ per lb. +22.5% ad val.

SCHEDULE 4.—CHEMICALS AND RELATED PRODUCTS—Continued

Item	Articles	Rates of duty 1	2
413.04	α-Methylbenzyl alcohol	3.5¢ per lb. +25.4% ad val.	7¢ per lb. +51% ad val.
413.08	Musk, artificial	2.8¢ per lb. +11.4% ad val.	7¢ per lb. +57% ad val.
413.12	α-Pentylcinnamaldehyde	3.5¢ per lb. +22.5% ad val.	7¢ per lb. +45% ad val.
413.16	Phenylacetaldehyde	3.5 per lb. +20.2% ad val.	7¢ per lb. +40.5% ad val.
413.20	Phenethyl alcohol	3.5 per lb. +38.5% ad val.	7¢ per lb. +77% ad val.
413.24	Saccharin	1.5¢ per lb. +12.9% ad. val	7¢ per lb. +61% ad val.
413.28	Other	3.5¢ per lb. +29% ad val.	7¢ per lb. +58% ad val.
	From whatever source obtained, derived, or manufactured:		
413.32	Coumarin	3.5¢ per lb. +24.1% ad val.	7¢ per lb. +48% ad val.
413.36	Methyl salicylate	3.5¢ per lb. +54.2% ad val.	7¢ per lb. +68.5% ad val.
413.40	Vanillin	1.5¢ per lb. +10.2% ad val.	7¢ per lb. +48% ad val.
	Mixtures in whole or in part of any of the products provided for in this subpart:		
413.50	Paints and enamel paints, stains, and varnishes	3.5¢ per lb. +23% ad val.	7¢ per lb. +46% ad val.
413.51	Other	3.5¢ per lb. +23% ad val., but not less than the highest rate applicable to any component material.	7¢ per lb. +46% ad val., but not less than the highest rate applicable to any component material.

SCHEDULE 5.—NONMETALLIC MINERALS AND PRODUCTS

Item	Articles	Rates of duty 1	2
*	* * * * *	*	*
	PART 2.—CERAMIC PRODUCTS		
*	* * * * *	*	*
	Subpart C.—Table, Kitchen, Household, Art and Ornamental Pottery		

Subpart C headnotes:

1. This subpart covers ceramic articles chiefly used for preparing, serving, or storing food or beverages, or food or beverage ingredients; and certain smokers', household, and art and ornamental articles of ceramic ware. This subpart does not cover—

(i) smokers' articles provided for in part 9B of schedule 7;

(ii) other articles specifically provided for in schedule 7 or elsewhere in the schedules.

2. (a) For the purposes of this subpart, the term *"available in specified sets"* [(items 533.23, 533.25, 533.26, 533.28, 533.63, 533.65, 533.66, 533.68, and 533.69] (*items 533.22, 533.24, 533.62, and 533.64*) embraces plates, cups, saucers, and other articles chiefly used for preparing, serving, or storing food or beverages, or food or beverage ingredients, which are sold or offered for sale in the same pattern, but no article is classifiable as being "available in specified sets" unless it is of a pattern in which at least the articles listed below in (b) [or (c)] of this headnote are sold or offered for sale.

SCHEDULE 5.—NONMETALLIC MINERALS AND PRODUCTS—Continued

Item	Articles	Rates of duty 1	2

(b) If each of the following articles is sold or offered for sale in the same pattern, the classification hereunder in item [533.23, 533.25, 533.26, 533.28, 533.63, 533.65, 533.66, or 533.68] *533.22, 533.24, 533.62, or 533.64*, of all articles of such pattern shall be governed by the aggregate value of the following articles in the quantities indicated, as determined by the [appraiser] *appropriate customs officer* under section 402 of the Tariff Act of 1930, as amended, whether or not such articles are imported in the same shipment:

12 plates of the size nearest to 10.5 inches in maximum dimension, sold or offered for sale,
12 plates of the size nearest to 6 inches in maximum dimension, sold or offered for sale,
12 tea cups and their saucers, *sold or offered for sale*,
12 soups of the size nearest to 7 inches in maximum dimension, sold or offered for sale,
12 fruits of the size nearest to 5 inches in maximum dimension, sold or offered for sale,
1 platter or chop dish of the size nearest to 15 inches in maximum dimension, sold or offered for sale,
1 open vegetable dish or bowl of the size nearest to 10 inches in maximum dimension, sold or offered for sale,
1 sugar of largest capacity, sold or offered for sale,
1 creamer of largest capacity, sold or offered for sale.

If either soups of fruits are not sold or offered for sale, 12 cereals of the size nearest to 6 inches in maximum dimension, sold or offered for sale, shall be substituted therefor.

(c) If each of the articles listed above in (b) of this headnote is not sold or offered for sale in the same pattern, but each of the following articles is sold or offered for sale in the same pattern, the classification hereunder in item 533.69 of all articles of such pattern shall be governed by the aggregate value of the following articles in the quantities indicated, as determined by the appraiser under section 402 of the Tariff Act of 1930, as amended, whether or not such articles are imported in the same shipment:

6 plates of the size nearest to 8 inches in maximum dimension, sold or offered for sale,
6 beverage cups and their saucers,
1 sugar of largest capacity, sold or offered for sale,
1 creamer of largest capacity, sold or offered for sale,
1 beverage pot of the size nearest a 6-cup capacity, sold or offered for sale.

[(d)] (c) The percentage of water absorption of cast and jiggered ceramic articles of the same pattern, which are "available in specified sets" and which are imported together in a ratio of at least 5 jiggered articles to 1 cast article in the same shipment shall be the average water absorption of such cast and jiggered articles, of the same pattern in the shipment, which average absorption shall be deemed to be equivalent to 5 percent of the water absorption of a representative sample of such cast articles plus 95 percent of the water absorption of a representative sample of such jiggered articles.

3. In these provisions of this part which classify merchandise according to the value of each "article", an article is a single tariff entity which may consist of more than one piece. For example, a vegetable dish and its cover, or a beverage pot and its lid, imported in the same shipment, constitute an article.

Articles chiefly used for preparing, serving, or storing food or beverages, or food or beverage ingredients:

533.11	Of coarse-grained earthenware, or of coarse-grained stoneware.	2.5% ad val.	15% ad val.
	Of fine-grained earthenware, whether or not decorated, having a reddish-colored body and a lustrous glaze which, on teapots, may be any color, but which, on other articles, must be mottled, streaked, or solidly colored brown to black with metallic oxide or salt:		
533.14	Valued not over $1.50 per dozen articles	6% ad val.	25% ad val.
533.16	Valued over $1.50 per dozen articles	6% ad val	25% ad val.
	Of fine-grained earthenware (except articles provided for in items 533.14 and 533.16) or of fine-grained stoneware:		
	Available in specified sets:		

SCHEDULE 5.—NONMETALLIC MINERALS AND PRODUCTS—Continued

Item	Articles	Rates of duty 1	Rates of duty 2
533.23	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is not over $3.30.	5¢ per doz. pcs. + 14% ad val.	10¢ per doz. pcs. + 50% ad val.
533.25	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $3.30 but not over $7.	10¢ per doz. pcs. + 21% ad val.	10¢ per doz. pcs. + 50% ad val.
533.26	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $7 but not over $12.	10¢ per doz. pcs. + 21% ad val.	10¢ per doz. pcs. + 50% ad val.
533.28	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $12.	5¢ per doz. pcs. + 10.5% ad val.	10¢ per doz. pcs. + 50% ad val.
	Not available in specified sets:		
533.31	Steins, mugs, candy boxes, decanters, punch bowls, pretzel dishes, tidbit dishes, tiered servers, and bonbon dishes.	5¢ per doz. pcs. + 12.5% ad val.	10¢ per doz. pcs. + 50% ad val.
	Other articles:		
533.33	Cups valued not over $0.50 per dozen, saucers valued not over $0.30 per dozen, plates not over 9 inches in maximum diameter and valued not over $0.50 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued not over $1 per dozen, and other articles valued not over $1 per dozen.	5¢ per doz. pcs. + 12.5% ad val.	10¢ per doz. pcs. + 50% ad val.
533.35	Cups valued over $0.50 but not over $1 per dozen, saucers valued over $0.30 but not over $0.55 per dozen, plates not over 9 inches in maximum diameter and valued over $0.50 but not over $0.90 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $1 but not over $1.55 per dozen, and other articles valued over $1 but not over $2 per dozen.	10¢ per doz. pcs. +21% ad val.	10¢ per doz. pcs. +50% ad val.
533.36	Cups valued over $1 but not over $1.70 per dozen, saucers valued over $0.55 but not over $0.95 per dozen, plates not over 9 inches in maximum diameter and valued over $0.90 but not over $1.55 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $1.55 but not over $2.65 per dozen, and other articles valued over $2 but not over $3.40 per dozen.	10¢ per doz. pcs. +21% ad val.	10¢ per doz. pcs. +50% ad val.
533.38	Cups valued over $1.70 per dozen, saucers valued over $0.95 per dozen, plates not over 9 inches in maximum diameter and valued over $1.55 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $2.65 per dozen, and other articles valued over $3.40 per dozen.	5¢ per doz. pcs. +11% ad val.	10¢ per doz. pcs. +50% ad val.
533.41	Of bone chinaware	17.5% ad val.	10¢ per doz. pcs. +70% ad val.
	Of nonbone chinaware or of subporcelain:		
533.51	Hotel or restaurant ware and other ware not household ware.	10¢ per doz. pcs. +45% ad val.	10¢ per doz. pcs. +70% ad val.
	Household ware available in specified sets:		
533.63	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is not over $10.	10¢ per doz. pcs. +48% ad val.	10¢ per doz. pcs. +70% ad val.
533.65	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $10 but not over $24.	10¢ per doz. pcs. +55% ad val.	10¢ per doz. pcs. +70% ad val.
533.66	In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $24 but not over $56.	10¢ per doz. pcs. +36% ad val.	10¢ per doz. pcs. +70% ad val.
533.68	In any pattern for which the aggregate value of the articles listed in head-note 2(b) of this subpart is over $56.	5¢ per doz. pcs. +18% ad val.	10¢ per doz. pcs. +70% ad val.
533.69	Not covered by item 533.63, 533.65, 533.66, or 533.68, and in any pattern for which the aggregate value of the articles listed in headnote 2(c) of this subpart is over $8.	5¢ per doz. pcs. +18% ad val.	10¢ per doz. pcs. +70% ad val.
	Household ware not covered by item 533.63, 533.65, 533.66, 533.68, or 533.69:		
533.71	Steins, mugs, candy boxes, decanters, punch bowls, pretzel dishes, tidbit dishes, tiered servers, and bonbon dishes.	22.5% ad val.	70% ad val.
	Other articles:		

SCHEDULE 5.—NONMETALLIC MINERALS AND PRODUCTS—Continued

Item	Articles	Rates of duty 1	Rates of duty 2
533.73	Cups valued not over $1.35 per dozen, saucers valued not over $0.90 per dozen, plates not over 9 inches in maximum diameter and valued not over $1.30 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued not over $2.70 per dozen, and other articles valued not over $4.50 per dozen.	5¢ per doz. pcs. +22.5% ad val.	10¢ per doz. pcs. +70% ad val.
533.75	Cups valued over $1.35 but not over $4 per dozen, saucers valued over $0.90 but not over $1.90 per dozen, plates not over 9 inches in maximum diameter and valued over $1.30 but not over $3.40 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $2.70 but not over $6 per dozen, and other articles valued over $4.50 but not over $11.50 per dozen	5¢ per doz. pcs. +30% ad val.	10¢ per doz. pcs. +70% ad val.
533.77	Cups valued over $4 per dozen, saucers valued over $1.90 per dozen, plates not over 9 inches in maximum diameter and valued over $3.40 per dozen, plates over 9 but not over 11 inches in maximum diameter and valued over $6 per dozen, and other articles valued over $11.50 per dozen	5¢ per doz. pcs. +17.5% ad val.	10¢ per doz. pcs. +70% ad val
	Articles chiefly used for preparing, serving, or storing food or beverages, or food or beverage ingredients:		
533.11	*Of coarse-grained earthenware, or of coarse-grained stoneware*	2.5% ad val	15% ad val.
533.15	*Of fine-grained earthenware, whether or not decorated, having a reddish-colored body and a lustrous glaze which, on teapots, may be any color, but which, on other articles, must be mottled, streaked, or solidly colored brown to black with metallic oxide or salt.*	6% ad val	25% ad val.
	Of fine-grained earthenware (except articles provided for in item 533.15) or of fine-grained stoneware:		
533.20	*Hotel or restaurant ware and other ware not household ware.*	48.7% ad val	55% ad val.
	Household ware available in specified sets:		
533.22	*In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is not over $38.*	23.5% ad val	55% ad val.
533.24	*In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $38.*	11.4% ad val	55% ad val.
	Household ware not available in specified sets:		
533.29	*Steins with permanently attached pewter lids*	13.6% ad val	55% ad val.
533.30	*Mugs and other steins*	13.6% ad val	55% ad val.
533.32	*Candy boxes, decenters, punch bowls, pretzel dishes, tidbit dishes, tiered servers, bonbon dishes, egg cups, spoons and spoon rests, oil and vinegar sets, tumblers, and salt and pepper shaker sets.*	13.6 ad val	55% ad val.
533.34	*Cups valued over $5.25 per dozen; saucers valued over $3 per dozen; soups, oatmeals and cereals valued over $6 per dozen; plates not over 9 inches in maximum diameter and valued over $6 per dozen; plates over 9 but not over 11 inches in maximum diameter and valued over $8.50 per dozen; platters or chop dishes valued over $35 per dozen; sugars valued over $21 per dozen; creamers valued over $15 per dozen; and beverage servers valued over $42 per dozen.*	11.6% ad val	55 ad val.
533.39	*Other articles*	23.5% ad val	55% ad val.
	Of chinaware or of subporcelain:		
533.52	*Hotel or restaurant ware and other ware not household ware*	48.7% ad val	75% ad val.
	Household ware:		
533.54	*Of bone chinaware*	17.5 ad val	75% ad val.
	Of nonbone chinaware or of subporcelian:		
	Available in specified sets:		
533.62	*In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is not over $56*	38.6% ad val	75% ad val.
533.64	*In any pattern for which the aggregate value of the articles listed in headnote 2(b) of this subpart is over $56*	18.4% ad val	75% ad val.
	Not available in specified sets:		
533.72	*Steins with permanently attached pewter lids.*	22.5% ad val	70% ad val.
533.74	*Mugs and other steins*	22.5% ad val	70% ad val.

SCHEDULE 5.—NONMETALLIC MINERALS AND PRODUCTS—Continued

Item	Articles	Rates of duty 1	2
533.76	*Candy boxes, decanters, punchbowls, pretzel dishes, tidbit dishes, tiered servers, bonbon dishes, egg cups, spoons and spoon rests, oil and vinegar sets, tumblers, and salt and pepper shaker sets.*	*22.5% ad val.*	*70% ad val.*
533.78	*Cups valued over $8 per dozen; saucers valued over $5.25 per dozen; soups, oatmeals and cereals valued over $9.30 per dozen; plates not over 9 inches in maximum diameter and valued over $8.50 per dozen; plates over 9 but not over 11 inches in maximum diameter and valued over $11.50 per dozen; platters or chop dishes valued over $10 per dozen; sugars valued over $25 per dozen; creamers valued over $20 per dozen; and beverage servers valued over $50 per dozen.*	*18% ad val.*	*75% ad val.*
533.79	*Other articles*	*26.1% ad val.*	*75% ad val.*

SCHEDULE 6.—METALS AND METAL PRODUCTS

Item	Articles	Rates of duty 1	2

PART E.—METAL PRODUCTS

* * * * * * *

Subpart E.—Tools, Cutlery, Forks and Spoons

Subpart E headnotes:

1. Except for blow and other torches (items 469.31 and 649.32), abrasive wheels mounted on frameworks (item 649.39), tool tips and forms for making tool tips (item 649.53), sewing sets, pedicure on manicure sets, or combinations thereof (items 651.11 and 651.13), and except for knives, forks, spoons, and ladles, all the foregoing which are kitchen or tableware of precious metal, this subpart covers only articles with a blade, working edge, working surface or other working part of—
   (i) base metal;
   (ii) metallic carbides on a support of base metal;
   (iii) natural or synthetic precious or semiprecious stones on a support of base metal; or
   (iv) abrasive materials on a support of base metal, provided that the articles have other functioning or working elements such as cutting teeth, edges, grooves, or flutes.
2. In determining the length of files and rasps (items 649.01–.07, inclusive), the tang (if any) should not be included.
3. The provisions for "*interchangeable tools for hand tools or for machine tools*" cover interchangeable tools which are designed to be fitted to hand tools or machine tools and which cannot be used independently, and include, but are not limited to, interchangeable tools for pressing, stamping, drilling, tapping, threading, boring, broaching, milling, cutting, dressing, mortising or screw-driving, but do not include saw blades, knives, or cutting blades, and do not include holding or operating devices even if attached to such interchangeable tools.
4. For the purposes of determing the rate of duty applicable to sets provided for in item 651.75, a specific rate of duty or a compound rate of duty for any article in the set shall be converted to its ad valorem equivalent rate, i.e., the ad valorem rate which, when applied to the full value of the article determined in accordance with section 402 [of 402a] of this Act, would provide the same amount of duties as the specific or compound rate.
5. Cases, boxes, or containers of types ordinarily sold at retail with the tools or other articles provided for in this subpart are classifiable with such articles if imported therewith.

SCHEDULE 6.—METALS AND METAL PRODUCTS—Continued

Item	Articles	Rates of duty 1	Rates of duty 2
	Subpart E statistical headnote:		
	1. For purposes of statistical reporting of sets under item 651.75—		
	(a) the number of pieces reported shall be the total number of separate pieces in the set(s) and, *in addition;*		
	(b) for sets containing knives, forks, or spoons described in items 650.08, 650.09, 650.10, 650.12, 650.38, 650.39, 650.40, 650.42, 650.54, and 650.55 report the quantity of such knives, forks, or spoons under the appropriate 7-digit reporting number(s) provided thereunder.		
*	* * * * *	*	*
	SUBPART F.—MISCELLANEOUS METAL PRODUCTS		
*	* * * * *	*	*
	Other:		
652.97	Offshore oil and natural gas drilling and production platforms.	9.5% ad val.	45% ad val.
652.99	Other	9.5% ad val.	45% ad val.
652.97	Offshore oil and natural gas drilling and production platforms.	9.5% ad val.	45% ad val.
653.00	Other	9.5% ad val.	45% ad val.
653.01	Other	9.5% ad val.	45% ad val.
	PART 4.—MACHINERY AND MECHANICAL EQUIPMENT		
	Subpart J —Parts of Machines		
680.35	Other	1.7¢ per lb. + 7.5% ad val.	10¢ per lb. + 45% ad val.
	Ball bearings, and parts thereof:		
	Radial ball bearings, having an outside diameter of:		
	Under 9 mm		
	9 mm and over but not over 30 mm		
	Over 30 mm but not over 52 mm		
	Over 52 mm but not over 100 mm		
	Over 100 mm		
	Ball bearings, other radial		
	Parts of ball bearings (including parts of articles provided for in item 680.33):		
	Inner races and outer races (including inner and outer races of integral shaft bearings provided for in item 680.33)		
	Other parts		
	Roller bearings (including combination roller and ball bearings) and parts thereof:		
	Tapered roller bearings and parts:		
	Cup and cone assemblies imported as a set		
	Cups imported separately		
	Cone assemblies imported separately		
	Other parts		
	Spherical roller bearings and parts		
	Other roller bearings (including combination roller and ball bearings) and parts.		
680.36	If Canadian article and original motorvehicle equipment (see headnote 2, part 6B, schedule 6).	Free	
	Ball bearings and parts:		
	Ball bearings		
	Parts of ball bearings		
	Roller bearings (including combination roller and ball bearings) and parts thereof:		
	Tapered roller bearings and parts:		
	Cup and cone assemblies imported as a set.		
	Cups imported separately		
	Cone assemblies imported separately		
	Other parts		
	Other roller bearings (including combination roller and ball bearings) and parts.		

SCHEDULE 6.—METALS AND METAL PRODUCTS—Continued

Item	Articles	Rates of duty 1	2
	Other:		
680.37	*Ball bearings and parts thereof*	*11% ad val*	*67% ad val.*
680.38	*If Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6).*	*Free*	
680.39	*Other*	*13% ad val*	*67% ad val.*
680.41	*If Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6).*	*Free*	
[*680.40*]	Forged steel grinding balls	6% ad val	27.5% ad val.
*	* * * * *	*	*

PART 6.—TRANSPORTATION EQUIPMENT

*	* * * * *	*	*

Subpart C.—Aircraft and Spacecraft

Subpart C headnotes:

1. This subpart does not cover—
   (i) guided weapons and missiles or similar weapons of war (see part 5A of schedule 7); or
   (ii) toy balloons or toy kites (see part 5E of schedule 7).
2. For the purposes of this subpart—
   (a) the term "*aircraft*" embraces lighter-than-air aircraft (balloons and airships), heavier-than-air aircraft (airplanes, including machines also capable of use for ground or water transportation; gliders and kites), all the foregoing, however propelled, and whether designed for civilian or military use, but does not include spacecraft; and
   (b) the term "*spacecraft*" embraces craft, however propelled, and whether designed for civilian or military use, designed for flight beyond the earth's atmosphere.
3. *Certified for Use in Civil Aircraft.—*
   (a) *Whenever the term "certified for use in civil aircraft" is used in an item description in the schedules, the importer shall file a written statement, accompanied by such supporting documentation as the Secretary of the Treasury may require, with the appropriate customs officer stating that the imported article has been imported for use in civil aircraft, that it will be so used, and that the article has been approved for such use by the Administrator of the Federal Aviation Administration (F.A.A.) or by the airworthiness authority in the country of exportation, if such approval is recognized by the F.A.A. as an acceptable substitute for F.A.A. certification, or than an application for approval for such use has been submitted to, and accepted by, the Administrator of the F.A.A.*
   (b) *For purposes of the schedules, the term "civil aircraft" means all aircraft other than aircraft purchased for use by the Department of Defense or the United States Coast Guard.*

*	* * * * *	*	*

SCHEDULE 7.—SPECIFIED PRODUCTS; MISCELLANEOUS AND NONENUMERATED PRODUCTS

* * * * * * *

Item	Articles	Rates of duty 1	2

PART 1.—FOOTWEAR; HEADWEAR AND HAT BRAIDS; GLOVES; LUGGAGE, HANDBAGS, BILLFOLDS, AND OTHER FLAT GOODS

Subpart A.—Footwear

Subpart A headnotes:

1. This subpart covers boots, shoes, slippers, sandals, moccasins, slipper socks (socks with applied soles of leather or other material), scuffs, overshoes, rubbers, arctics, galoshes, and all allied footwear (including athletic or sporting boots and shoes) of whatever material composed, and by whatever method constructed, all the foregoing designed for human wear except—
   (i) footwear with permanently attached skates or snowshoes (see part 5D of this schedule),
   (ii) hosiery (see part 6C of schedule 3), and
   (iii) infants' knit footwear (see part 6F of schedule 3).
2. For the purposes of this subpart—
   (a) the term *"huaraches"* (item 700.05) means a type of leather-soled sandal having a woven-leather upper laced to the insole, with the insole machine-stitched to the outsole, and having a heel which is nailed on;
   (b) the term *"McKay-sewed footwear"* (item 700.10) means footwear the soles of which are sewed to the upper by means of a McKay chainstitch, with the stitching passing through the outsole, upper, lining, and insole;
   (c) the term *"moccasins"* (item 700.15) means footwear of the American Indian handicraft type, having no line of demarcation between the soles and the uppers;
   (d) the term *"welt footwear"* (items 700.25 through 700.29) means footwear constructed with a welt, which extends around the edge of the tread portion of the sole, and in which the welt and shoe upper are sewed to a lip on the surface of the insole, and the outsole of which is sewed or cemented to the welt;
   (e) the term *"slippers"* (item 700.32) means footwear of the slip-on type without laces, buckles, zippers, or other closures, the heel of which is of underwedge construction, and (1) having a leather upper permanently trimmed with a real or imitation fur collar, or (2) having a leather upper and a split leather tread sole (including heel) held together by a blown sponge-rubber midsole created and simultaneously vulcanized thereto;
   (f) the term *"footwear for men, youths, and boys"* (item 700.35) covers footwear of American youths' size 11-½ and larger for males, and does not include footwear commonly worn by both sexes; and
   (g) the term *"fibers"* means unspun fibrous vegetable materials, vegetable fibers, wool, silk, or other animal fibers, man-made fibers, paper yarns, or any combination thereof.
3. [(a)] For the purposes of items 700.51 through 700.58, the rubber or plastics forming the exterior surface area specified, if supported by fabric or other material, must coal or fill the supporting material with a quantity of rubber or plastics sufficient to visibly and significantly affect the surface otherwise than by change in color, whether or not the color has been changed thereby.

[(b) Subject to the provisions of section 336(f) of this Act, the merchandise in item 700.60 shall be subject to duty upon the basis of the American selling price, as defined in section 402 or 402a of this Act, of like or similar articles manufactured or produced in the United States.]

* * * * * * *

	Footwear (whether or not described elsewhere in this subpart) which is over 50 percent by weight of rubber or plastics or over 50 percent by weight of fibers and rubber or plastics with at least 10 percent by weight being rubber or plastics:		
	Hunting boots, galoshes, rainwear, and other footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease, or chemicals or cold or inclement weather, all the foregoing having soles and uppers of which over 90 percent of the exterior surface area is rubber or plastics (except footwear with uppers of nonmolded construction formed by sewing the parts thereof together and having exposed on the outer surface a substantial portion of functional stitching):		

SCHEDULE 7.—SPECIFIED PRODUCTS; MISCELLANEOUS AND NONENUMERATED PRODUCTS—Continued

Item	Articles	Rates of duty 1	Rates of duty 2
700.51	Having soles and uppers of which over 90 percent of the exterior surface area is polyvinyl chloride, whether or not supported or lined with polyvinyl chloride but not otherwise supported or lined.	12.5% ad val.	25% ad val.
700.52	Footwear (except footwear provided for in item 700.51), the uppers of which do not extend above the ankle, designed for use without closures, whether or not supported or lined.	25% ad val.	50% ad val.
700.53	Other:	37.5% ad val.	75% ad val.
	Boots:		
	Other:		
	Other footwear (except footwear having uppers of which over 50 percent of the exterior surface area is leather):		
	Having uppers of which over 90 percent of the exterior surface area is rubber or plastics (except footwear having foxing or a foxing-like band applied or molded at the sole and overlapping the upper):		
700.54	Zoris (thonged sandals):	6% ad val.	35% ad val.
[700.55]	Other:	6% ad val.	35% ad val.
700.56	Athletic footwear:		
	Ski boots:		
	Other:		
	For men:		
	For youths and boys:		
	For women and misses:		
	For children and infants:		
	Sandals and similar footwear of plastic, produced in one piece by molding.		
	Other:		
	Footwear having supported vinyl uppers:		
	For men:		
	For youths and boys:		
	For women:		
	For misses:		
	For children:		
	For infants:		
	Other:		
	For men:		
	For youths and boys:		
	For women:		
	For misses:		
	For children:		
	For infants:		
700.60	Other:	20% ad val.	35% ad val.
	Like or similar to U.S. footwear:		
	Oxford height:		
	For men, youths, and boys:		
	For women and misses:		
	For children and infants:		
	Other:		
	Not like or similar to U.S. footwear:		
	Oxford height:		
	For men, youths, and boys:		
	For women and misses:		
	For children and infants:		
	Other:		
	Other:		
700.57	*Hunting boots, galoshes, rainwear, and other footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease, or chemicals or cold or inclement weather.*	37.5% ad val.	66% ad val.
700.59	*Footwear with open toes or open heels; footwear of the slip-on type, that is held to the foot without the use of laces or buckles or other fasteners, the foregoing except footwear provided for in items 700.57 and except footwear having a foxing or foxing-like band wholly or almost wholly of rubber or plastics applied or molded at the sole and overlapping the upper.*	37.5% ad val.	66% ad val.
	Other:		
	Footwear having soles (or midsoles, if any) of rubber or plastics which are affixed to the supper exclusively with an adhesive (any midsoles also being affixed exclusively to one another and to the outsole with an adhesive); the foregoing except footwear having a foxing or foxing-like band applied to or molded at the sole and overlapping the upper and except footwear with soles which overlap the upper other than at the toe or heel:		

SCHEDULE 7.—SPECIFIED PRODUCTS; MISCELLANEOUS AND NONENUMERATED PRODUCTS—Continued

Item	Articles	Rates of duty 1	Rates of duty 2
700.61	*Valued not over $6.50 per pair*	*37.5% ad val.*	*66% ad val.*
700.62	*Valued over $6.50 but not over $12 per pair*	*90¢ per pair +20% ad val.*	*$1.58 per pair +35% ad val.*
700.63	*Valued over $12 per pair*	*20% ad val.*	*35% ad val.*
	Other:		
700.64	*Valued not over $3.00 per pair*	*48% ad val.*	*84% ad val.*
700.67	*Valued over $3.00 but not over $6.50 per pair*	*90¢ per pair +37.5% ad val*	*$1.58 per pair +66% ad val.*
700.69	*Valued over $6.50 but not over $12 per pair*	*90¢ per pair +20% ad val.*	*$1.58 per pair +35% ad val.*
700.71	*Valued over $12 per pair*	*20% ad val.*	*35% ad val.*
	Footwear, with uppers of fibers:		
	With soles of leather:		
[700.66]	Valued not over $2.50 pr pair	15% ad val.	35% ad val.
700.72	Slipper socks		
	Other:		
	For men, youths, and boys		
	Other		
[700.68]	Valued over $2.50 per pair	10% ad val.	35% ad val.
700.73	Slipper socks		
	Other:		
	For men, youths, and boys		
	Other		
	With soles of material other than leather:		
[700.70]	With uppers of vegetable fibers	7.5% ad val.	35% ad val.
700.74	For men, youths, and boys		
	For women		
	For misses		
	For children		
	For infants		
700.75	With soles and uppers of wool felt	7% ad val.	35% ad val.
	For men	(459)	
	For youths and boys	(459)	
	For women	(459)	
	For misses	(459)	
	For children	(459)	
	For infants	(459)	
700.80	Other	12.5% ad val.	35% ad val.
	For men, youths, and boys		
	For women		
	For misses		
	For children		
	For infants		
	Other footwear:		
700.83	Of wood	8% ad val.	33⅓% ad val.
	For men		
	For youths and boys		
	For women		
	For misses		
	For children		
	For infants		

* * * * * * *

Subpart C.—Gloves

Subpart C headnotes:

1. For the purposes of this subpart—
   (a) the term "*gloves*" includes all gloves and mittens designed for human wear, except boxing gloves, golf gloves, baseball gloves, and other gloves specially designed for use in sports; and
   (b) the term "*glove linings*" includes all linings for gloves, as defined in (a) supra.
2. In determining the component material of chief value in gloves—
   (a) lining and applied cuffs shall be disregarded, and
   (b) any leather component shall be disregarded unless the area of such leather is over 50 percent of the external surface area of the gloves exclusive of applied cuffs.
3. The length of gloves (items 705.62, 705.64, and 705.67 through 705.71) shall be the extreme length thereof when extended to their fullest dimension, including the unfolded length of cuffs or other appendages.

[4. Subject to the provisions of section 336(f) of this Act, the merchandise provided for in item 704.55 shall be subject to duty upon the basis of the American selling price, as defined in section 402 or 402a of this Act, of like or similar articles manufactured or produced in the United States.]

* * * * * * *

SCHEDULE 7.—SPECIFIED PRODUCTS; MISCELLANEOUS AND NONENUMERATED PRODUCTS—Continued

Item	Articles	Rates of duty 1	Rates of duty 2
	Of wool:		
	Gloves:		
	Valued not over $1.75 per dozen pairs:		
704.55	Knit [(see headnote 4 of this subpart)]..(431)	30¢ per lb. + 26% ad val.	40¢ per lb. + 35% ad val.

* * * * * * * * *

PART 2.—OPTICAL GOODS; SCIENTIFIC AND PROFESSIONAL INSTRUMENTS; WATCHES, CLOCKS, AND TIMING DEVICES; PHOTOGRAPHIC GOODS; MOTION PICTURES; RECORDINGS AND RECORDING MEDIA

* * * * * * *

Subpart D.—Measuring, Testing, and Controlling Instruments

Subpart D headnotes:

1. The provisions of this subpart covered by items [711.00] *711.04* to 711.88, inclusive, do not apply to electrical measuring, checking, analyzing, or automatically-controlling instruments or apparatus, as defined in headnote 2 below.

2. For the purposes of this subpart, the provisions herein (items [712.00 to 712.99,] *712.05 to 712.51*, inclusive) for "electrical measuring, checking, analyzing, or automatically-controlling instruments and apparatus" apply only to the following articles:

(a) appliances, instruments, apparatus, or machines of kinds described in subpart C of this part or in the provisions of this subpart (subpart D) covered by items [711.00] *711.04* to 711.88, inclusive, the operation of which depends on an electrical phenomenon which varies according to the factor to be ascertained or automatically controlled;

(b) instruments or apparatus for measuring or checking electrical quantities; and

(c) instruments or apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic, or similar radiations.

Subpart E.—Watches, Clocks, and Timing Apparatus

Subpart E headnotes:

1. * * *

* * * * * * *

3. [(a) In this subpart, column 1 or the Rates of Duty columns with respect to watch movements having not over 7 jewels has been divided into two columns, viz., 1-a and 1-b. The rates of duty in column 1-a apply to watch movements which have 7 jewels or which, if having less than 7 jewels, do not have a bushing or its equivalent (other than a substitute for a jewel) in any position customarily occupied by a jewel. The rates of duty in column 1-b apply to watch movements having under 7 jewels and having a bushing or its equivalent (other than a substitute for a jewel) in any position customarily occupied by a jewel.]

[(b)] (*a*) The comp[illegible] citation for watches covered by item 715.05 and clocks covered by item 715.15 shall be each of such item numbers, followed by the appropriate item numbers for the respective movements and cases comprising such watches or clocks. Thus, item 715.05-716.08-720.20 is the correct citation for a watch in a gold case having over 17 jewels.

[(c)] (*b*) In this subpart, each of the rates of duty provided for watch movements, having no jewels or not over 17 jewels, not adjusted, not self-winding, and not constructed or designed to operate for a period in excess of 47 hours without rewinding (items 716.10 through 716.36, inclusive) is also the "base rate" for watch movements having the same width and number of jewels covered by [items 717.—, 718.—, and] *item* 719.—. [For citation purposes, the two blanks on the end of each of the latter item numbers shall be filled in with the last two digits of the item number for the applicable base rate. Thus, "item 717.31" would be the citation for an adjusted watch movement, 0.7 inch wide, having 17 jewels, but not self-winding and not constructed or designed to operate for a period in excess of 47 hours without rewinding.] *For citation purposes, the two blanks on the end of such item number shall be filled in with the last two digits of the item number for the applicable base rate. Thus, "item 719.31" would be the citation for a watch movement, 0.7 inch wide, having 17 jewels, which is adjusted or self-winding or constructed or designed to operate for a period in excess of 47 hours without rewinding.*

SCHEDULE 7.—SPECIFIED PRODUCTS; MISCELLANEOUS AND NONENUMERATED PRODUCTS—Continued

Item	Articles	Rates of duty 1	2

[(d)] (c) The width of a watch or clock movement, as defined in headnote 2 (b) and (c) of this subpart, is the shortest surface dimension through the center of the pillar or bottom plate, or its equivalent, not including in the measurement any portion not essential to the functioning of the movement; and the thickness of a "watch movement", as so defined, is the maximum thickness between the outside surfaces of the plate and bridges, or their equivalents.

[(e)] (d) The additional duty for adjustments to watch movements applies to each adjustment of whatever kind (treating adjustment to temperature as two adjustments), in accordance with the marking as hereinafter provided for.

[(f)] (e) Bimetallic balance wheels which are not part of balance assemblies, and mainsprings with riveted ends, are each to be considered as one part or piece, for the purpose of assessing duties on assemblies and subassemblies provided for in items 720.75, 720.80, 720.82, 720.84, and 720.86,

4. *Special Marking Requirements:* Any movement, case, or dial provided for in this subpart, whether imported separately or attached to an article provided for in this subpart, shall not be permitted to be entered unless conspicuously and indelibly marked by cutting, die-sinking, engraving, or stamping, as specified below:

(a) Watch movements shall be marked on one or more of the bridges or top plates to show—
(i) the name of the country of manufacture,
(ii) the name of the manufacturer or purchaser,
(iii) [in Arabic numerals and] in words, the number of jewels, if any, serving a mechanical purpose as frictional bearings; and
(iv) [in Arabic numerals and] in words, the number and classes of adjustments, or if unadjusted, the word "unadjusted".

(b) Clock movements shall be marked on the most visible part of the front or back plate to show—
(i) the name of the country of manufacture.
(ii) the name of the manufacturer or purchaser, and
(iii) the number of jewels, if any.

(c) Watch cases shall be marked on the inside or outside of the back cover to show—
(1) the name of the country of manufacture, and
(ii) the name of the manufacturer or purchaser.

(d) Clock cases and other cases provided for in this subpart shall be marked on the most visible part of the outside of the back to show the name of the country of manufacture; and

[(e) Dials shall be marked to show the name of the country of manufacture, which marking, if the dial is imported attached to any of the articles provided for in this part, shall be placed on the face of the dial in such manner as not to be obscured by any part of the case.]

(e) Dials shall be marked to show the name of the country of manufacture.

* * * * * * *

	Having no jewels or not over 17 jewels:			
	Not adjusted, not self-winding (or if a self-winding device cannot be incorporated therein), and not constructed or designed to operate for a period in excess of 47 hours without rewinding:	1-a		1-b
	Having no jewels or only 1 jewel:			
716.10	Not over 0.6 inch in width	90¢ each.	$1.25 each.	$1.50 each.
	Having a balance wheel and hairspring			
	Other			
716.11	Over 0.6 but not over 0.8 inch in width	75¢ each.	$1.35 each.	$1.35 each.
	Having a balance wheel and hairspring			
	Other			
716.12	Over 0.8 but not over 0.9 inch in width	75¢ each.	$1.20 each.	$1.20 each.
	Having a balance wheel and hairspring			
	Other			
716.13	Over 0.9 but not over 1 inch in width	75¢ each.	$1.05 each.	$1.05 each.
	Having a balance wheel and hairspring			
	Other			
716.14	Over 1 but not over 1.2 inches in width	75¢ each.	93¢ each.	93¢ each.

SCHEDULE 7.—SPECIFIED PRODUCTS; MISCELLANEOUS AND NONENUMERATED PRODUCTS—Continued

Item	Articles	Rates of duty 1		2
	Having a balance wheel and hairspring			
	Other			
716.15	Over 1.2 but not over 1.5 inches in width	75¢ each.	84¢ each.	84¢ each.
	Having a balance wheel and hairspring			
	Other			
716.16	Over 1.5 but not over 1.77 inches in width	75¢ each.	75¢ each.	75¢ each.
	Having a balance wheel and hairspring			
	Other			
	Having over 1 jewel but not over 7 jewels:			
716.20	Not over 0.6 inch in width	$1.80 each.	$2.50 each.	$2.50 each.
	Having a blance wheel and hairspring			
	Other			
716.21	Over 0.6 but not over 0.8 inch in width	$1.35 each.	$2.25 each.	$2.25 each.
	Having a balance wheel and hairspring			
	Other			
716.22	Over 0.8 but not over 0.9 inch in width	$1.35 each.	$2 each	$2 each.
	Having a balance wheel and hairspring			
	Other			
716.23	Over 0.9 but not over 1 inch in width	$1.20 each.	$1.75 each.	$1.75 each.
	Having a balance wheel and hairspring			
	Other			
716.24	Over 1 but not over 1.2 inches in width	90¢ each.	$1.55 each.	$1.55 each.
	Having a balance wheel and hairspring			
	Other			
716.25	Over 1.2 but not over 1.5 inches in width	90¢ each.	$1.40 each.	$1.40 each.
	Having a balance wheel and hairspring			
	Other			
716.26	Over 1.5 but not over 1.77 inches in width	90¢ each.	$1.25 each.	$1.25 each.
	Having a balance wheel and hairspring			
	Other			
716.10	*Not over 0.6 inch in width*	*90¢ each.*	*$1.50 each.*	
716.11	*Over 0.6 but not over 0.8 inch in width*	*75¢ each.*	*$1.50 each.*	
716.12	*Over 0.8 but not over 0.9 in width*	*75¢ each.*	*$1.50 each.*	
716.13	*Over 0.9 but not over 1 inch in width*	*75¢ each.*	*$1.50 each.*	
716.14	*Over 1 but not over 1.2 inches in width*	*75¢ each.*	*$1.50 each.*	
716.15	*Over 1.2 but not over 1.5 inches in width*	*75¢ each.*	*$1.50 each.*	
716.16	*Over 1.5 but not over 1.77 inches in width*	*75¢ each.*	*$1.50 each.*	
	Having over 1 jewel but not over 7 jewels:			
716.20	*Not over 0.6 inch in width*	*$1.80 each.*	*$2.50 each.*	
716.21	*Over 0.6 but not over 0.8 inch in width*	*$1.35 each.*	*$2.50 each.*	
716.22	*Over 0.8 but not over 0.9 inch in width*	*$1.35 each.*	*$2.50 each.*	
716.23	*Over 0.9 but not over 1 inch in width*	*$1.20 each.*	*$2.50 each.*	
716.24	*Over 1 but not over 1.2 inches in width*	*90¢ each.*	*$2.50 each.*	
716.25	*Over 1.2 but not over 1.5 inches in width*	*90¢ each.*	*$2.50 each.*	
716.26	*Over 1.5 but not over 1.77 inches in width*	*90¢ each.*	*$2.50 each.*	
	Having over 7 but not over 17 jewels:			
716.30	Not over 0.6 inch in width	$1.80 each + 9¢ for each jewel over 7.		$2.50 each + 15¢ for each jewel over 7.
716.31	Over 0.6 but not over 0.8 inch in width	$1.35 each + 9¢ for each jewel over 7.		[$2.25 each + 15¢ for each jewel over 7] *$2.50 each + 15¢ for each jewel over 7.*

SCHEDULE 7.—SPECIFIED PRODUCTS; MISCELLANEOUS AND NONENUMERATED PRODUCTS—Continued

Item	Articles	Rates of duty 1	Rates of duty 2
716.32	Over 0.8 but not over 0.9 inch in width	$1.35 each + 9¢ for each jewel over 7.	[$2 each + 15¢ for each jewel over 7] *$2.50 each + 15¢ for each jewel over 7.*
716.33	Over 0.9 but not over 1 inch in width	$1.20 each + 9¢ for each jewel over 7.	[$1.75 each + 15¢ for each jewel over 7] *$2.50 each + 15¢ for each jewel over 7.*
716.34	Over 1 but not over 1.2 inches in width	90¢ each + 9¢ for each jewel over 7.	[$1.55 each + 15¢ for each jewel over 7] *$2.50 each + 15¢ for each jewel over 7.*
716.35	Over 1.2 but not over 1.5 inches in width	90¢ each + 9¢ for each jewel over 7.	[$1.40 each + 15¢ for each jewel over 7] *$2.50 each + 15¢ for each jewel over 7.*
716.36	Over 1.5 but not over 1.77 inches in width	90¢ each + 9¢ for each jewel over 7.	[$1.25 each + 15¢ for each jewel over 7] *$2.50 each + 15¢ for each jewel over 7.*
•	•	•	•
719... (see headnote 3(c))	Adjusted and self-winding (or if a self-winding device can be incorporated therein), or constructed or designed to operate for a period in excess of 47 hours without rewinding.	Column 1 base rate + 50¢ each + 50¢ for each adjustment.	Column 2 base rate + $1 each + $1 for each adjustment.
719... (see headnote 3(b))	Dutiable adjustments. *Adjusted or self-winding, whether or not adjusted (or if self-winding device can be incorporated therein), or constructed or designed to operate for a period in excess of 47 hours without rewinding.*	*Column 1 base rate + 50¢ each if self-winding + 50¢ for each adjustment.*	*Column 2 base rate + $1 each if self-winding + $1 for each adjustment.*
•	•	•	•
720.75	Other assemblies and subassemblies:	[4.5¢ for each jewel (if any) + the column 1 rate specified in item 720.65 for bottom or pillar plates or their equivalent therein (if any) + 1¢ for each other part or piece therein (if any), but the total duty on the assembly or subassembly shall not exceed the column 1 duty for the complete movement for which suitable, nor be less than 22.5% ad val. unless said 22.5 percent rate exceeds the column 1 duty for the complete movement.] *22.5% ad val.*	15¢ for each jewel (if any + the column 2 rate specified in item 720.65 for bottom or pillar plates or their equivalent therein (if any) + 3¢ for each other part or piece therein (if any), but the total duty on the assembly or subassembly shall not exceed the column 2 duty for the complete movement for which suitable, nor be less than 45% ad val. unless said 45 percent rate exceeds the column 2 duty for the complete movement.
	Dutiable at 22.5 percent ad valorem:		
	For movements having a balance wheel and hairspring.		
	Other		
	Dutiable at other than 22.5 percent ad valorem:		
	For movements having a balance wheel and hairspring.		
	Other		
•	•	•	•

SCHEDULE 7.—SPECIFIED PRODUCTS; MISCELLANEOUS AND NONENUMERATED PRODUCTS—Continued

Item	Articles	Rates of duty 1	2
	Photographic cameras (other than motion-picture cameras), photographic enlargers, and combination camera-enlargers:		
722.10	Having a photographic lens valued over 50 percent of *the* value of *the* article.	12.5% ad val.	45% ad val.
*	* * * * *	*	*
	PART 7.—BUTTONS, BUCKLES, PINS, AND OTHER FASTENING DEVICES; ARTIFICIAL AND PRESERVED FLOWERS AND FOLIAGE; MILLINERY ORNAMENTS; TRIMMINGS; AND FEATHER PRODUCTS		
	Subpart A.—Buttons, Buckles, Pins, Hooks and Eyes, and Slide Fasteners		
	Subpart A headnotes: 1. This subpart does not cover— (i) jewelry and other objects of personal adornment provided for in part 6A of schedule 7; or (ii) harness and saddlery or riding-bridle hardware (see part 3D of schedule 6). 2. For the purposes of this subpart— (a) the term "*line*" in the rates of duty columns (items 745.20, [745.22], and 745.32) means the line button measure of one-fortieth of one inch; and (b) the term "*button blanks*" (item 745.40)is limited to raw or crude blanks suitable for manufacture into buttons. [4.] *5.* Buttons (whether finished or not finished) provided for in item 745.32 which are the product of an insular possession of the United States outside the customs territory of the United Stares and which are manufactured or produced from button blanks or unfinished buttons which were the product of any foreign country shall be subject to duty under item 745.32 at the rate which applies to products of such foreign country.		
	PART 8.—COMBS; HAIR ORNAMENTS; BROOMS AND BRUSHES; PAINT ROLLERS; UMBRELLAS AND CANES		
	Subpart A.—Combs, Hair Ornaments, Brooms and Brushes, Paint Rollers		
*	* * * * *	*	*
	Brooms and brushes consisting of vegetable materials bound together but not mounted or set in a block or head, with or without handles:		
	Brooms wholly or in part of broom corn:		
	Whiskbrooms:		
	[Valued not over 32¢ each] *Valued not over 45¢ each;*		
750.26	In any calendar year prior to the entry, or withdrawal from warehouse, for consumption of 91,885 dozen (or such modified quantity as may become applicable under headnote 3(a) to this subpart) whiskbrooms classifiable under items 750.26 to 750.28, inclusive.	20% ad val.	20% ad val.
750.27	Other	12¢ each	12¢ each
750.28	[Valued over 32¢ each] *Valued over 45¢ each*	32% ad val.	32% ad val.
*	* * * * *	*	*
	PART 11.—WORKS OF ART; ANTIQUES		
*	* * * * *	*	*
	Subpart B.—Antiques		
	Subpart B headnotes: 1. For the purposes of item 766.20, the value of repairs shall be— (i) the cost thereof; or (ii) if no charge was made, the value thereof, as set out in the invoice and entry papers; except that, if the appraiser concludes that the amount so set out does not represent a reasonable cost or value, as the case may be, then the value of the repairs shall be determined in accordance with section 402 [or 402a] of this Act. 2. Except for picture frames, the provisions of items 766.20 and 766.25 do not apply to movable articles of convenience or decoration design for use in furnishing a house, apartment, place of business or of accommodation, unless such articles are entered at ports designated by the Secretary of the Treasury for such purpose. Antique picture frames may be entered at any port of entry.		
*	* * * * *	*	*

SCHEDULE 7.—SPECIFIED PRODUCTS; MISCELLANEOUS AND NONENUMERATED PRODUCTS—Continued

Item	Articles	Rates of duty 1	2
	PART 12.—RUBBER AND PLASTIC PRODUCTS		
*	* * * * * * *		
	Subpart C.—Specified Rubber and Plastics Products		
*	* * * * * * *		
772.51	Other	[4%] *5.7%* ad val.	10% ad val.
	New (not including recapped):		
	Passenger car tires		
	Truck and bus tires		
	Motorcycle tires		
	Other:		
	Not over 24 inches rim size		
	Over 24 inches rim size		
	Other		
*	* * * * * * *		
	PART 13.—PRODUCTS NOT ELSEWHERE NEUMERATED		
	Subpart A.—Miscellaneous Products		
	Subpart A headnotes:		
	1. This subpart does not cover—		
	(i) glass inners for vacuum bottles and other vacuum containers (see part 3 of schedule 5);		
	(ii) pressure-sensitive articles impregnated or coated with drugs (see part [13B] *13C* of schedule 4); or		
	(iii) pressure-sensitive floor coverings and wall coverings.		
	2. The term "*pressure sensitive*", as used in items 790.50 and 790.55, refers to articles which have an adhesive coating on one or both surfaces that will adhere to other surfaces upon the application of pressure only.		
*	* * * * * * *		

SCHEDULE 8.—SPECIAL CLASSIFICATION PROVISIONS

Item	Articles	Rates of duty 1	2
*	* * * * * * *		
	PART 1.—ARTICLES EXPORTED AND RETURNED		
	Part 1 headnotes:		
	1. In the absence of a specific provision to the contrary, the tariff status of an article is not affected by the fact it was previously imported into the customs territory of the United States and cleared through customs whether or not duty was paid upon such previous importation.		
	2. Any product of the United States which is returned after having been advanced in value or improved in condition abroad by any process of manufacture or other means, or any imported article which has been assembled abroad in whole or in part of products of the United States, shall be treated for the purposes of this Act as a foreign article, and if, subject to a duty which is wholly or partly ad valorem, shall be dutiable, except as otherwise prescribed in this part, on its full value determined in accordance with section 402 or 402a of this Act. If such product or such article is dutiable at a rate dependent upon its value, the value for the purpose of determining the rate shall be its full value under the said section 402 [or 402a].		
	3. This part does not apply to animals provided for in item 100.04 of part 1 of schedule 1.		
*	* * * * * * *		

SCHEDULE 8.—SPECIAL CLASSIFICATION PROVISIONS—Continued

Item	Articles	Rates of duty 1	2

* * * * * * *

Subpart B—Articles Advanced or Improved Abroad

Subpart B headnotes:

1. This subpart shall not apply to any article exported—
   (a) from continuous customs custody with remission, abatement, or refund of duty;
   (b) with benefit of drawback;
   (c) to comply with any law of the United States or regulation of any Federal agency requiring exportation; or
   (d) after manufacture or production in the United States under item 864.05 of this schedule.

2. *Articles repaired, altered, processed, or otherwise changed in condition abroad.*—The following provisions apply only to items 806.20 and 806.30:
   (a) The value of repairs, alterations, processing, or other change in condition outside the United States shall be—
      (i) the cost to the importer of such change; or
      (ii) if no charge is made, the value of such change, as set out in the invoice and entry papers; except that, if the appraiser concludes that the amount so set out does not represent a reasonable cost or value, then the value of the change shall be determined in accordance with section 402 [or 402a] of this Act.
   (b) No appraisement of the imported article in its changed condition shall be required unless necessary to a determination of the rate or rates of duty applicable to such article.
   (c) The duty upon the value of the change in condition shall be at the rate which would apply to the article itself, as an entirety without constructive separation of its components, in its condition as imported if it were not within the purview of this subpart. If the article, as returned to the United States, is subject to a specific or compound rate of duty, such rate shall be converted to the ad valorem rate which when applied to the full value of such article determined in accordance with section 402 [or 402a] of this Act would provide the same amount of duties as the specific or compound rate. In order to compute the duties due, the ad valorem rate so obtained shall be applied to the value of the change in condition made outside the United States.

3. *Articles assembled abroad with components produced in the United States.*—The following provisions apply only to item 807.00:
   (a) The value of the products of the United States assembled into the imported article shall be—
      (i) the cost of such products at the time of the last purchase; or
      (ii) if no charge is made, the value of such products at the time of the shipment for exportation,
   as set out in the invoice and entry papers; except that if the appraiser concludes that the amount so set out does not represent a reasonable cost or value, then the value of such products shall be determined in accordance with section 402 [or 402a] of this Act.

* * * *

PART 7.—OTHER SPECIAL CLASSIFICATION PROVISIONS

Part 7 headnote:

1. * * *

2. The provisions of items 870.40 and 870.45 do not apply to—
   (i) articles of textile materials; articles provided for in schedule 5; articles of leather or of fur on the skin;
   (ii) articles provided for in schedule 6, part 2, part 3 (subparts A through F except items 652.12 through 652.38, inclusive, 652.84, 652.88, 653.00, and 653.01), part 5 (except item 688.40), or part 6, but interchangeable agricultural and horticultural implements are classifiable in item 870.40 even if mounted at the time of importation on a tractor provided for in part 6B of schedule 6;
   (iii) ball or roller bearings, including such bearings with integral shafts, and parts thereof, provided for in items 680.33 through 680.36, inclusive; or
   (iv) articles provided for in item 666.00.

SCHEDULE 8.—SPECIAL CLASSIFICATION PROVISIONS—Continued

Item	Articles	Rates of duty 1	2
870.10	Records, diagrams, and other data with regard to any business, engineering, or exploration operation conducted outside the United States, whether on paper, cards, photographs, blueprints, tapes, or other media.	Free	Free.
	Nets or sections or parts of nets:		
870.20	Monofilament gill nets to be used for fish sampling	Free	Free.
870.25	To be used in taking wild birds under license issued by an appropriate Federal or State governmental authority.	Free	Free.
870.27	Specimens of archeology, mineralogy, or natural history (including specimens of botany or zoology other than live zoological specimens) imported for any public or private scientific collection for exhibition or other educational or scientific use, and not for sale or other commercial use.	Free	Free.
870.30	Developed photographic film, including motion-picture film on which pictures or sound and pictures have been recorded; photographic slides; transparencies; sound recordings; recorded video-tape; models; charts; maps; globes; and posters; all of the foregoing which are determined to be visual or auditory materials in accordance with headnote 1 of this part.	Free	Free.
870.40	*Machinery, equipment, and implements to be used for agricultural or horticultural purposes.*	*Free*	*The column 2 rate applicable in the absence of this item.*
870.45	*Parts of articles provided for in item 666.00, whether or not covered by a specific provision within the meaning of general interpretative rule 10(ij).*	*Free*	*The column 2 rate applicable in the absence of this item.*

* * * * * * *

APPENDIX TO THE TARIFF SCHEDULES

* * * * * * *

Item	Articles	Rates of duty 1	2	Effective period
	PART 1.—TEMPORARY LEGISLATION			
*	* * * * *	*		*
	Subpart B.—Temporary Provisions Amending the Tariff Schedules			
*	* * * * *	*		*
	Wool (provided for in part 1C, schedule 3):			
905.10	All wool provided for in items 306.00 through 306.24	Free	Free	On or before [6/30/80] *6/30/85*
905.11	Wool not finer than 46s provided for in items 306.34 through 306.34.	Free	Free	On or before [6/30/80] *6/30/85*
*	* * * * *	*		*

Rates of duty in rate column numbered 2 of the Tariff Schedules are amended as follows:

Item:	Old rate of duty:	New rate of duty:
110.65	2.5¢ per lb	1% ad val.
111.52	1.25¢ per lb	6% ad val.
111.56	1.25¢ per lb	1% ad val.
112.03	1.25¢ per lb	2.5% ad val.
112.12	1.25¢ per lb	2% ad val.
112.24	1.25¢ per lb	4% ad val.
113.15	1.25¢ per lb	2% ad val.
114.34	8¢ per lb. (including wt. of immediate container)	7.5% ad val.
114.36	8¢ per lb. (including wt. of immediate container)	12.5% ad val.

Item:	Old rate of duty:	New rate of duty:
114.55	8¢ per lb. (including wt. of immediate container)	13% ad val.
141.60	6¢ per lb	38.5% ad val.
176.47	5.3¢ per lb	22.5% ad val.
178.10	5¢ per lb	12.5% ad val.
252.13	6¢ per lb. + 20% ad val	21% ad val.
252.15	5¢ per lb. + 15% ad val	22% ad val.
252.20	3¢ per lb. + 15% ad val	24.5% ad val.
252.25	6¢ per lb. + 20% ad val	38% ad val.
252.27	5¢ per lb. + 15% ad val	30.5% ad val.
252.30	6¢ per lb. + 15% ad val	24% ad val.
252.40	6¢ per lb. + 20% ad val	25% ad val.
252.42	5¢ per lb. + 15% ad val	20.5% ad val.
252.45	3¢ per lb. + 15% ad val	15.5% ad val.
252.59	6¢ per lb. + 20% ad val	24% ad val.
252.61	5¢ per lb.+15% ad val	20% ad val.
252.63	4¢ per lb.+15% ad val	18% ad val.
252.67	0.25¢ per lb.+10% ad val	11.5% ad val.
252.70	6¢ per lb.+20% ad val	29% ad val.
252.73	5¢ per lb.+15% ad val	22% ad val.
252.75	3¢ per lb.+15% ad val	28% ad val.
252.77	6¢ per lb.+20% ad val	28% ad val.
253.05	3¢ per lb.+15% ad val	17.5% ad val.
253.10	3¢ per lb.+25% ad val	27% ad val.
253.15	6¢ per lb.+15% ad val	36% ad val.
253.20	6¢ per lb.+15% ad val	36% ad val.
253.25	3¢ per lb.+15% ad val	19% ad val.
253.35	5¢ per lb.+17% ad val	22.5% ad val.
253.40	5¢ per lb.+20% ad val	24% ad val.
253.45	5¢ per lb.+20% ad val	22.5% ad val.
254.09	3¢ per lb.+25% ad val	42% ad val.
254.15	6¢ per lb. + 20% ad val	38% ad val.
254.18	5¢ per lb. + 15% ad val	30.5% ad val.
254.20	6¢ per lb. + 15% ad val	24% ad val.
254.30	5¢ per lb. + 10% ad val	15% ad val.
254.35	3¢ per lb. + 25% ad val	31% ad val.
254.40	6¢ per lb. + 20% ad val	24% ad val.
254.42	5¢ per lb. + 15% ad val	20% ad val.
254.44	4¢ per lb. + 15% ad val	18% ad val.
254.46	5¢ per lb. + 15% ad val	37% ad val.
254.48	5¢ per lb. + 20% ad val	34% ad val.
254.50	30¢ per lb	35% ad val.
254.54	3¢ per lb. + 15% ad val	17.5% ad va
254.56	3¢ per lb. + 25% ad val	35% ad val..
254.58	30¢ per lb	62.5% ad vlal.
254.63	6¢ per lb. + 20% ad val	30% ad val.
254.65	5¢ per lb. + 15% ad val	20% ad val.
254.70	5¢ per lb.+15% ad val	18.5% ad val.
254.75	5¢ per lb	14% ad val.
254.80	5¢ per lb. +15% ad val	25% ad val.
254.85	5¢ per lb. +15% ad val	20% ad val.
254.90	30¢ per lb	24.5% ad val.
254.95	8.75¢ per lb	11.5% ad val.
256.20	3¢ per lb. + 20% ad val	33% ad val.
256.25	3¢ per lb. + 30% ad val	33% ad val.
256.48	5¢ per lb. + 20% ad val	21.5% ad val.
256.65	1¢ per lb. + 25% ad val	25.5% ad val.
256.67	3¢ per lb. + 35% ad val	43% ad val.
256.80	6¢ per lb. + 15% ad val	19.5% ad val.
256.85	5¢ per lb. + 20% ad val	26.5% ad val.
303.20	10¢ per lb. + 25% ad val	25.5% ad val.
307.62	40¢ per lb. + 50% ad val	55.5% ad val.
307.64	40¢ per lb. + 50% ad val	55.5% ad val.
309.10	45¢ per lb. + 65% ad val	65.5% ad val.
309.25	45¢ per lb. + 65% ad val	72.5% ad val.
309.70	10¢ per lb. + 25% ad val	56.5% ad val.
309.80	45¢ per lb. + 65% ad val	76.5% ad val.
309.90	10¢ per lb. + 30% ad val	51.5% ad val.
310.06	45¢ per lb. + 50% ad val	79% ad val.
310.21	45¢ per lb. + 55% ad val	83.5% ad val.
310.40	12.5¢ per lb. + 45% ad val	54% ad val.
310.50	13.5¢ per lb. + 50% ad val	61.5% ad val.
310.60	45¢ per lb. + 65% ad val	81% ad val.
310.80	45¢ per lb. + 65% ad val	80% ad val.
312.30	6¢ per lb. + 35% ad val	36.5% ad val.
315.35	2¢ per lb. + 15% ad val	19.5% ad val.
315.40	2¢ per lb. + 15% ad val	20% ad val.
315.45	2¢ per lb. + 15% ad val	17% ad val.
316.60	45¢ per lb. + 65% ad val	76.5% ad val.
335.50	1¢ per lb. + 10% ad val	11.5% ad val.
335.55	40¢ per lb. + 55% ad val	19.0% ad val.
335.60	45¢ per lb. + 70% ad val	78% ad val.
336.20	40¢ per lb. + 60% ad val	63% ad val.
336.25	50¢ per lb. + 60% ad val	62% ad val.
336.30	40¢ per lb. + 55% ad val	95% ad val.
336.40	40¢ per lb. + 60% ad val	63.5% ad val.
336.50	50¢ per lb. + 55% ad val	138.5% ad val.
336.60	50¢ per lb. + 60% ad val	68.5% ad val.

Item:	Old rate of duty:	New rate of duty:
338.10	60¢ per lb. + 70% ad val	107% ad val.
338.15	50¢ per lb. + 70% ad val	80.5% ad val.
338.30	45¢ per lb. + 70% ad val	81% ad val.
339.05	40¢ per lb. + 60% ad val	63.5% ad val.
345.30	50¢ per lb. + 50% ad val	65.5% ad val.
345.50	45¢ per lb. + 60% ad val	113.5% ad val.
346.52	44¢ per lb. + 55% ad val	61.5% ad val.
346.60	45¢ per lb. + 65% ad val	79.5% ad val.
346.82	44¢ per lb. + 55% ad val	58% ad val.
346.90	45¢ per lb. + 65% ad val	79.5% ad val.
347.40	50¢ per lb. + 50% ad val	59% ad val.
347.55	45¢ per lb. + 65% ad val	68.5% ad val.
347.60	45¢ per lb. + 70% ad val	76.5% ad val.
347.65	45¢ per lb. + 70% ad val	78% ad val.
347.70	45¢ per lb. + 70% ad val	84% ad val.
355.25	45¢ per bl. + 65% ad val	74% ad val.
355.45	45¢ per lb. + 65% ad val	82% ad val.
355.60	45¢ per lb. + 65% ad val	70% ad val.
355.70	50¢ per lb. + 50% ad val	54% ad val.
355.82	45¢ per lb. + 65% ad val	84.5% ad val.
356.30	50¢ per lb. + 50% ad val	65% ad val.
356.40	45¢ per lb. + 65% ad val	74.5% ad val.
357.15	50¢ per lb. + 60% ad val	68.5% ad val.
357.20	50¢ per lb. + 60% ad val	63% ad val.
357.35	45¢ per lb. + 60% ad val	63% ad val.
357.45	45¢ per lb. + 60% ad val	62% ad val.
357.90	19.5¢ per lb. + 15% ad val	21.5% ad val.
357.95	45¢ per lb. + 70% ad val	88.5% ad val.
358.08	50¢ per lb. + 60% ad val	66% ad val.
358.14	45¢ per lb. + 65% ad val	74% ad val.
358.30	50¢ per lb. + 60% ad val	64.5% ad val.
358.50	45¢ per lb. + 65% ad val	68.5% ad val.
359.30	50¢ per lb. + 50% ad val	57% ad val.
359.50	45¢ per lb. + 65% ad val	83.5% ad val.
363.10	40¢ per lb. + 40% ad val	48.5% ad val.
363.85	45¢ per lb. + 65% ad val	77.5% ad val.
364.22	50¢ per lb. + 60% ad val	64.5% ad val.
364.30	45¢ per lb. + 65% ad val	74% ad val.
367.05	50¢ per lb. + 50% ad val	60% ad val.
367.10	50¢ per lb. + 50% ad val	52.5 % ad val.
367.15	44¢ per lb. + 55% ad val	65.5% ad val.
367.25	40¢ per lb. + 40% ad val	48.5% ad val
367.50	45¢ per lb. + 60% ad val	74.5% ad val.
367.55	45¢ per lb. + 65% ad val	78% ad val.
367.60	45¢ per lb. + 65% ad val	72.5% ad val.
370.04	4¢ each + 40% ad val	75% ad val.
370.08	4¢ each + 40% ad val	53.5% ad val.
370.12	4¢ each + 40% ad val	49% ad val.
370.16	4¢ each + 40% ad val	54% ad val.
370.17	4¢ each + 40% ad val	50% ad val.
370.19	4¢ each + 40% ad val	45% ad val.
370.21	4¢ each + 40% ad val	59.5% ad val.
370.22	4¢ each + 40% ad val	46% ad val.
370.28	10¢ per lb. + 34% ad val	38% ad val.
370.32	10¢ per lb. + 45% ad val	48% ad val.
370.40	10¢ per lb. + 47% ad vla	49% ad val.
370.44	10¢ per lb. + 57% ad val	60% ad val.
370.52	10¢ per lb. + 44% ad val	45% ad val.
370.56	10¢ per lb. + 55% ad val	55.5% ad val.
370.64	10¢ per lb. + 57% ad val	58% ad val.
370.68	10¢ per lb. + 67% ad val	67.5% ad val.
370.76	1¢ each + 50% ad val	51.5% ad val.
370.88	45¢ per lb. + 65% ad val	68.5% ad val.
372.25	50¢ per lb. + 75% ad val	83.5% ad val.
372.30	50¢ per lb. + 50% ad val	63.5% ad val.
372.35	50¢ per lb. + 50% ad val	54% ad val.
372.40	33¢ per lb. + 45% ad val	65.5% ad val.
372.45	50¢ per lb. + 50% ad val	55% ad val.
372.70	45¢ per lb. + 65% ad val	68.5% ad val.
372.75	45¢ per lb. + 65% ad val	73% ad val.
373.15	37.5% ad val	52% ad val.
373.25	50¢ per lb. + 75% ad val	71.5% ad val.
374.50	50¢ per lb. + 50% ad val	53.5% ad val.
374.60	45¢ per lb. + 65% ad val	72% ad val.
376.08	50¢ per lb. + 50% ad val	67.5% ad val.
376.16	45¢ per lb. + 70% ad val	83.5% ad val.
378.35	50¢ per lb. + 50% ad val	55.5% ad val.
378.40	33¢ per lb. + 45% ad val	54% ad val.
378.45	50¢ per lb. + 50% ad val	52% ad val.
378.60	45¢ per lb. + 65% ad val	72% ad val.
378.65	45¢ per lb. + 65% ad val	71% ad val.
380.57	50¢ per lb. + 50% ad val	63% ad val.
380.59	50¢ per lb. + 50% ad val	52% ad val.
380.61	50¢ per lb. + 50% ad val	54.5% ad val.
380.63	33¢ per lb. + 45% ad val	58% ad val.
380.66	50¢ per lb. + 50% ad val	58.5% ad val.

Item:	Old rate of duty:	New rate of duty:
380.81	45¢ per lb. + 65% ad val	72% ad val.
380.84	45¢ per lb. + 65% ad val	76% ad val.
382.48	50¢ per lb. + 75% ad val	78.5% ad val.
382.54	50¢ per lb. +50% ad val	63% ad val.
382.56	50¢ per lb. +50% ad val	52% ad val.
382.58	50¢ per lb. +50% ad val	54.5% ad val.
382.60	33¢ per lb. +45% ad val	58% ad val.
382.63	50¢ per lb. +50% ad val	58.5% ad val.
382.78	45¢ per lb. +65% ad val	72% ad val.
382.81	45¢ per lb. +65% ad val	76% ad val.
385.53	45¢ per lb. +65% ad val	103% ad val.
385.61	45¢ per lb. +65% ad val	71% ad val.
385.85	45¢ per lb. +65% ad val	71% ad val.
388.10	50¢ per lb. + 50% ad val	70.5% ad val.
388.20	50¢ per lb. + 50% ad val	56.6% ad val.
388.30	44¢ per lb. + 55% ad val	60.5% ad val.
389.40	45¢ per lb. + 60% ad val	72% ad val.
389.50	45¢ per lb. + 65% ad val	74% ad val.
389.61	45¢ per lb. + 65% ad val	71.5% ad val.
389.62	45¢ per lb. + 65% ad val	78.5% ad val.
416.10	1¢ per lb	8.5% ad val.
416.30	2¢ per lb	10% ad val.
416.40	60¢ per lb. on tungsten content + 40% ad val	55% ad val.
417.10	0.75¢ per lb	9.5% ad val.
417.16	0.375¢ per lb	10% ad val.
417.22	2.5¢ per lb	28% ad val.
417.24	2¢ per lb	16% ad val.
417.26	1.25¢ per lb	18% ad val.
417.28	50¢ per lb. on molybdenum content + 15% ad val	29% ad val.
417.30	1¢ per lb	15% ad val.
417.32	1.5¢ per lb	4% ad val.
417.34	1.5¢ per lb	8.5% ad val.
417.40	60¢ per lb. on tungsten content + 40% ad val	49.5% ad val.
417.52	1¢ per lb. + 25% ad val	29% ad val.
417.54	1¢ per lb. + 25% ad val	25.5% ad val.
417.70	2¢ per lb	28.5% ad val.
417.72	6¢ per lb	7.5% ad val.
417.74	1.25¢ per lb	10.5% ad val.
417.76	2¢ per lb	19% ad val.
417.78	2 5¢ per lb	6% ad val.
418.14	1¢ per lb	10% ad val.
418.24	0.3¢ per lb	2% ad val.
418.26	50¢ per lb. on molybdenum content + 15% ad val	24 5% ad val.
418.30	60¢ per lb. on tungsten content + 40% ad val	43.5% ad val.
418.62	10¢ per lb	6.5% ad val.
418.72	3¢ per lb. + 25% ad val	29% ad val.
418.74	3¢ per lb. + 25% ad val	31% ad val.
418.76	4¢ per lb. on copper content	5% ad val.
418.78	3¢ per lbl + 25% ad val	32.5% ad val.
419.00	3¢ per lb	6% ad val.
419.02	3¢ per lb	10% ad val.
419.24	1¢ per lb	3% ad val.
419.28	0.625¢ per lb	5% ad val.
419.34	0.75¢ per lb	20% ad val.
419.60	50¢ per lb. on molybdenum content + 15% ad val	20.5% ad val.
419.80	6¢ per lb	18% ad val.
419.82	6¢ per lb	25.5% ad val.
420.04	0.75¢ per lb	6% ad val.
420.06	1.5¢ per lb	9% ad val.
420.08	2.25¢ per lb	3.5% ad val.
420.20	25¢ per lb	7.5% ad val.
420.22	50¢ per lb. on molybdenum content + 15% ad val	23% ad val.
420.24	1¢ per lb	7% ad val.
420.26	1.5¢ per lb	3% ad val.
420.28	6¢ per lb	23% ad val.
420.32	60¢ per lbl on tungsten content ÷ 40% ad val	50.5% ad val.
420.84	0.25¢ per lb	8.5% ad val.
420.88	1.5¢ per lb	13% ad val.
420.94	7¢ per 100 lb	26% ad val.
420.98	1.75¢ per lb	8.5% ad val.
421.04	2¢ per lb	8.5% ad val.
421.10	50¢ per lb. on molybdenum content + 15% ad val	25.5% ad val.
421.14	4.5¢ per lb	54% ad val.
421.16	1.5¢ per lb	6% ad val.
421.18	0.75¢ per lb	11.5% ad val.
421.34	0.375¢ per lb	3% ad val.
421.36	1.5¢ per lb	62.5% ad val.
421.46	$1 per ton	4% ad val.
421.52	0.75¢ per lb	7.5% ad val.
421.54	0.375¢ per lb	4.5% ad val.
421.56	60¢ per lb. on tungsten content +40% ad val	46.5% ad val.
422.40	60¢ per lb. on tungsten content +50% ad val	55.5% ad val.
422.42	60¢ per lb. on tungsten content +40% ad val	45.5% ad val.
422.72	1.3¢ per lb	5% ad val.
422.76	0.75¢ per lb	8% ad val.
423.88	50¢ per lb. on molybdenum content +15% ad val	18% ad val.
423.92	60¢ per lb. on tungsten content + 40% ad val	45.5% ad val.

Item:	Old rate of duty:	New rate of duty:
425.00	6¢ per lb. +30% ad val	56.5% ad val.
425.02	6¢ per lb. + 30% ad val	35% ad val.
425.12	6¢ per lb. + 30% ad val	50.5% ad val.
425.14	6¢ per lb. + 30% ad val	39% ad val.
425.18	11¢ per lb	58% ad val.
425.38	6¢ per lb. + 30% ad val	40% ad val.
425.52	6¢ per lb. + 30% ad val	30.5% ad val.
425.70	2¢ per lb	16% ad val.
425.72	5¢ per lb	17.5% ad val.
425.74	17¢ per lb	39.5% ad val.
425.76	3¢ per lb	22.5% ad val.
425.78	6¢ per lb	2% ad val.
425.86	6¢ per lb	34.5% ad val.
425.88	12¢ per lb	2% ad val.
425.94	8¢ per lb	17% ad val.
426.00	3.5¢ per lb	22% ad val.
426.12	7¢ per lb	7% ad val.
426.14	4¢ per lb	5% ad val.
426.32	3¢ per lb. + 25% ad val	32% ad val.
426.34	3¢ per lb. + 25% ad val	29% ad val.
426.36	2.5¢ per lb	3% ad val.
426.42	3¢ per lb	75% ad val.
426.56	22¢ per lb. + 25% ad val	28% ad val.
426.72	6¢ per lb	4% ad val.
426.76	5¢ per lb	11% ad val.
426.77	5¢ per lb	21% ad val.
426.78	14¢ per lb	22.5% ad val.
426.82	5¢ per lb	11.5% ad val.
426.94	12¢ per lb	42% ad val.
426.98	2¢ per lb	27.5% ad val.
427.40	6¢ per lb.+30% ad val	71% ad val.
427.42	6¢ per lb.+30% ad val	32.5% ad val.
427.44	6¢ per lb.+30% ad val	61.5% ad val.
427.46	6¢ per lb.+30% ad val	60% ad val.
427.54	6¢ per lb.+30% ad val	40% ad val.
427.56	8¢ per lb	32.5% ad val.
427.58	6¢ per lb.+30% ad val	37% ad val.
427.70	6¢ per lb.+30% ad val	45% ad val.
427.72	6¢ per lb	37.5% ad val.
427.74	6¢ per lb	50.5% ad val.
427.82	6¢ per lb.+30% ad val	41.5% ad val.
427.88	15¢ per lb	20% ad val.
427.94	6¢ per lb	20.5% ad val.
427.97	18¢ per gal	46% ad val.
428.04	6¢ per lb. + 30% ad val	37% ad val.
428.06	6¢ per lb	66% ad val.
428.20	6¢ per lb. + 30% ad val	35% ad val.
428.22	6¢ per lb. + 30% ad val	39% ad val.
428.24	6¢ per lb. + 30% ad val	39% ad val.
428.26	6¢ per lb. + 30% ad val	33.5% ad val.
428.30	6¢ per lb. + 30% ad val	51% ad val.
428.34	6¢ per lb. + 30% ad val	63% ad val.
428.46	6¢ per lb. + 30% ad val	54.5% ad val.
428.52	7¢ per lb	40% ad val.
428.58	3¢ per lb	20.5% ad val.
428.68	6¢ per lb. + 30% ad val	52% ad val.
428.80	6¢ per lb. + 30% ad val	46% ad val.
428.84	6¢ per lb. + 30% ad val	49% ad val.
428.86	6¢ per lb. + 30% ad val	55% ad val.
428.88	6¢ per lb. + 30% ad val	31% ad val.
428.94	6¢ per lb. + 30% ad val	88.5% ad val.
428.96	6¢ per lb. + 30% ad val	37% ad val.
429.00	6¢ per lb. + 30% ad val	36.5% ad val.
429.22	1¢ per lb	8.5% ad val.
429.24	4¢ per lb	32% ad val.
429.26	15¢ per lb	125% ad val.
429.44	6¢ per lb. + 30% ad val	76% ad val.
429.46	6¢ per lb. + 30% ad val	35% ad val.
429.47	6¢ per lb. + 30% ad val	114.5% ad val.
437.02	$1.25 per lb	59% ad val.
437.68	18¢ per lb	8% ad val.
437.69	11¢ per lb	5% ad val.
445.05	4¢ per lb. + 30% ad val	37% ad val.
445.10	4¢ per lb. + 30% ad val	35.5% ad val.
445.15	4¢ per lb. + 30% ad val	34% ad val.
445.20	50¢ per lb	73.5% ad val.
445.25	40¢ per lb	34.5% ad val.
445.30	4¢ per lb. + 30% ad val	43% ad val.
445.35	4¢ per lb. + 30% ad val	41.5% ad val.
445.40	4¢ per lb. + 30% ad val	37.5% ad val.
445.45	4¢ per lb. + 30% ad val	43.5% ad val.
445.50	4¢ per lb. + 30% ad val	33.5% ad val.
465.87	45¢ per lb	66% ad val.
472.22	0.4¢ per lb	13% ad val.
472.30	0.5¢ per lb	11% ad val.
472.44	0.375¢ per lb	8.5% ad val.
473.24	3¢ per lb. + 35% ad val	39.5% ad val.

Item:	Old rate of duty:	New rate of duty:
473.28	8¢ per lb	12% ad val.
473.46	1.75¢ per lb	5.5% ad val.
473.48	2.25¢ per lb	12% ad val.
473.52	2.5¢ per lb	12% ad val.
473.54	3¢ per lb	12.5 ad val.
743.56	2.75¢ per lb	12.5% ad val.
473.60	2.5¢ per lb	4.5% ad val.
473.66	35¢ per lb	6% ad val.
473.72	1.75¢ per lb	11% ad val.
473.74	1.75¢ per lb. + 15% ad val	22.5% ad val.
473.76	1.75¢ per lb	5.5% ad val.
473.78	2.25¢ per lb	4.5% ad val.
473.80	3¢ per lb	11% ad val.
473.84	4¢ per lb	7.5% ad val.
490.30	3¢ per lb. + 25% ad val	28% ad val.
490.32	3¢ per lb. + 25% ad val	29.5% ad val.
490.42	4.5¢ per lb. + 30% ad val	34.5% ad val.
490.44	4.5¢ per lb. + 25% ad val	50% ad val.
490.46	4.5¢ per lb. + 25% ad val	27.5% ad val.
490.65	6¢ per lb. + 30% ad val	39.5% ad val.
490.90	1.5¢ per lb. + 25% ad val	27% ad val.
493.18	45¢ per lb	33.5% ad val.
493.22	5¢ per lb	11% ad val.
522.24	$8.40 per ton	13.5% ad val.
534.84	10¢ per doz pcs. + 50% ad val	51.5% ad val.
534.87	10¢ per doz. pcs. + 50% ad val	50.5% ad val.
607.01	Additional duty of 3¢ per lb. on chromium content in excess of 0.2%.	1% ad val.
607.02	Additional duty of 65¢ per lb. on molybdenum content in excess of 0.1%.	1% ad val.
607.03	Additional duty of 72¢ per lb. on tungsten content in excess of 0.3%.	1% ad val.
607.04	Additional duty of $1 per lb. on vanadium content in excess of 0.1%.	1% ad val.
607.12	75¢ per ton + additional duties (see headnote 4)	0.5% ad val. + additional duties.
607.18	$1.125 per ton + additional duties (see headnote 4)	0.5% ad val. + additional duties.
607.20	75¢ per ton	0.5% ad val.
607.21	75¢ per ton + additional duties (see headnote 4)	0.5% ad val. + additional duties.
607.31	2.5¢ per lb. on chromium content	7.5% ad val.
607.35	1.875¢ per lb. on manganese content + 15% ad val	22% ad val.
607.36	1.875¢ per lb. on manganese content	6.5% ad val.
607.37	1.875¢ per lb. on manganese content	10.5% ad val.
607.40	50¢ per lb. on molybdenum content + 15% ad val	31.5% ad val.
607.51	3¢ per lb. on silicon content	11.5% ad val.
607.52	4¢ per lb on silicon content	9% ad val.
607.53	8¢ per lb. on silicon content	40% ad val.
607.57	1.875¢ per lb. on managnese content + 15% ad val	23% ad val.
607.65	60¢ per lb. on tungsten content + 25% ad val	35% ad val.
608.06	0.75¢ per lb	1% ad val.
608.10	0.75¢ per lb	3% val.
608.30	1.5¢ per lb	7% ad val.
608.32	1.5¢ per lb. + 8% ad val. + additional duties (see headnote 4).	10.5% ad val. + additional duties.
608.60	0.75¢ per lb. + 20% ad val	23% ad val.
608.70	0.3¢ per lb	4.5% ad val.
608.71	0.6¢ per lb	5.5% ad val.
608.73	0.6¢ per lb	29.5% ad val.
608.75	0.85¢ per lb	6% ad val.
608.76	0.6¢ per lb. + 8% ad val. + additional duties (see headnote 4).	11% ad val. + additional duties.
608.78	0.85¢ per lb. + 8% ad val. + additional duties (see headnote 4).	10% ad val. + additional duties.
608.92	1¢ per lb	6% ad val.
608.93	1¢ per lb	6% ad val.
608.95	0.2¢ per lb. + 20% ad val	21.5% ad val.
609.25	0.2¢ per lb. + 25% ad val	25.5% ad val.
609.26	0.2¢ per lb. + 25% ad val	26% ad val.
609.27	0.2¢ per lb. +25% ad val	26% ad val.
609.35	0.2¢ per lb. +33% ad val. + additional duties (see headnote 4).	34% ad val. + additional duties.
609.36	0.2¢ per lb. +33% ad val. + additional duties (see headnote 4).	34% ad val.+ additional duties.
609.37	0.2¢ per lb. +33% ad val. + additional duties (see headnote 4).	12.5% ad val. + additional duties.
609.41	1.25¢ per lb	7% ad val.
609.72	0.2¢ per lb. +25% ad val	26% ad val.

Item:	Old rate of duty:	New rate of duty:
609.76	0.2¢ per lb. +33% ad val. + additional duties (see headnote 4).	33% ad val. + additional duties.
609.80	0.2¢ per lb	2% ad val.
609.82	0.2¢ per lb. +8% ad val. + additional duties (see headnote 4)	9% ad val. + additional duties.
609.96	0.2¢ per lb	2% ad val.
609.98	0.2¢ per lb. +8% ad val. + additional duties (see headnote 4).	8% ad val. + additional duties.
610.20	0.1¢ per lb	1% ad val.
610.21	0.1¢ per lb. +8% ad val. + additional duties (see headnote 4).	9% ad val. + additional duties
610.25	0.25¢ per lb	2% ad val.
610.26	0.25¢ per lb. + 8% ad val. + additional duties (see headnote 4).	8% ad val. + additional duties.
610.30	1.75¢ per lb	13% ad val.
610.31	1.25¢ per lb	6.5% ad val.
610.32	0.75¢ per lb	5.5% ad val.
610.35	1.75¢ per lb. + 8% ad val. + additional duties (see headnote 4).	10% ad val. + additional duties.
610.36	1.25¢ per lb. + 8% ad val. + additional duties (see headnote 4).	9.5% ad val. + additional duties.
610.37	0.75¢ per lb. + 8% ad val. + additional duties (see neadhote 4).	10% ad val. + additional duties.
610.39	0.2¢ per lb	1% ad val.
610.40	0.2¢ per lb. + 8% ad val. + additional duties (see headnote 4).	8.5% ad val. + additional duties.
612.02	4¢ per lb. on copper content (see headnote 6)	6% ad val.
612.03	4¢ per lb. on 99.6% of the copper content	6% ad val.
612.05	4¢ per lb. on copper content+20% ad val	24% ad val.
612.06	4¢ per lb. on copper content	6% ad val.
612.08	4¢ per lb. on 99.6% of the copper content+20% ad val	24% ad val.
612.10	4¢ per lb. on 99.6% of the copper content	6% ad val.
612.15	4¢ per lb. on copper content+3¢ per lb	12% ad val.
612.17	3¢ per lb.+25% ad val	38% ad val.
612.20	3¢ per lb.+25% ad val	28% ad val.
612.30	3¢ per lb.+30% ad val	38% ad val.
612.31	6.5¢ per lb	7.5% ad val.
612.32	3¢ per lb.+45% ad val	48% ad val.
612.34	3¢ per lb.+30% ad val	38% ad val.
612.35	4¢ per lb. on copper content+30% ad val	32% ad val.
612.36	3¢ per lb.+45% ad val	48% ad val.
612.38	3¢ per lb.+30% ad val	38% ad val.
612.39	4¢ per lb. on copper content + 4¢ per lb	9% ad val.
612.40	3¢ per lb. + 30% ad val	38% ad val.
612.41	3¢ per lb. + 45% ad val	48% ad val.
612.43	3¢ per lb. + 30% ad val	38% ad val.
612.44	4¢ per lb. on copper content + 4¢ per lb	9% ad val.
612.45	3¢ per lb. + 45% ad val	49% ad val.
612.50	3¢ per lb. + 45% ad val	48% ad val.
612.52	3¢ per lb. + 45% ad val	49% ad val.
612.55	17¢ per lb	12% ad val.
612.56	3¢ per lb. + 45% ad val	49% ad val.
612.60	6.5¢ per lb	7% ad val.
612.61	4¢ per lb. on copper content + 30% ad val	32% ad val.
612.62	4¢ per lb. on copper content + 4¢ per lb	9% ad val.
612.63	3¢ per lb. + 45% ad val	48% ad val.
612.64	4¢ per lb. on copper content + 4¢ per lb	9% ad val.
612.70	4¢ per lb. on copper content + 30% ad val	32% ad val.
612.71	4¢ per lb. on copper content + 0.2¢ per lb. + 30% ad val.	32% ad val.
612.72	4¢ per lb. on copper content + 25% ad val	28% ad val.
612.73	4¢ per lb. on copper content + 0.2¢ per lb. + 25% ad val.	28% ad val.
612.80	3¢ per lb. + 45% ad val	48% ad val.
612.81	4¢ per lb. on copper content + 12¢ per lb	17% ad val.
612.82	3¢ per lb. + 45% ad val	49% ad val.
613.02	11¢ per lb	13% ad val.
613.03	15¢ per lb	13% ad val.
613.04	3¢ per lb. + 45% ad val	47% ad val.
613.06	3¢ per lb. + 45% ad val	45.5% ad val.
613.08	3¢ per lb. + 45% ad val	49% ad val.
613.10	4¢ per lb. on copper content + 8¢ per lb	10% ad val.
613.12	3¢ per lb. + 45% ad val	49% ad val.
613.15	3¢ per lb. + 45% ad val	46% ad val.
613.18	3¢ per lb. + 45% ad val	49% ad val.
618.01	7¢ per lb	18.5% ad val.
618.02	4¢ per lb	11% ad val.
618.04	5¢ per lb	25% ad val.
618.06	4¢ per lb	10.5% ad val.
618.10	4¢ per lb	16% ad val.
618.15	45% ad val	11% ad val.
618.22	0.2¢ per lb. + 25% ad val	25% ad val.

Item:	Old rate of duty:	New rate of duty:
618.25	7¢ per lb	13.5% ad val.
618.27	7¢ per lb	9.5% ad val.
618.40	12¢ per lb	11% ad val.
618.45	4¢ per lb	15.5% ad val.
624.02	2.125¢ per lb. on 99.6% of the lead content	10.5% ad val.
624.03	2.125¢ per lb. on lead content	10% ad val.
624.04	2.125¢ per lb. on 99.6% of the lead content	11.5% ad val.
624.10	2.375¢ per lb	10% ad val.
624.18	6¢ per lb	47% ad val.
624.22	6¢ per lb	44% ad val.
624.30	2.375¢ per lb	10% ad val.
624.32	6¢ per lb	45% ad val.
624.40	6¢ per lb	45% ad val.
624.50	2.375¢ per lb	10% ad val.
624.52	6¢ per lb	44% ad val.
626.10	1.5¢ per lb	11% ad val.
626.17	2¢ per lb	4% ad val.
626.18	2.25% per lb	24% ad val.
626.31	0.2¢ per lb. + 25% ad val	25.5% ad val.
628.57	40¢ per lb. on magnesium content + 20% ad val	60.5% ad val.
629.25	60¢ per lb. on tungsten content + 25% ad val	50% ad val.
629.28	60¢ per lb. on tungsten content + 50% ad val	58% ad val.
629.32	60¢ per lb. on tungsten content + 25% ad val	35.5% ad val.
632.32	87.5¢ per lb. + ad val	20% ad val.
632.42	8¢ per lb. on silicon content	21% ad val.
642.12	4.5¢ per lb	40% ad val.
642.50	1¢ per sq. ft. + 10% ad val	28% ad val.
642.54	1¢ per sq. ft. + 3¢ per lb	19.5% ad val.
642.56	3¢ per lb. + 25% ad val	28% ad val.
642.58	1¢ per sq. ft	18% ad val.
642.62	4.25¢ per sq. ft. + 10% ad val	31% ad val.
642.66	4.25¢ per sq. ft. + 3¢ per lb	25% ad val.
642.68	3¢ per lb. + 40% ad val	43% ad val.
642.70	4.25¢ per sq. ft	27.5 ad val.%
642.76	3¢ per lb. + 50% ad val	51.5% ad val.
642,85	3¢ per lb. + 35% ad val	37% ad val.
642.96	0.5¢ per lb	2% ad val.
644.02	5.5¢ per lb	6.5% ad val.
644.08	22¢ per lb	61.5% ad val.
644.11	22¢ per lb	47.5% ad val.
644.17	3¢ per lb	28% ad val.
644.24	3¢ per lb. + 45% ad val	47% ad val.
644.36	8¢ per lb. + 20% ad val	21% ad val.
644.38	5¢ per lb	22.5% ad val.
644.40	8¢ per lb. + 20% ad val	24.5% ad val.
644.42	5¢ per lb. + 20% ad val	23% ad val.
644.46	82.5¢ per 100 leaves	8% ad val.
644.52	6.75¢ per 100 sq. in. + 25% ad val	26% ad val.
644.64	6¢ per 100 leaves + 10% ad val	13.5% ad val.
644.68	6¢ for each 3.025 sq. in. + 10% ad val	104% ad val.
644.80	6¢ per 100 leaves + 10% ad val	10% ad val.
644.84	6¢ for each 3.025 sq. in. + 10% ad val	15% ad val.
644.88	6¢ per 100 leaves	3% ad val.
644.92	6¢ for each 3.025 sq. in	6% ad val.
644.95	0.375¢ per 100 sq. in	20% ad val.
644.98	13.25¢ per lb	4% ad val.
646.02	4.5¢ per lb	4% ad val.
646.20	2¢ per lb	4% ad val.
646.25	0.75¢ per lb	2% ad val.
646.26	0.4¢ per lb	3.5% ad val.
646.28	0.4¢ per lb	2% ad val.
646.30	1.5¢ per lb	5.5% ad val.
646.32	4.5¢ per lb	8% ad val.
646.45	4.5¢ per lb	8% ad val.
646.54	1¢ per lb	3.5% ad val.
646.56	0.6¢ per lb	0.5% ad val.
646.74	6.5¢ per lb	7% ad val.
646.80	35¢ per doz. + 20% ad val	39.5% ad val.
646.81	50¢ per doz. + 20% ad val	29.5% ad val.
646.82	75¢ per doz. + 20% ad val	28.5% ad val.
646.83	$1 per doz. + 20% ad val	27% ad val.
646.84	$1.50 per doz. + 20% ad val	36% ad val.
646.85	$2 per doz. + 20% ad val	29.5% ad val.
646.86	70¢ per doz. + 20% ad val	40% ad val.
646.87	$1 per doz. + 20% ad val	41% ad val.
646.88	$1.50 per doz. + 20% ad val	77% ad val.
646.89	$2 per doz. + 10% ad val	32 5% ad val.
649.33	3¢ per lb	6% ad val.
651.07	$1.15 per 1,000 + 40% ad val	72% ad val.
652.24	4¢ per lb	10% ad val.
652.41	0.25¢ per lb	10% ad val.
653.97	5¢ per lb. + 30% ad val	35.5% ad val.
654.10	8.5¢ per lb. + 40% ad val	45.5% ad val.
657.30	3¢ per lb. + 45% ad val	45.5% ad val.
657.35	3¢ per lb. + 45% ad val	46% ad val.
657.70	3¢ per lb.	2.5% ad val.
660.65	$4.50 each + 65% ad val	68.5% ad val.

Item:	Old rate of duty:	New rate of duty:
672.20	$1.15 per 1,000 + 40% ad val	42% ad val.
680.20	3¢ per lb. + 45% ad val	47% ad val.
680.30	10¢ per lb. + 45% ad val	45% ad val.
690.25	0.6¢ per lb	3% ad val.
712.10	$4.50 each + 65% ad val	70% ad val.
720.75	15¢ for each jewel (if any) + the column 2 rate specified in item 720.65 for bottom or pillar plates or their equivalent therein (if any) + 3¢ for each other part or piece therein (if any), but the total duty on the assembly or subassembly shall not exceed the column 2 duty for the complete movement for which suitable, nor be less than 45% ad val. unless said 45 percent rate exceeds the column 2 duty for the complete movement.	45% ad val.
725.04	$1.25 each + 35% ad val	37.5% ad val.
730.23	$1.50 each + 45% ad val	82.5% ad val.
730.25	$4 each + 45% ad val	82.5% ad val.
730.27	$6 each + 45% ad val	74% ad val.
730.29	$10 each + 45% ad val	73% ad val.
730.37	$1.50 each + 45% ad val	75% ad val.
730.39	$4 each + 45% ad val	75% ad val.
730.41	$6 each + 45% ad val	79% ad val.
730.43	$10 each + 45% ad val	71.5% ad val.
730.51	$1.50 each + 45% ad val	65% ad val.
730.53	$4 each + 45% ad val	65% ad val.
730.55	$6 each + 45% ad val	65% ad val.
730.57	$10 each + 45% ad val	65% ad val.
730.63	$5 each + 50% ad val	69.5% ad val.
730.71	$5 each + 50% ad val	73.5% ad va
730.74	$4 each + 50% ad val	57.5% ad val.
750.10	$2 each + 35% ad val	36% ad val.
760.10	45¢ per gross + 40% ad val	41.5% ad val.
760.20	25¢ per gross + 20% ad val	21.5% ad val.
760.30	25¢ per gross + 20% ad val	20% ad val.
770.05	15¢ per lb. + 25% ad val	42.5% ad val.
770.07	50¢ per lb. + 40% ad val	64% ad val.
770.10	50¢ per lb. + 40% ad val	56% ad val.
771.20	50¢ per lb	30.5% ad val.
771.31	45¢ per lb	28.5% ad val.
771.35	45¢ per lb	18% ad val.
771.50	25¢ per lb	17% ad val.
772.06	50¢ per lb. + 40% ad val	84.5% ad val.
772.80	50¢ per lb. + 40% ad val	57.5% ad val.
773.20	45¢ per lb. + 65% ad val	105.5% ad val.
774.35	40¢ per lb. + 50% ad val	56% ad val.
790.59	15¢ each + 45% ad val	56% ad val.
790.60	30¢ each + 45% ad val	55.5% ad val.
790.61	37.5¢ each + 45% ad val	52% ad val.
790.62	45¢ each + 45% ad val	51% ad val.

INTERNAL REVENUE CODE OF 1954

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Subtitle A—Income Taxes

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CHAPTER 1—NORMAL TAXES AND SURTAXES

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Subchapter N—Tax Based on Income From Sources Within or Without the United States

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PART IV—DOMESTIC INTERNATIONAL SALES CORPORATIONS

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Subpart A—Treatment of Qualifying Corporations

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SEC. 993. DEFINITIONS.

(a) QUALIFIED EXPORT RECEIPTS.—* * *

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(c) EXPORT PROPERTY.—

(1) IN GENERAL.—For purposes of this part, the term "export property" means property—

(A) manufactured, produced, grown, or extracted in the United States by a person other than a DISC,

(B) held primarily for sale, lease, or rental, in the ordinary course of trade or business, by, or to, a DISC, for direct use, consumption or disposition outside the United States, and

(C) not more than 50 percent of the fair market value of which is attributable to articles imported into the United States.

In applying subparagraph (C), the fair market value of any article imported into the United States shall be its appraised value, as determined by the Secretary under section 402 or [402a of the Tariff Act of 1930 (19 U.S.C., sec. 1401a or 1402)] *of the Tariff Act of 1930 (19 U.S.C. 1401a)* in connection with its importation.

Subtitle E—Alcohol, Tobacco, and Certain Other Excise Taxes

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CHAPTER 51—DISTILLED SPIRITS, WINES, AND BEER

Subchapter A—Gallonage and Occupational Taxes

PART I—GALLONAGE TAXES

Subpart A—Distilled Spirits

SEC. 5001. IMPOSITION, RATE, AND ATTACHMENT OF TAX.

(a) RATE OF TAX—

[(1) GENERAL.—There is hereby imposed on all distilled spirits in bond or produced in or imported into the United States an internal revenue tax at the rate of $10.50 on each proof gallon or wine gallon when below proof and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon.]

(1) IN GENERAL.—There is hereby imposed on all distilled spirits produced in or imported into the United States a tax at the rate of $10.50 on each proof gallon and a proportionate tax at the like rate on all fractional parts of a proof gallon.

(2) PRODUCTS CONTAINING DISTILLED SPIRITS.—All products of distillation, by whatever name known, which contain distilled spirits, on which the tax imposed by law has not been paid, *and any alcoholic ingredient added to such products*, shall be considered and taxed as distilled spirits.

(3) IMPORTED PERFUMES CONTAINING DISTILLED SPIRITS.—There is hereby imposed on all perfumes imported into the United States containing distilled spirits a tax of $10.50 per wine gallon, and a proportionate tax at a like rate on all fractional parts of such wine gallon.

(4) WINES CONTAINING MORE THAN 24 PERCENT ALCOHOL BY VOLUME.—Wines containing more than 24 percent of alcohol by volume shall be taxed as distilled spirits.

(5) DISTILLED SPIRITS WITHDRAWN FREE OF TAX.—Any person who removes, sells, transports, or uses distilled spirits, withdrawn free of tax under section 5214(a) or section 7510, in violation of laws or regulations now or hereafter in force pertaining thereto, and all such distilled spirits shall be subject to all provisions of law relating to distilled spirits subject to tax, including those requiring payment of the tax thereon; and the person so removing, selling, transporting, or using the distilled spirits shall be required to pay such tax.

(6) DENATURED DISTILLED SPIRITS OR ARTICLES.—Any person who produces, withdraws, sells, transports, or uses denatured distilled spirits or articles in violation of laws or regulations now or hereafter in force pertaining thereto, and all such denatured distilled spirits or articles shall be subject to all provisions of law pertaining to distilled spirits that are not denatured, including those requiring the payment of tax thereon; and the person so producing, withdrawing, selling, transporting, or using the denatured distilled spirits or articles shall be required to pay such tax.

(7) FRUIT-FLAVOR CONCENTRATES.—If any volatile fruit-flavor concentrate (or any fruit mash or juice from which such concentrate is produced) containing one-half of 1 percent or more of alcohol by volume, which is manufactured free from tax under section 5511, is sold, transported, or used by any person in viola-

tion of the provisions of this chapter or regulations promulgated thereunder, such person and such concentrate, mash, or juice shall be subject to all provisions of this chapter pertaining to distilled spirits and wines, including those requiring the payment of tax thereon; and the person so selling, transporting, or using such concentrate, mash, or juice shall be required to pay such tax.

(8) IMPORTED LIQUEURS AND CORDIALS.—Imported liqueurs and cordials, or similar compounds, containing distilled spirits, shall be taxed as distilled spirits.

(9) IMPORTED DISTILLED SPIRITS WITHDRAWN FOR BEVERAGE PURPOSES.—There is hereby imposed on all imported distilled spirits withdrawn from customs custody under section 5232 without payment of the internal revenue tax, and thereafter withdrawn from bonded premises for beverage purposes, an additional tax equal to the duty which would have been paid had such spirits been imported for beverage purposes, less the duty previously paid thereon.

(10) ALCOHOLIC COMPOUNDS FROM PUERTO RICO.—Except as provided in section 5314, upon bay rum, or any article containing spirits, brought from Puerto Rico into the United States for consumption or sale there is hereby imposed a tax on the spirits contained therein at the rate imposed on distilled spirits produced in the United States.

SEC. 5002. DEFINITIONS.

[(a) DEFINITIONS.—When used in this chapter—

[(1) DISTILLED SPIRITS PLANT.—The term "distilled spirits plant" means an establishment which is qualified under subchapter B to perform any operation, or any combination of operations, for which qualification is required under such subchapter.

[(2) BONDED PREMISES.—The term "bonded premises", when used with reference to distilled spirits, means the premises of a distilled spirits plant, or part thereof, as described in the application required by section 5171(a), on which operations relating to production, storage, denaturation, or bottling of distilled spirits, prior to the payment or determination of the distilled spirits tax, are authorized to be conducted.

[(3) BOTTLING PREMISES.—The term "bottling premises", when used with reference to distilled spirits plants, means the premises of a distilled spirits plant, or part thereof, as described in the application required by section 5171(a), on which operations relating to the rectification or bottling of distilled spirits or wines on which the tax has been paid or determined, are authorized to be conducted.

[(4) BONDED WAREHOUSEMAN.—The term "bonded warehouseman" means the proprietor of a distilled spirits plant who is authorized to store distilled spirits after entry for deposit in storage and prior to payment or determination of the internal revenue tax or withdrawal as provided in section 5214 or 7510.

[(5) DISTILLER.—The term "distiller" shall include every person—

[(A) who produces distilled spirits from any source or substance; or

[(B) who brews or makes mash, wort, or wash, fit for distillation or for the production of distilled spirits (except a person making or using such material in the authorized production of wine or beer, or the production of vinegar by fermentation); or

[(C) who by any process separates alcoholic spirits from any fermented substance; or

[(D) who, making or keeping mash, wort, or wash, has also in his possession or use a still.

[(6) DISTILLED SPIRITS.—

[(A) General Definition.—The term "distilled spirits", alcoholic spirits", and "spirits" mean that substance known as ethyl alcohol, ethanol, or spirits of wine, including all dilutions and mixtures thereof, from whatever source or by whatever process produced, and shall include whisky, brandy, rum, gin, and vodka.

[(B) Products of Rectification.—As used in section 5291 (a) the term "distilled spirits" includes products produced in such manner that the person producing them is a rectifier within the meaning of section 5082.

[(7) PROOF SPIRITS.—The term "proof spirits" means that the liquid which contains one-half its volume of ethyl alcohol of a specific gravity of seven thoustand nine hundred and thirty-nine ten-thoustandths (.7939) at 60 degrees Fahrenheit referred to water at 60 defrees Fahrenheit as unity.

[(8) PROOF GALLON.—The term "proof gallon" means a United States gallon of proof spirits, or the alcoholic equivalent thereof.

[(9) CONTAINER.—The term "container", when used with respect to distilled spirits, means any receptacle, vessel, or form of package, bottle, tank, or pipeline used, or capable of use, for holding, storing, transferring, or conveying distilled spirits.

[(10) APPROVED CONTAINER.—The term "approved container", when used with respect to distilled spirits, means a container the use of which is authorized by regulations prescribed by the Secretary.

[(11) ARTICLES.—The term "articles" means any substance or preparation in the manufacture of which denatured distilled spirits are used, unless another meaning is distinctly expressed or maanifestly intended.

[(12) EXPORT.—The terms "export", "exported", and "exportation" shall include shipments to a possession of the United States.

[(b) CROSS REFERENCES.—

[(1) For definition of wine gallon, see section 5041(c).

[(2) For definition of rectifier, see section 5082.

[(3) For definition of manufacturer of stills, see section 5102.

[(4) For definition of dealer, see section 5112(a).

[(5) For definitions of whoseale dealers, see section 5112.

[(6) For definitions of retail dealers, see section 5122.

[(7) For definitions of general application to this title, see chapter 79.]

SEC. 5002. DEFINITIONS.

(a) IN GENERAL.—For purposes of this chapter—

(1) DISTILLED SPIRITS PLANT.—The term "distilled spirits plant" means an establishment which is qualified under subchapter B to perform any distilled spirits operation.

(2) DISTILLED SPIRITS OPERATION.—The term "distilled spirits operation" means any operation for which qualification is required under subchapter B.

(3) BONDED PREMISES.—The term "bonded premises", when used with respect to distilled spirits, means the premises of a distilled spirits plant, or part thereof, on which distilled spirits operations are authorized to be conducted.

(4) DISTILLER.—The term "distiller" includes any person who—

(A) produces distilled spirits from any source or substance,

(B) brews or makes mash, wort, or wash fit for distillation or for the production of distilled spirits (other than the making or using of mash, wort, or wash in the authorized production of wine or beer, or the production of vinegar by fermentation),

(C) by any process separates alcoholic spirits from any fermented substance, or

(D) making or keeping mash, wort, or wash, has a still in his possession or use.

(5) PROCESSOR.—

(A) IN GENERAL.—The term "processor", when used with respect to distilled spirits, means any person who—

(i) manufactures, mixes, or otherwise processes distilled spirits, or

(ii) manufactures any article.

(B) RECTIFIER, BOTTLER, ETC, INCLUDED.—The term "processor" includes (but is not limited to) a rectifier, bottler, and denaturer.

(6) CERTAIN OPERATIONS NOT TREATED AS PROCESSING.—In applying paragraph (5), there shall not be taken into account—

(A) OPERATIONS AS DISTILLER.—Any process which is the operation of a distiller.

(B) MIXING OF TAXPAID SPIRITS FOR IMMEDIATE CONSUMPTION.—Any mixing (after determination of tax) of distilled spirits for immediate consumption.

(C) USE BY APOTHECARIES.—Any process performed by an apothecary with respect to distilled spirits which such apothecary uses exclusively in the preparation or making up of medicines unfit for use for beverage purposes.

(7) WAREHOUSEMAN.—The term "warehouseman", when used with respect to distilled spirits, means any person who stores bulk distilled spirits.

(8) DISTILLED SPIRITS.—The terms "distilled spirits", "alcoholic spirits", and "spirits" mean that substance known as ethyl alcohol, ethanol, or spirits of wine in any form (including all dilutions and mixtures thereof from whatever source or by whatever process produced).

(9) BULK DISTILLED SPIRITS.—The term "bulk distilled spirits" means distilled spirits in a container having a capacity in excess of 1 wine gallon.

(10) PROOF SPIRITS.—The term "proof spirits" means that liquid which contains one-half its volume of ethyl alcohol of a specific gravity of 0.7939 at 60 degrees Fahrenheit (referring to water as 60 degrees Fahrenheit as unity).

(11) PROOF GALLON.—The term "proof gallon" means a United States gallon of proof spirits, or the alcoholic equivalent thereof.

(12) CONTAINER.—The term "container", when used with respect to distilled spirits, means any receptacle, vessel, or form of package, bottle, tank, or pipeline used, or capable of use, for holding, storing, transferring, or conveying distilled spirits.

(13) APPROVED CONTAINER.—The term "approved container", when used with respect to distilled spirits, means a container the use of which is authorized by regulations prescribed by the Secretary.

(14) ARTICLE.—Unless another meaning is distinctly expressed or manifestly intended, the term "article" means any substance in the manufacture of which denatured distilled spirits are used.

(15) EXPORT.—The terms "export", exported", and "exportation" include shipments to a possession of the United States.

(b) CROSS REFERENCES.—

(1) For definition of wine gallon, see section 5041(c).

(2) For definition of manufacturer of stills, see section 5102.

(3) For definition of dealer, see section 5112(a).

(4) For definitions of wholesale dealers, see section 5112.

(5) For definitions of retail dealers, see section 5122.

(6) For definitions of general application to this title, see chapter 79.

SEC. 5003. CROSS REFERENCES TO EXEMPTIONS, ETC.

(1) For provisions authorizing the withdrawal of distilled spirits free of tax for use by Federal or State agencies, see sections 5214(a)(2) and 5313.

(2) For provisions authorizing the withdrawal of distilled spirits free of tax by nonprofit educational organizations, scientific universities or colleges of learning, laboratories, hospitals, blood banks, sanitariums, and charitable clinics, see section 5214(a)(3).

(3) For provisions authorizing the withdrawal of certain imported distilled spirits from customs custody without payment of tax, see section 5232.

(4) For provisions authorizing the withdrawal of denatured distilled spirits free of tax, see section 5214(a)(1).

(5) For provisions exempting from tax distilled spirits for use in production of vinegar by the vaporizing process, see section 5505(j).

(6) For provisions relating to the withdrawal of wine spirits without payment of tax for use in the production of wine, see section 5373.

(7) For provisions exempting from tax volatile fruit-flavor concentrates, see section 5511.

(8) For provisions authorizing the withdrawal of distilled spirits from bonded premises without payment of tax for export, see section 5214(a)(4).

(9) For provisions authorizing withdrawal of distilled spirits without payment of tax to customs bonded warehouses for export, see [section 5522(a) and] section 5214(a)(9).

(10) For provisions relating to withdrawal of distilled spirits without payment of tax as supplies for certain vessels and aircraft, see 19 U.S.C. 1309.

(11) For provisions authorizing regulations for withdrawal of distilled spirits for use of United States free of tax, see section 7510.

(12) For provisions relating to withdrawal of distilled spirits without payment of tax to foreign-trade zones, see 19 U.S.C. 81c.

(13) For provisions relating to exemption from tax of taxable articles going into the possessions of the United States, see section 7653(b).

(14) For provisions authorizing the withdrawal of distilled spirits without payment of tax for use in certain research, development, or testing, see section 5214(a)(10).

(15) For provisions authorizing the withdrawal of distilled spirits without payment of tax for transfer to manufacturing bonded warehouses for manufacturing for export, see section 5214(a)(6).

(16) For provisions authorizing the withdrawal of articles from the bonded premises of a distilled spirits plant free of tax when contained in an article, see section 5214(a)(11).

[(15)] *(17)* For provisions relating to allowance for certain losses in bond, see section 5008(a).

SEC. 5004. LIEN FOR TAX.

(a) DISTILLED SPIRITS SUBJECT TO LIEN.—

(1) GENERAL.—The tax imposed by section 5001(a)(1) shall be a first lien on the distilled spirits from the time the spirits are in existence as such until the tax is paid.

(2) EXCEPTIONS.—The lien imposed by paragraph (1), or any similar lien imposed on the spirits under prior provisions of internal revenue law, shall terminate in the case of distilled spirits produced on premises qualified under internal revenue law for the production of distilled spirits when such distilled spirits are—

(A) withdrawn from bonded premises on determination of tax; or

(B) withdrawn from bonded premises free of tax under provisions of section 5214(a)(1), (2), [or (3)] *(3), or (11)*, or section 7510; or

(C) exported, deposited in a foreign-trade zone, used in the production of wine, laden as supplies upon, or used in the maintenance or repair of, certain vessels or aircraft, deposited in a customs bonded warehouse, or used in certain research, development, or testing, as provided by law.

[(b) OTHER PROPERTY SUBJECT TO LIEN.—

[(1) GENERAL.—The tax imposed by section 5001(a)(1) shall be a first lien on the distillery used for producing the distilled spirits, the stills, vessels, and fixtures therein, the lot or tract of land on which such distillery is situated, and on any building thereon, from the time such spirits are in existence as such until the tax is paid, or until the persons liable for the tax under section

5005(a) or (b) have been relieved of liability for such tax by reason of the provisions of section 5005 (c)(2), (c)(3), (d), or (e). In the case of a distilled spirits plant producing distilled spirits, the premises subject to lien shall comprise the bonded premises of such plant, any building containing any part of the bonded premises and the land on which such building is situated, as described in the application for registration of such plant. Any similar lien on the property described in this paragraph arising under prior provisions of internal revenue law shall not be assertable as to the tax on any distilled spirits in respect to which the persons liable for the tax have been relieved of liability therefor by reason of the provisions of section 5005(c)(2), (c)(3), (d), or (e).

[(2) EXCEPTION DURING TERM OF BOND.—No lien shall attach to any lot or tract of land, distillery, building, or distilling apparatus, under this subsection, by reason of distilling done during any period included within the term of any bond given under section 5173(b)(1)(C).

[(3) EXTINGUISHMENT OF LIEN.—Any lien under paragraph (1), or any similar lien imposed on the property described in paragraph (1) under prior provisions of internal revenue law, shall be held to be extinguished—

[(A) if the property is no longer used for distilling and there is no outstanding liability against any person referred to in section 5005(a) or (b) for taxes or penalties imposed by law on the distilled spirits produced thereon, and no litigation is pending in respect of any such tax or penalty; or

[(B) if an indemnity bond given under the provisions of section 5173(b)(1)(C), further conditioned to stand in lieu of such lien or liens and to indemnify the United States for the payment of all taxes and penalties which otherwise could be asserted against such property by reason of such lien or liens, is accepted and approved by the Secretary. Such bond shall not be accepted or approved if there is any pending litigation or outstanding assessment with repsect to such taxes or penalties, or if the Secretary has knowledge of any circumstances indicating that such bond is tendered with intent to evade payment or defeat collection of any tax or penalty.

[(4) CERTIFICATE OF DISCHARGE.—Any person claiming any interest in the property subject to lien under paragraph (1) may apply to the Secretary for a duly acknowledged certificate to the effect that such lien is discharged and, if the Secretary determines that such lien is extinguished, the Secretary shall issue such certificate, and any such certificate may be recorded.]

[(c)] *(b)* CROSS REFERENCE.—

For provisions relating to extinguishing of lien in case of redistillation, see section 5223(e).

SEC. 5005. PERSONS LIABLE FOR TAX

(a) GENERAL.—* * *

* * * * * * *

(c) PROPRIETORS OF DISTILLED SPIRITS PLANTS.—

(1) BONDED STORAGE.—Every person operating bonded premises of a distilled spirits plant shall be liable for the internal revenue tax on all distilled spirits while the distilled spirits are stored on

such premises, and on all distilled spirits which are in transit to such premises (from the time of removal from the transferor's bonded premises) pursuant to application made by him. Such liability for the tax on distilled spirits shall continue until the distilled spirits are transferred or withdrawn from bonded premises as authorized by law, or until such liability for tax is relieved by reason of the provisions of section 5008(a). Nothing in this paragraph shall relieve any person from any liability imposed by subsection (a) or (b).

(2) TRANSFERS IN BOND.—When distilled spirits are transferred in bond in accordance with the provisions of section 5212, persons liable for the tax on such spirits under subsection (a) or (b), or under any similar prior provisions of internal revenue law, shall be relieved of such liability, if proprietors of transferring and receiving premises are independent of each other and neither has a proprietary interest, directly or indirectly, in the business of the other, and all persons liable for the tax under subsection (a) or (b), or under any similar prior provisions of internal revenue law, have divested themselves of all interest in the spirits so transferred. Such relief from liability shall be effective from the time of removal from the transferor's bonded premises, or from the time of divestment of interest, whichever is later.

[(3) WITHDRAWALS ON DETERMINATION OF TAX.—

[(A) Any person who withdraws distilled spirits from the bonded premises of a distilled spirits plant on determination of tax, upon giving of a withdrawal bond as provided for in section 5174, shall be liable for payment of the internal revenue tax on the distilled spirits so withdrawn, from the time of such withdrawal.

[(B) All persons liable for the tax on distilled spirits under subsection (a) or (b), or under any similar prior provisions of internal revenue law, shall be relieved of liability with respect to the tax on any distilled spirits withdrawn on determination of tax under withdrawal bond (as provided for in section 5174) if the person withdrawing such spirits and the person, or persons, liable for the tax under subsection (a) or (b), or under any similar prior provisions of internal revenue law, are independent of each other and neither has a proprietary interest, directly or indirectly, in business of the the other, and all persons liable for the tax under subsection (a) or (b), or under any similar prior provisions of internal revenue law, have divested themselves of all interest in the spirits so withdrawn.]

(d) WITHDRAWALS FREE OF TAX.—All persons liable for the tax under subsection (a) or (b), or under any similar prior provisions of internal revenue law, shall be relieved of such liability as to distilled spirits withdrawn free of tax under the provisions of section 5214(a)(1), (2), [or (3),] *(3), or (11)*, or under section 7510, at the time such spirits are so withdrawn from bonded premises.

* * * * * * *

(f) CROSS REFERENCES.—

[(1) For provisions conditioning warehousing bonds on the payment of the tax, see section 5173(c).]

(1) For provisions requiring bond covering operations at, and withdrawals from, distilled spirits plants, see section 5173.

(2) For provisions relating to transfer of tax liability to redistiller in case of redistillation, see section 5223.

(3) For liability for tax on denatured distilled spirits, articles, and volatile fruit-flavor concentrates, see section 5001(a)(6) and (7).

(4) For liability for tax on distilled spirits withdrawn free of tax, see section 5001(a)(5).

(5) For liability of wine producer for unlawfully using wine spirits withdrawn for the production of wine, see section 5391.

(6) For provisions relating to transfer of tax liability for wine, see section 5043(a)(1)(A).

SEC. 5006. DETERMINATION OF TAX.

(a) REQUIREMENTS.—

(1) [GENERAL] *IN GENERAL.*—Except as otherwise provided in this section, the [internal revenue] tax on distilled spirits shall be determined when the spirits are withdrawn from bond. Such tax shall be determined by such means as the Secretary shall by regulations prescribe, and with the use of such devices and apparatus (including but not limited to [storage, gauging, and bottling] tanks and pipelines) as the Secretary may require. The tax on distilled spirits withdrawn from the bonded premises of a distilled spirits plant shall be determined upon completion of the gauge for determination of tax and before withdrawal from bonded premises, under such regulations as the Secretary shall prescribe.

[(2) DISTILLED SPIRITS ENTERED FOR STORAGE.—

[(A) BONDING PERIOD LIMITATION.—Except as provided in subparagraph (B), the tax on distilled spirits entered for deposit in storage in internal revenue bond shall be determined within 20 years from the date of original entry for deposit in such storage.

[(B) EXCEPTIONS.—Subparagraph (A) and section 5173(c)(1)(A) shall not apply in the case of—

[(i) distilled spirits of 190 degrees or more of proof;

[(ii) denatured distilled spirits; or

[(iii) distilled spirits which on July 26, 1936, were 8 years of age or older and which were in bonded warehouses on that date.

[(C) DISTILLED SPIRITS MINGLED IN INTERNAL REVENUE BOND.—In applying subparagraph (A) and section 5173(c)(1)(A) to distilled spirits entered for deposit in storage on different dates and lawfully mingled in internal revenue bond, the Secretary shall, by regulations, provide for the application of the 20-year period to such spirits in such manner that no more spirits will remain in bond than would have been the case had such mingling not occurred.

[(3) DISTILLED SPIRITS NOT ACCOUNTED FOR.—If the Secretary finds that the distiller has not accounted for all the distilled spirits produced by him, he shall, from all the evidence he can obtain, determine what quantity of distilled spirits was actually produced by such distiller, and an assessment shall be made for the difference between the quantity reported and the quantity shown to have been actually produced, at the rate of tax imposed by law for every proof gallon.]

(2) DISTILLED SPIRITS NOT ACCOUNTED FOR.—If the Secretary finds that the distiller has not accounted for all the distilled spirits produced by him, he shall, from all the evidence he can obtain, determine what quantity of distilled spirts was actually produced by such distiller, and an assessment shall be made for the difference between the quantity reported and the quantity shown to have been actually produced at the rate of tax imposed by law for every proof gallon.

(b) TAXABLE LOSS.—

(1) ON ORIGINAL QUANTITY.—Where there is evidence satisfactory to the Secretary that there has been any loss of distilled spirits from any cask or other package deposited in storage in internal revenue bond, other than a loss which by reason of section 5008(a) is not taxable, the Secretary may require the withdrawal from bonded premises of such distilled spirits, and direct the officer designated by him to collect the tax accrued on the original quantity of distilled spirits entered for deposit [in storage in internal revenue bond] *on bonded premises* in such cask or package [, notwithstanding that the time specified in any bond given for the withdrawal of the spirts entered in storage in such cask or package has not expired, except]*; except* that, under regulations prescribed by the Secretary, when the extent of any loss from causes other than theft or unauthorized voluntary destruction can be established by the proprietor to the satisfaction of the Secretary, an allowance of the tax on the loss so established my be credited against the tax on the original quantity. If such tax is not paid on demand it shall be assessed and collected as other taxes are assessed and collected.

(2) ALTERNATIVE METHOD.—Where there is evidence satisfactory to the Secretary that there has been access, other than as authorized by law, to the centents of casks or packages stored on bonded premises, and the extent of such access in such as to evidence a lack of due diligence or a failure to employ necessary and effective controls on the part of the proprietor, the Secretary (in lieu of requiring the casks or packages to which such access has been had to be withdrawn and tax paid on the original quantity of distilled spirits centered for deposit [in storage in internal revenue bond] *on bonded premises* in such casks or packages as provided in paragraph (1)) may assess an amount equal to the tax on 5 proof gallons of distilled spirits at the prevailing rate on each of the total number of such casks or packages as determined by him.

(3) APPLICATION OF SUBSECTION.—The provisions of this subsection shall apply to distilled spirits which are filled into casks or packages, as authorized by law, after entry and deposit [in stor-

age in internal revenue bond] *on bonded premises*, whether by recasking, filling from storage tanks, consolidation of packages, or otherwise; and the quantity filled into such casks or packages shall be deemed to be the original quantity for the purpose of this subsection, in the case of loss from such casks or packages.

SEC. 5007. COLLECTION OF TAX ON DISTILLED SPIRITS.

[(a) TAX ON DISTILLED SPIRITS REMOVED FROM BONDED PREMISES.—

[(1) GENERAL.—The tax on domestic distilled spirts and on distilled spirts removed from customs custody under section 5232 shall be paid in accordance with section 5061.

[(2) DISTILLED SPIRITS WITHDRAWN TO BOTTLING PREMISES UNDER WITHDRAWAL BOND.—If distilled spirits are withdrawn from bonded premises under section 5213 and a withdrawal bond is posted under section 5174(a)(2), the Secretary shall, in fixing the time for filing the return and the time for payment of the tax under section 5061(a), make allowance for the period of transportation of the distilled spirits from the bonded premises to the bottling premises, not to exceed such maximum periods as he may by regulations prescribe.]

(a) TAX ON DISTILLED SPIRITS REMOVED FROM BONDED PREMISES.—The tax on domestic distilled spirits and on distilled spirits removed from customs custody under section 5232 shall be paid in accordance with section 5061.

* * * * * * *

SEC. 5008. ABATEMENT, REMISSION, REFUND, AND ALLOWANCE FOR LOSSES OR DESTRUCTION OF DISTILLED SPIRITS.

(a) DISTILLED SPIRITS LOST OR DESTROYED IN BOND.—

(1) EXTENT OF LOSS ALLOWANCE.—No tax shall be collected in respect of distilled spirits lost or destroyed while in bond, except that such tax shall be collected—

(A) THEFT.—In the case of loss by theft, unless the Secretary finds that the theft occurred without connivance, collusion, fraud, or negligence on the part of the proprietor of the distilled spirits plant, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them; [and]

(B) VOLUNTARY DESTRUCTION.—In the vase of voluntary destrication, unless such destruction is carried out as provided in subsection [(b)(1)] *(b); and*

(C) UNEXPLAINED SHORTAGE.—In the case of an unexplained shortage of bottled distilled spirits.

(2) PROOF OF LOSS.—In any case in which distilled spirits are lost or destroyed, whether by theft or otherwise, the Secretary may require the proprietor of the distilled spirits plant or other person liable for the tax to file a claim for relief from the tax and submit proof as to the cause of such loss. In every case where it appears that the loss was by theft, the burden shall be upon the proprietor of the distilled spirits plant or other person responsible for the distilled spirits tax to establish to the satisfaction of the Secretary that such loss did not occur as the result of connivance, collusion, fraud, or negligence on the part of the proprietor of

the distilled spirits plant, owner, consigner, consignee, bailee, or carrier, or the employees or agents of any of them.

(3) REFUND OF TAX.—In any case where the tax would not be collectible by virtue of paragraph (1), but such tax has been paid, the Secretary shall refund such tax.

(4) LIMITATION.—Except as provided in pargaraph (5), no tax shall be abated, remitted, credited, or refunded under this subsection where the loss occurred after the tax was determined (as provided in section 5006(a)). The abatement, remission, credit, or refund of taxes provided for by paragraphs (1) and (3) in the case of loss of distilled spirits by theft shall be only allowed to the extent that the claimant is not indemnified against or recompensed in respect of the tax for such loss.

(5) APPLICABILITY.—The provisions of this subsection shall extend to and apply in respect of distilled spirits lost after the tax was determined and [prior to the] *before* completion of the physical removal of the distilled spirits from bonded premises [, but shall not be applicable where the loss occurred after the time prescribed for the withdrawal of the distilled spirits from bonded premises under section 5006(a)(2) unless the loss occurred in the course of physical removal of the spirits immediately subsequent to such time. This paragraph shall not be applicable to any loss of distilled spirits for which abatement, remission, credit, or refund of tax is allowable under the provisions of subsection (c), or would be allowable except for the limitations established under subsection (c)(3)].

[(b) VOLUNTARY DESTRUCTION.—

[(1) DISTILLED SPIRITS IN BOND.—The proprietor of the distilled spirits plant or other persons liable for the tax imposed by this chapter or by section 7652 with respect to any distilled spirits in bond may voluntarily destroy such spirits, but only if such destruction is under such supervision, and under such regulations, as the Secretary may prescribe.

[(2) DISTILLED SPIRITS WITHDRAWN FOR RECTIFICATION OR BOTTLING.—Any distilled spirits withdrawn from bond on payment or determination of tax for rectification or bottling may, before removal from the bottling premises of the distilled spirits plant to which removed from bond or after return to such bottling premises, on application to the Secretary, be destroyed after such gauge and under such supervision as the Secretary may by regulations prescribe. If a claim is filed within 6 months from the date of such destruction, the Secretary shall, under such regulations as he may prescribe, abate, remit, or, without interest, credit or refund the taxes imposed under section 5001(a)(1), under subpart B of this part, or under section 7652 on the spirits so destroyed, to the proprietor of the distilled spirits plant who withdrew the distilled spirits on payment or determination of tax.

[(c) LOSS OF DISTILLED SPIRITS WITHDRAWN FROM BOND FOR RECTIFICATION OR BOTTLING.—

[(1) GENERAL.—Whenever any distilled spirits withdrawn from bond on payment or determination of tax for rectification

or bottling are lost before removal from the premises of the distilled spirits plant to which removed from bond, the Secretary shall, under such regulations as he may prescribe, abate, remit, or, without interest, credit or refund the tax imposed on such spirits under section 501(a)(1) or under section 7652 to the proprietor of the distilled spirits plant who withdrew the distilled spirits on payment or determination of tax for removal to his bottling premises, if it is established to the satisfaction of the Secretary that—

[(A) such loss occurred (i) by reason of accident while being removed from bond to bottling premises, or (ii) by reason of flood, fire, or other disaster, or (iii) by reason of accident while on the distilled spirits plant premises and amounts to 10 proof gallons or more in respect of any one accident; or

[(B) such loss occurred (i) before the completion of the bottling and casing or other packaging of such spirits for removal from the bottling premises and (ii) by reason of, and was incident to, authorized rectifying, packaging, bottling, or casing operations (including losses by leakage or evaporation occurring during removal from bond to the bottling premises and during storage on bottling premises pending rectification or bottling).

[(2) LIMITATION.—No abatement, remission, credit, or refund of taxes shall be made under this subsection—

[(A) in any case where the claimant is indemnified or recompensed for the tax;

[(B) in excess of the amount allowable under paragraph (3), in case of losses referred to in paragraph (1)(B); or

[(C) unless a claim is filed, under such regulations as the Secretary may prescribe, by the proprietor of the distilled spirits plant who withdrew the distilled spirits on payment or determination of tax, (i) within 6 months from the date of the loss in case of losses referred to in paragraph (1)(A), or (ii) within 6 months from the close of the computation year in which the loss occurred in case of losses referred to in paragraph (1)(B).

The quantity of distilled spirits lost within the meaning of subparagraph (B) of paragraph (1) shall be determined at such times and by such means or methods as the Secretary shall by regulations prescribe.

[(3) MAXIMUM LOSS ALLOWANCES—

[(A) If all the alcoholic ingredients used in distilled spirits products during the computation year were distilled spirits withdrawn from bond by the proprietor of the bottling premises on payment or determination of tax, for removal to such premises, the loss allowable in such computation year under paragraph (1)(B) shall not be greater than the excess of losses over gains, and shall not exceed the maximum amount of loss allowable as shown in the following schedule:

If total completions during the computation year in proof gallons are:	*The maximum allowable loss in proof gallons is:*
Not over 24,000	2 percent of completions.
Over 24,000 but not over 120,000	480 proof gallons plus 1% of excess over 24,000.
Over 120,000 but not over 600,000	1,440 proof gallons plus .6% of excess over 120,000.
Over 600,000 but not over 2,400,000	4,320 proof gallons plus .3% of excess over 600,000.
Over 2,400,000	9,720 proof gallons plus .2% of excess over 2,400,000.

The Secretary may, by regulations, reduce the amount of the maximum allowable losses in the preceding schedule when he finds that such adjustment is necessary for protection of the revenue, or increase the amount of such maximum allowable losses if he finds that such may be done without undue jeopardy to the revenue and is necessary to more nearly provide for the actual losses described in paragraph (1)(B). However, in no event shall allowable losses exceed 2 percent of total completions.

[(B) If alcoholic ingredients other than distilled spirits withdrawn from bond by the proprietor of the bottling premises on payment or determination of tax, for removal to such premises, were used in distilled spirits products during the computation year, the loss allowable under paragraph (1)(B) shall be determined by first obtaining the amount that would have been allowable if all of the ingredients had been distilled spirits withdrawn from bond by the proprietor of the bottling premises on payment or determination of tax, for removal to such premises, and thereafter reducing this amount by an amount proportional to the percentage which the total proof gallons of such alcoholic ingredients bears to the total proof gallons of all alcoholic ingredients used in such distilled spirits products.

[(C) As used in this subsection, the term "completions" means the distilled spirits products bottled and cased or otherwise packaged or placed in approved containers for removal from the bottling premises, and the term "computation year" means the period from July 1 of calendar year through June 30 of the following year.

[(D) The Secretary may, under such regulations and conditions as he may prescribe, make tentative allowances for losses provided for in paragraph (1)(B) for fractional parts of a year, which allowances shall be computed by the procedures prescribed in paragraphs (3)(A) and (3)(B), except that the numerical values for the completions and for the

maximum allowable losses in proof gallons in the schedule in paragraph (3)(A) shall be divided by the number of such fractional parts within the computation year.

[(E) The loss allowable to any proprietor qualifying for abatement, remission, credit, or refund of taxes under paragraph (1)(B) shall not exceed the quantity which would be allowed by a tentative estimates schedule constructed in accordance with paragraph (3)(D) for the portion of the computation year that such proprietor was qualified to operate the distilled spirits plant.

[(F) Notwithstanding the limitations contained in the schedule in paragraph (3)(A) the Secretary may, under such regulations as he may prescribe, in addition to the losses allowable under paragraphs (1)(A) and (1)(B), allow actual determined losses incurred in the manufacture of gin and vodka where produced in closed systems in a manner similar to that authorized on bonded premises.

[(4) ELIGIBLE PROPRIETORS.—

[(A) The term "proprietor" as used in this subsection and in subsection (b)(2) shall, in the case of a corporation, include all affiliated or subsidiary corporations who are qualified during the computation year for successive operation of the same bottling premises and who make joint application to the Secretary to be treated as one proprietor for the purposes of this subsection and subsection (b)(2) and who comply with such conditions as the Secretary may by regulations prescribe.

[(B) For the purposes of this subsection and subsection (b)(2) a proprietor of bottling premises of a distilled spirits plant who makes application to the Secretary for the withdrawal of distilled spirits from bond on payment of tax for removal to such bottling premises shall be deemed to be the proprietor who withdrew distilled spirits on payment of tax, and the distilled spirits withdrawn pursuant to such application shall be deemed to have been withdrawn by such proprietor on payment of tax, whether or not he was the person who paid the tax.

[(5) DISTILLED SPIRITS RETURNED TO BOTTLING PREMISES.—Distilled spirits withdrawn from bond on payment or determination of tax for rectification or bottling which are removed from bottling premises and subsequently returned to the premises from which removed may be dumped and gauged after such return under such regulations as the Secretary may prescribe, and subsequent to such gauge shall be eligible for allowance of loss under this subsection as though they had not been removed from such bottling premises.

[(d). DISTILLED SPIRITS RETURNED TO BONDED PREMISES—

[(1) GENERAL.—Whenever any distilled spirits withdrawn from bonded premises on payment or determination of tax are returned to the bonded premises of a distilled spirits plant under section 5215(a), the Secretary shall abate, remit, or (without interest) credit or refund the tax imposed under section 5001(a)(1) (or the tax equal to such tax imposed under section 7652) on the spirits so returned.

[(2) DISTILLED SPIRITS RETURNED TO BONDED PREMISES FOR STORAGE PENDING EXPORTATION.—Whenever any distilled spirits are returned under section 5215(b) to the bonded premises of a distilled spirits plant, the Secretary shall (without interest) credit or refund the internal revenue tax found to have been paid or determined with respect to such distilled spirits. Such amount of tax shall be the same amount which would be allowed as a drawback under section 5062(b) on the exportation of such distilled spirits.

[(3) DISTILLED SPIRITS STAMPED AND LABELED AS BOTTLED IN BOND.—Whenever any distilled spirits are returned under section 5215(c) to the bonded premises of a distilled spirits plant, the Secretary shall (without interest) credit or refund the tax imposed under section 5001(a)(1) on the spirits so returned.

[(4) LIMITATION.—No allowance under paragraph (1), (2), or (3) shall be made unless a claim is filed under such regulations as the Secretary may prescribe, by the proprietor of the distilled spirits plant to which the distilled spirits are returned within 6 months of the date of return.

[(e) SAMPLES FOR USE BY THE UNITED STATES.—The Secretary shall, under such regulations as he may prescribe, without interest, credit or refund to the proprietor the tax on any samples of distilled spirits removed from the premises of a distilled spirits for analysis or testing by the United States.]

(b) VOLUNTARY DESTRUCTION.—The proprietor of the distilled spirits plant or other persons liable for the tax imposed by this chapter or by section 7652 with respect to any distilled spirits in bond may voluntarily destroy such spirits, but only if such destruction is under such supervision and under such regulations as the Secretary may prescribe.

(c) DISTILLED SPIRITS RETURNED TO BONDED PREMISES.—

(1) IN GENERAL.—Whenever any distilled spirits withdrawn from bonded premises on payment or determination of tax are returned to the bonded premises of a distilled spirits plant under section 5215(a), the Secretary shall abate or (without interest) credit or refund the tax imposed under section 5001(a)(1) (or the tax equal to such tax imposed under section 7652) on the spirits so returned.

(2) CLAIM MUST BE FILED WITHIN 6 MONTHS OF RETURN OF SPIRITS.—No allowance under paragraph (1) may be made unless claim therefor is filed within 6 months of the date of the return of the spirits. Such claim may be filed only by the proprietor of the distilled spirits plant to which the spirits were returned, and shall be filed in such form as the Secretary may by regulations prescribe.

[(f)] *(d)* DISTILLED SPIRITS WITHDRAWN WITHOUT PAYMENT OF TAX.—The provisions of subsection (a) shall be applicable to loss of distilled spirits occurring during transportation from bonded premises of a distilled spirits plant to—

(1) the port of export, in case of withdrawal under section 5214(a)(4);

(2) the customs manufacturing bonded warehouse, in case of withdrawal under section 5214(a)(6);

(3) the vessel or aircraft, in case of withdrawal under section 5214(a)(7);

(4) the foreign-trade zone, in case of withdrawal under section 5214(a)(8); and

(5) the customs bonded warehouse in the case of withdrawal under sections 5066 and 5214(a)(9).

The provisions of subsection (a) shall be applicable to loss of distilled spirits withdrawn from bonded premises without payment of tax under section 5214(a)(10) for certain research, development, or testing, until such distilled spirits are used as provided by law.

[(g)] (*e*) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable in respect of the internal revenue tax on distilled spirits, shall, insofar as applicable and not inconsistent with [subsections (b)(2), (c), and (d),] *subsection (c)*, be applicable to the credits or refunds provided for under such [subsections] *subsection* to the same extent as if such credits or refunds constituted credits or refunds of such tax.

[(h)] (*f*) CROSS REFERENCE.—

For provisions relating to allowance for loss in case of wine spirits withdrawn for use in wine production, see section 5373(b)(3).

SEC. 5009. DRAWBACK.

[(a) DRAWBACK ON EXPORTATION OF DISTILLED SPIRITS IN CASKS OR PACKAGES.—On the exporation of distilled spirits in casks or packages containing not less than 20 wine gallons each, filled in internal revenue bond, drawback of the internal revenue tax paid or determined may be allowed, under such regulations, and on the filing of such bonds, reports, returns, and applications, and the keeping of such records, as the Secretary may prescribe. The drawback shall be paid or credited in an amount equal to such tax on the quantity of distilled spirits exported, as ascertained prior to exportation by such gauge as the Secretary may by regulations prescribe. The drawback shall be paid or credited only after all requirements of law and regulations have been complied with and on the filing, with the Secretary, of a proper claim and evidence satisfactory to the Secretary that the tax on such distilled spirits has been paid or determined and that the distilled spirits have been exported.

[(b) CROSS REFERENCE.—

[(1) For provisions relating to drawback on distilled spirits packaged or bottled especially for export, see section 5062(b).

[(2) For provisions relating to drawback on designated nonbeverage products, see sections 5131 through 5134.

[(3) For drawback on distilled spirits used in flavoring extracts or medicinal or toilet preparations exported, see section 313(d) of the Tariff Act of 1930 (19 U.S.C. 1313).

[(4) For drawback on articles removed to foreign-trade zones, see 19 U.S.C. 81c.

[(5) For drawback on shipments from the United States to Puerto Rico, the Virgin Islands, Guam, or American Samoa, see section 7653(c).]

Subpart B—Rectification

[SEC. 5021. IMPOSITION AND RATE OF TAX.

[In addition to the tax imposed by this chapter on distilled spirits and wines, there is hereby imposed (except as otherwise provided in this chapter) a tax of 30 cents on each proof gallon and a proportionate tax at a like rate on all fractional parts of such proof gallon on all distilled spirits or wines rectified, purified, or refined in such manner, and on all mixtures produced in such manner, that the person so rectifying, purifying, refining, or mixing the same is a rectifier (as defined in section 5082). Spirits or wines shall not twice be subjected to tax under this section because of separate acts of rectification, pursuant to approved formula, between the time such spirits or wines are received on the bottling premises and the time they are removed therefrom.

[SEC. 5022. TAX ON CORDIALS AND LIQUEURS CONTAINING WINE.

[On all liqueurs, cordials, or similar compounds produced in the United States and not produced for sale as wine, wine specialties, or cocktails, which contain more than 2½ percent by volume of wine of an alcoholic content in excess of 14 percent by volume, there shall be paid, in lieu of the tax imposed by section 5021, a tax at the rate of $1.92 per wine gallon and a proportionate tax at a like rate on all fractional parts of such wine gallon. The last sentence of section 5021 shall not be construed to limit the imposition of tax under this section. All other provisions of law applicable to rectification shall apply to the products subject to tax under this section.

[SEC. 5023. TAX ON BLENDING OF BEVERAGE RUMS OR BRANDIES.

[In the case of rums or fruit brandies mixed or blended pursuant to section 5234(c), in addition to the tax imposed by this chapter on the production of distilled spirits, there shall, except in the case of such rums or brandies which have been aged in wood at least 2 years at the time of their first blending or mixing, be paid a tax of 30 cents as to each proof gallon (and a proportionate tax at a like rate on all fractional parts of such proof gallon) of rums or brandies so mixed or blended and withdrawan from bonded premises, except when such rums or brandies are withdrawn under section 5214 or section 7510.

[SEC. 5024. DEFINITIONS.

[(1) For definition of "rectifier", see section 5082.

[(2) For definition of "products of rectification" as "distilled spirits" for certain purposes, see section 5002(a)(6)(B).

[(3) For other definitions relating to distilled spirits, see section 5002.

[(4) For definitions of general application to this title, see chapter 79.

[SEC. 5025. EXEMPTION FROM RECTIFICATION TAX.

[(a) ABSOLUTE ALCOHOL.—The process of extraction of water from high-proof distilled spirits for the production of absolute alcohol

shall not be deemed to be rectification within the meaning of sections 5081 and 5082, and absolute alcohol shall not be subject to the tax imposed by section 5021, but the production of such absolute alcohol shall be under such regulations as the Secretary may prescribe.

[(b) PRODUCTION OF GIN AND VODKA.—The tax imposed by section 5021 shall not apply to gin produced on bottling premises of distilled spirits plants by the redistillation of a pure spirit over juniper berries and other natural aromatics, or the extraction of oils of such, or to vodka produced on bottling premises of distilled spirits plants from pure spirits in the manner authorized on bonded premises of distilled spirits plants.

[(c) REFINING SPIRITS IN COURSE OF ORIGINAL DISTILLATION.—The purifying or refining of distilled spirits, in the course of original and continuous distillation or other original and continuous processing, through any material which will not remain incorporated with such spirits when the production thereof is complete shall not be held to be rectification within the meaning of sections 5021, 5081, or 5082, nor shall these sections be held to prohibit such purifying or refining.

[(d) REDISTILLATION OF DISTILLED SPIRITS ON BONDED PREMISES.—Sections 5021, 5081, and 5082 shall not apply to the redistillation of distilled spirits under section 5223.

[(e) MINGLING OF DISTILLED SPIRITS.—Sections 5021, 5081, and 5082 shall not apply to—

[(1) the mingling on bonded premises of spirits distilled at 190 degrees or more of proof; or

[(2) the mingling of distilled spirts on bonded premises, or in the course of removal therefrom, for redistillation, storage, or any other purpose, incident to the requirements of the national defense; or

[(3) the mingling in bulk gauging tanks on bonded premises of heterogeneous distilled spirits for immediate removal to bottling premises, exclusively for use in taxable rectification, or for blending under subsection (f), or for other mingling or treatment under subsection (k); or

[(4) the blending on bonded premises of beverage brandies or rums, under the provisions of section 5234(c); or

[(5) the mingling of homogeneous distilled spirits; or

[(6) the mingling on bonded premises of distilled spirits for immediate redistillation, immediate denaturation, or immediate removal from such premises free of tax under section 5214(a) (1), (2), or (3), or section 7510; or

[(7) the mingling on bonded premises of distilled spirits as authorized by section 5234(a)(2).

[(f) BLENDING STRAIGHT WHISKIES, RUMS, FRUIT BRANDIES, OR WINES.—The taxes imposed by this subpart shall not attach—

[(1) to blends made exclusively of two or more pure straight whiskies, differing as to types, aged in wood for a period not less than 4 years and without the addition of coloring or flavoring matter or any other substance than pure water and if not reduced below 80 proof; or

[(2) to blends made exclusively of two or more pure fruit brandies, differing as to types, distilled from the same kind of

fruit, aged in wood for a period not less than 2 years and without the addition of coloring or flavoring matter (other than caramel) or any other substance than pure water and if not reduced below 80 proof; or

[(3) to the mixing and blending of wines, where such blending is for the sole purpose of perfecting such wines according to commercial standards; or

[(4) to blends made exclusively of two or more rums, differing as to types, aged in wood for a period not less than 2 years and without the addition of coloring or flavoring matter (other than caramel) or any other substance than pure water and if not reduced below 80 proof.

Such blended whiskies, blended rums, and blended fruit brandies shall be exempt from tax under this subpart only when blended in such tanks and under such conditions and supervision as the Secretary may by regulations prescribe.

[(g) ADDITION OF CARAMEL TO BRANDY OR RUM.—The addition of caramel to commercial brandy or rum on the bonded premises of a distilled spirits plant, pursuant to regulations prescribed by the Secretary, shall not be deemed to be rectification within the meaning of sections 5021, 5081, and 5082.

[(h) APOTHECARIES.—The taxes imposed by this subpart and by part II of this subchapter shall not be imposed on apothecaries as to wines or distilled spirits which they use exclusively in the preparation or making up of medicines unfit for use for beverage purposes.

[(i) MANUFACTURER RECOVERING DISTILLED SPIRITS FOR REUSE IN PRODUCTS UNFIT FOR BEVERAGE PURPOSES.—The taxes imposed by this subpart and by part II of this subchapter shall not be imposed on any manufacturer for recovering distilled spirits, on which the tax has been paid or determined, from dregs or marc of percolation or extraction, or from medicines, medicinal preparations, food products, flavors, or flavoring extracts, which do not meet the manufacturer's standards, if such recovered distilled spirits are used by such manufacturer in the manufacture of medicines, medicinal preparations, food products, flavors, or flavoring extracts, which are unfit for use for beverage purposes.

[(j) STABILIZATION OF DISTILLED SPIRITS.—The removal, on the premises of a distilled spirits plant, of extraneous insoluble materials from distilled spirits, and minor changes in the soluble color or soluble solids of distilled spirits, which occur solely as a result of such filtrations or other physical treatments (which do not involve the addition of any substance which will remain incorporated in the completed product) at the time of, or preparatory to, the bottling of distilled spirits, or preparatory to exportation, as may be necessary or desirable to produce a stable product, shall not be deemed to be rectification within the meaning of sections 5021, 5081, and 5082, if such changes do not exceed maximum limitations which the Secretary may by regulations provide.

[(k) OTHER MINGLING OR TREATMENT OF DISTILLED SPIRITS.—The tax imposed by section 5021 shall not apply to the mingling of distilled spirits of the same class and type, or to the treatment of distilled

spirits in such a manner as not to change the class and type of the distilled spirits, on bottling premises of a distilled spirits plant under such regulations as the Secretary may prescribe.

[(l) ADDITION OF TRACER ELEMENTS.—The authorized addition of tracer elements to distilled spirits under provisions of section 5201(d) shall not be deemed to be rectification within the meaning of sections 5021, 5081, and 5082.

[(m) CROSS REFERENCES.—

[(1) For provisions exempting distilled spirits and wines rectified in customs manufacturing bonded warehouses, see section 5523.

[(2) For provisions exempting winemakers in the use or treatment of wines or wine spirits, see section 5391.

[(3) For provisions exempting the manufacture of volatile fruit-flavor concentrates, see section 5511.

[SEC. 5026. DETERMINATION AND COLLECTION OF RECTIFICATION TAX.

[(a) DETERMINATION OF TAX.—

[(1) GENERAL.—The taxes imposed by sections 5021 and 5022 shall be determined upon the completion of the process of rectification by such means as the Secretary shall by regulations prescribe and with the use of such devices and apparatus (including but not limited to storage, gauging, and bottling tanks, and pipelines) as the Secretary may by regulations prescribe.

[(2) UNAUTHORIZED RECTIFICATION.—In the case of taxable rectification on premises other than premises on which rectification is authorized, the tax imposed by section 5021 or 5022 shall be due and payable at the time of such rectification.

[(b) PAYMENT OF TAX.—The taxes imposed by sections 5021, 5022, and 5023 shall be paid in accordance with section 5061.]

Subpart C—Wines

* * * * * * *

SEC. 5043. COLLECTION OF TAXES ON WINES.

(a) PERSONS LIABLE FOR PAYMENT.—The taxes on wine provided for in this subpart shall be paid—

(1) BONDED WINE CELLARS.—In the case of wines removed from any bonded wine cellar, by the proprietor of such bonded wine cellar; except that—

(A) in the case of any transfer of wine in bond [between bonded wine cellars] as authorized under the provisions of section 5362(b), the liability for payment of the tax shall become the liability of the transferee from the time of removal of the wine from the transferor's premises, and the transferor shall thereupon be relieved of such liability; and

(B) in the case of any wine withdrawn by a person other than such proprietor without payment of tax as authorized under the provisions of section 5362(c), the liability for payment of the tax shall become the liability of such person from the time of the removal of the wine from the bonded wine cel-

lar, and such proprietor shall thereupon be relieved of such liability.

(2) FOREIGN WINE.—In the case of foreign wines, by the importer thereof.

(3) OTHER WINES.—Immediately, in the case of any wine produced, imported, received, removed, or possessed otherwise than as authorized by law, by any person producing, importing, receiving, removing, or possessing such wine; and all such persons shall be jointly and severally liable for such tax with each other as well as with any proprietor, transferee, or importer who may be liable for the tax under this subsection.

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Subpart E—General Provisions

* * * * * * *

SEC. 5061. METHOD OF COLLECTING TAX.

(a) COLLECTION BY RETURN.—The taxes on distilled spirits, wines, [rectified distilled spirits and wines,] and beer shall be collected on the basis of a return. The Secretary shall, by regulation, prescribe the period or event for which such return shall be filed, the time for filing such return, the information to be shown in such return, and the time for payment of such tax.

(b) EXCEPTIONS.—Notwithstanding the provisions of subsection (a), any taxes imposed on, or amounts to be paid or collected in respect of, distilled spirits, wines, [rectified distilled spirits and wines,] and beer under—

(1) section 5001(a)(5), (6), or (7),
(2) section 5006(c) or (d),
[(3) section 5026(a)(2),]
[(4)] (*3*) section 5041(d),
[(5)] (*4*) section 5043(a)(3),
[(6)] (*5*) section 5054(a)(3) or (4), or
[(7)] (*6*) section 5505(a),

shall be immediately due and payable at the time provided by such provisions (or if no specific time for payment is provided, at the time the event referred to in such provision occurs). Such taxes and amounts shall be assessed and collected by the Secretary on the basis of the information available to him in the same manner as taxes payable by return but with respect to which no return has been filed.

(c) IMPORT DUTIES.—The internal revenue taxes imposed by this part shall be in addition to any import duties unless such duties are specially designated as being in lieu of internal revenue tax.

(d) EXTENSION OF TIME FOR COLLECTING TAX ON DISTILLED SPIRITS.—In the case of distilled spirits to which subsection (a) applies which are withdrawn from the bonded premises of a distilled spirits plant under bond for deferred payment of tax, the last day for filing a return (with remittances) for each semimonthly return period shall be determined under the following table:

If the return period is in—	*Such last day shall be—*
1980	*The last day of the first succeeding return period plus 5 days.*
1981	*The last day of the first succeeding return period plus 10 days.*
1982 or any year thereafter	*The last day of the second succeeding return period.*

SEC. 5064. LOSSES RESULTING FROM DISASTER, VANDALISM, OR MALICIOUS MISCHIEF.

(a) PAYMENTS.—The Secretary, under such regulations as he may prescribe, shall pay (without interest) an amount equal to the amount of the internal revenue taxes paid or determined and customs duties paid on distilled spirits, wines, [rectified products,] and beer previously withdrawn, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of—

(1) fire, flood, casualty, or other disaster, or

(2) breakage, destruction, or other damage (but not including theft) resulting from vandalism or malicious mischief,

if such disaster or damage occurred in the United States and if such distilled spirits, wines, [rectified products,] or beer were held and intended for sale at the time of such disaster or other damage. The payments provided for in this section shall be made to the person holding such distilled spirits, wines, [rectified products,] or beer for sale at the time of such disaster or other damage.

(b) CLAIMS.—

(1) PERIOD FOR MAKING CLAIM, PROOF.—No claim shall be allowed under this section unless—

(A) filed within 6 months after the date on which such distilled spirits, wines, [rectified products,] or beer were lost, rendered unmarketable, or condemned by a duly authorized official, and

(B) the claiman furnishes proof satisfactory to the Secretary that the claimant—

(i) was not indemnified by any valid claim of insurance or otherwise in respect of the tax, or tax and duty, on the distilled spirits, wines, [rectified products,] or beer covered by the claim; and

(ii) is entitled to payment under this section.

(2) MINIMUM CLAIM.—Except as provided in paragraph (3)(A), no claim of less than $250 shall be allowed under this section with respect to any disaster or other damage (as the case may be).

(3) SPECIAL RULES FOR MAJOR DISASTERS.—If the President has determined under the Disaster Relief Act of 1974 that a "major disaster" (as defined in such Act) has occurred in any part of the United States, and if the disaster referred to in subsection (a)(1) occurs in such part of the United States by reason of such major disaster, then—

(A) paragraph (2) shall not apply, and

(B) the filing period set forth in paragraph (1)(A) shall not expire before the day which is 6 months after the date on

which the President makes the determination that such major disaster has occurred.

(4) REGULATIONS.—Claims under this section shall be filed under such regulations as the Secretary shall prescribe.

(c) DESTRUCTION OF DISTILLED SPIRITS, WINES, [RECTIFIED PRODUCTS,] OR BEER.—When the Secretary has made payment under this section in respect of the tax, or tax and duty, on the distilled spirits, wines, [rectified products,] or beer condemned by a duly authorized official or rendered unmarketable, such distilled spirits, wines, [rectified products,] or beer shall be destroyed under such supervision as the Secretary may prescribe, unless such distilled spirits, wines, [rectified products,] or beer were previously destroyed under supervision satisfactory to the Secretary.

(d) PRODUCTS OF PUERTO RICO.—The provisions of this section shall not be applicable in respect of distilled spirits, wines, [rectified products,] and beer of Puerto Rican manufacture brought into the United States and so lost or rendered unmarketable or condemned.

(e) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable in respect of internal revenue taxes on distilled spirits, wines, [rectified products,] and beer shall, insofar as applicable and not inconsistent with this section, be applied in respect of the payments provided for in this section to the same extent as if such payments constituted refunds of such taxes.

* * * * * * *

SEC. 5066. DISTILLED SPIRITS FOR USE OF FOREIGN EMBASSIES, LEGATIONS, ETC.

(a) ENTRY INTO CUSTOMS BONDED WAREHOUSES.—

(1) BOTTLED DISTILLED SPIRITS WITHDRAWN FROM BONDED PREMISES.—Under such regulations as the Secretary may prescribe, [distilled spirits bottled in bond for export under the provisions of section 5233, or bottled distilled spirits returned to bonded premises under section 5215(b),] *bottled distilled spirits* may be withdrawn from bonded premises as provided in section 5214(a)(4) for transfer to customs bonded warehouses in which imported distilled spirits are permitted to be stored in bond for entry therein pending withdrawal therefrom as provided in subsection (b).

(2) BOTTLED DISTILLED SPIRITS ELIGIBLE FOR EXPORT WITH BENEFIT OF DRAWBACK.—Under such regulations as the Secretary may prescribe, distilled spirits stamped or restamped, and marked, especially for export under the provisions of section 5062(b) may be shipped to a customs bonded warehouse in which imported distilled spirits are permitted to be stored, and entered in such warehouses pending withdrawal therefrom as provided in subsection (b), and the provisions of this chapter shall apply in respect of such distilled spirits as if such spirits were for exportation.

(3) TIME DEEMED EXPORTED.—For the purposes of this chapter, distilled spirits entered into a customs bonded warehouse as provided in this subsection shall be deemed exported at the time so entered.

(b) WITHDRAWAL FROM CUSTOMS BONDED WAREHOUSES.—Notwithstanding any other provisions of law, distilled spirits entered into customs bonded warehouses under the provisions of subsection (a) [or domestic distilled spirits transferred to customs bonded warehouses under section 5521(d)(2)] may, under such regulations as the Secretary may prescribe, be withdrawn from such warehouses for consumption in the United States by and for the official or family use of such foreign governments, organizations, and individuals who are entitled to withdraw imported distilled spirits from such warehouses free of tax. Distilled spirits transferred to customs bonded warehouses under the provisions of this section shall be entered, stored, and accounted for in such warehouses under such regulations and bonds as the Secretary may prescribe, and may be withdrawn therefrom by such governments, organizations, and individuals free of tax under the same conditions and procedures as imported distilled spirits.

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PART II—OCCUPATIONAL TAX

[Subpart A—Rectifier

[SEC. 5081. IMPOSITION AND RATE OF TAX.

[Every rectifier of distilled spirits or wines (as defines in section 5082) shall pay a special tax of $220 a year; except that any rectifier of less than 20,000 proof gallons a year shall pay $110 a year.

[SEC. 5082. DEFINITION OF RECTIFIER.

[Every person who rectifies, purifies, or refines distilled spirits or whicky, brandy, rum, gin, wine, spirits, cordials, or wine bitters, or any tion, or original and continuous processing, from mash, wort, wash, or any other substance, through continuous closed vessels and pipes, until the production thereof is complete), and every person who, without rectifying, purifying, or refining distilled spirits, shall by mixing such spirits, wine, or other liquor with any material, manufacture any spurious, imitation, or compound liquors for sale, under the name of whisky, brandy, rum, gin, wine spirits, cordials, or wine bitters, or any other name, shall be regarded as a rectifier, and as being engaged in the business of rectifying.

[SEC. 5083. EXEMPTIONS.

[For exemptions from tax under section 5021 or 5081 in case of—
[(1) Absolute alcohol, see section 5025(a).
[(2) Production of gin and vodka, see section 5025(b).

[(3) Refining spirits in course of original distillation, see section 5025(c).

[(4) Redistillation of spirits on bonded premises of a distilled spirits plant, see section 5025(d).

[(5) Mingling of distilled spirits on bonded premises of a distilled spirits plant, see section 5025(e).

[(6) Apothecaries, see section 5025(h).

[(7) Manufacturers of chemicals and flavoring extracts, see section 5025(i).

[(8) Distilled spirits and wines rectified in customs manufacturing bonded warehouses, see section 5523.

[(9) Blending beverage brandies or rums on bonded premises of a distilled spirits plant, see section 5025(e)(4).

[(10) Blending of straight whiskies, fruit brandies, rums or wines, see section 5025(f).

[(11) Addition of caramel to brandy or rum, see section 5025(g).

[(12) Winemakers' use or treatment of wines or wine spirits, see section 5391.

[(13) Stabilization of distilled spirits, see section 5025(j).

[(14) Other mingling or treatment of distilled spirits, see section 5025(k).

[(15) Authorized addition of tracer elements, see section 5025(l).

[SEC. 5084. CROSS REFERENCES.

[(1) For provisions relating to gallonage tax on rectification, see subpart B of part I of this subchapter.

[(2) For provisions relating to qualifications of distilled spirits plants to engage in rectification, see subchapter B.

[(3) For provisions relating to recitifying operations on the premises of distilled spirits plants, see subchapter C.

[(4) For penalties, seizures, and forfeitures relating to rectifying and rectified products, see subchapter J and subtitle F.]

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Subpart D—Wholesale Dealers

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SEC. 5116. PACKAGING DISTILLED SPIRITS FOR INDUSTRIAL USES.

(a) GENERAL.—The Secretary may, at his discretion and under such regulations as he may prescribe, authorize a dealer engaging in the business of supplying distilled spirits for industrial uses to package distilled spirits, on which the tax has been paid or determined, for such uses in containers of a capacity in excess of 1 wine gallon and not more than 5 wine gallons.

(b) CROSS REFERENCES.—

(1) For provisions relating to stamps for immediate containers, see section 5205(a)[(2)] *(1)*.

(2) For provisions relating to containers of distilled spirits, see section 5206.

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Subchapter B—Qualification Requirements for Distilled Spirits Plants

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[SEC. 5171. ESTABLISHMENT.

[(a) GENERAL REQUIREMENTS.—Every person shall, before commencing or continuing the business of a distiller, bonded warehouseman, rectifier, or bottler of distilled spirits, and at such other times as the Secretary may by regulations prescribe, make application to the Secretary for and receive notice of the registration of his plant. No plant shall be registered under this section until the applicant has complied with the requirements of law and regulations in relation to the qualification of such business (or businesses).

[(b) PERMITS.—

[(1) REQUIREMENTS.—Every person required to file application for registration under subsection (a) whose disilling, warehousing, or bottling operations (or any part thereof) are not required to be covered by a basic permit under the Federal Alcohol Administration Act (27 U.S.C. 203, 204) shall, before commencing any such operations, apply for and obtain a permit under this subsection from the Secretary to engage in such operations. Section 5271(b), (c), (d), (e), (f), (g), and (h), and section 5274 are hereby made applicable to applications, to persons filing applications, and to permits required by or issued under this subsection.

[(2) EXCEPTIONS FOR AGENCY OF A STATE OR POLITICAL SUBDIVISION.—Paragraph (1) shall not apply to any agency of a State or political subdivision thereof or to any officer or employee of any such agency, and no such agency or officer or employee shall be required to obtain a permit thereunder.

[(c) CROSS REFERENCES.—

[For penalty for failure of a distiller or rectifier to file application for registration as required by this section, see section 5601(a)(2), and for penalty for the filing of a false application by a distiller, bonded warehouseman, rectifier, or bottler of distilled spirits, see section 5601(a)(3).]

SEC. 5171. ESTABLISHMENT.

(*a*) *CERTAIN OPERATIONS MAY BE CONDUCTED ONLY ON BONDED PREMISES.—Except as otherwise provided by law, operations as a distiller, warehouseman, or processor may be conducted only on the bonded premises of a distilled spirits plant by a person who is qualified under this subchapter.*

(*b*) *ESTABLISHMENT OF DISTILLED SPIRITS PLANT.—A distilled spirits plant may be established only by a person who intends to conduct at*

such plant operations as a distiller, as a warehouseman, or as both.

(c) REGISTRATION.—

(1) IN GENERAL.—Each person shall, before commencing operations at a distilled spirits plant (and at such other times as the Secretary may by regulations prescribe), make application to the Secretary for, and receive notice of, the registration of such plant.

(2) APPLICATION REQUIRED WHERE NEW OPERATIONS ARE ADDED.—No operation in addition to those set forth in the application made pursuant to paragraph (1) may be conducted at a distilled spirits plant until the person has made application to the Secretary for, and received notice of, the registration of such additional operation.

(3) SECRETARY MAY ESTABLISH MINIMUM CAPACITY AND LEVEL OF OF ACTIVITY REQUIREMENTS.—The Secretary may by regulations prescribe for each type of operation minimum capacity and level of activity requirements for qualifying premises as a distilled spirits plant.

(4) APPLICANT MUST COMPLY WITH LAW AND REGULATIONS.—No plant (or additional operation) shall be registered under this section until the applicant has complied with the requirements of law and regulations in relation to the qualification of such plant (or additional operation).

(d) PERMITS.—

(1) REQUIREMENTS.—Each person required to file an application for registration under subsection (c) whose distilled spirits operations (or any part thereof) are not required to be covered by a basic permit under the Federal Alcohol Administration Act (27 U.S.C. secs. 203 and 204) shall, before commencing the operations (or part thereof) not so covered, apply for and obtain a permit under this subsection from the Secretary to engage in such operations (or part thereof). Subsections (b), (c), (d), (e), (f), (g), and (h) of section 5271 are hereby made applicable to persons filing applications and permits required by or issued under this subsection.

(2) EXCEPTIONS FOR AGENCIES OF A STATE OR POLITICAL SUBDIVISIONS.—Paragraph (1) shall not apply to any agency of a State or political subdivision thereof or to any officer or employee of any such agency, and no such agency, officer, or employee shall be required to obtain a permit thereunder.

(e) CROSS REFERENCES.—

(1) For penalty for failure of a distiller or processor to file application for registration as required by this section, see section 5601(a)(2).

(2) For penalty for the filing of a false application by a distiller, warehouseman, or processor of distilled spirits, see section 5601(a)(3).

SEC. 5172. APPLICATION.

The application for registration required by section 5171[(a)] (c) shall, in such manner and form as the Secretary may by regulations prescribe, identify the applicant and persons interested in the business (or businesses) covered by the application, show the nature, location

and extent of the premises, show the specific type or types of operations to be conducted on such premises, and show any other information which the Secretary may by regulations require for the purpose of carrying out the provisions of this chapter.

[SEC. 5173. QUALIFICATION BONDS.

[(a) GENERAL PROVISIONS.—Every person intending to commence or to continue the business of a distiller, bonded warehouseman, or rectifier, on filing with the Secretary an application for registration of his plant, and before commencing or continuing such business, shall file bond in the form prescribed by the Secretary, conditioned that he shall faithfully comply with all the provisions of law and regulations relating to the duties and business of a distiller, bonded warehouseman, or rectifier, as the case may be (including the payment of taxes imposed by this chapter), and shall pay all penalties incurred or fines imposed on him for violation of any of the said provisions.

[(b) DISTILLER'S BOND.—Every person intending to commence or continue the business of a distiller shall give bond in a penal sum not less than the amount of tax on spirits that will be produced in his distillery during a period of 15 days, except that such bond shall be in a sum of not less than $5,000 nor more than $100,000.

[(1) CONDITIONS OF APPROVAL.—In addition to the requirements of subsection (a), the distiller's bond shall be conditioned that he shall not suffer the property, or any part thereof, subject to lien under section 5004(b)(1) to be encumbered by mortgage, judgment, or other lien during the time in which he shall carry on such business (except that this condition shall not apply during the term of any bond given under subparagraph (C) or to any judgment or other lien covered by a bond given under paragraph (4)), and no bond of a distiller shall be approved unless the Secretary is satisfied that the situation of the land and buildings which will constitute his bonded premises (as described in his application for registration) is not such as would enable the distiller to defraud the United States, and unless—

[(A) the distiller is the owner in fee, unencumbered by any mortgage, judgment, or other lien, of the lot or tract of land subject to lien under section 5004(b)(1); or

[(B) the distiller files with the officer designated for the purpose by the Secretary, in connection with his application for registration, the written consent of the owner of the fee, and any mortgagee, judgment creditor, or other person having a lien thereon, duly acknowledged, that such premises may be used for the purpose of distilling spirits, subject to the provisions of law, and expressly stipulating that the lien of the United States, for taxes on distilled spirits produced thereon and penalties relating thereto, shall have priority of such mortgage, judgment, or other encumbrance, and that in the case of the forfeiture of such premises, or any part thereof, the title to the same shall vest in the United States, discharged from such mortgage, judgment, or other encumbrance, or

[(C) the distiller files a bond, approved by the Secretary, in the penal sum equal to the appraised value of the property subject to lien under section 5004(b)(1), except that such bond shall not exceed the sum of $300,000. Such value shall be determined, and such bond shall be executed in such form and with such sureties and filed with the officer designated by the Secretary, under such regulations as the Secretary shall prescribe.

[(2) CANCELLATION OF INDEMNITY BOND.—When the liability for which an indemnity bond given under paragraph (1)(C) or (4) ceases to exist, such bond may be cancelled upon application to the Secretary or his delegate.

[(3) JUDICIAL SALE.—In the case of any distillery sold at judicial or other sale in favor of the United States, a bond in lieu of consent under paragraph (1)(B) may be taken at the discretion of the Secretary, and the person giving such bond may be allowed to operate such distillery during the existence of the right of redemption from such sale, on complying with all the other provisions of law.

[(4) INVOLUNTARY LIEN.—In the case of a judgment or other lien imposed on the property subject to lien under section 5004(b)(1) without the consent of the distiller, the distiller may file bond, approved by the Secretary, in the amount of such judgment or other lien to indemnify the United States for any loss resulting from such encumbrance.

[(c) BONDED WAREHOUSEMAN'S BONDS.—

[(1) GENERAL REQUIREMENTS.—Every person intending to commence or continue the business of a bonded warehouseman shall give bond in a penal sum not less than the amount of tax on distilled spirits stored on such premises and in transit thereto, except that such bond shall not exceed the sum of $200,000. In addition to the requirements in subsection (a), such bond shall be conditioned—

[(A) on the withdrawal of the spirits from storage on bonded premises within the time prescribed for the determination of tax under section 5006(a)(2), and

(B) on payment of the tax, except as otherwise provided by law, on all spirits withdrawn from storage on the bonded premises.

[(2) EXCEPTION.—The Secretary may by regulations specify bonded warehousing operations, other than the storage of more than 500 casks or packages of distilled spirits in wooden containers, for which a bond in a maximum sum of less $200,000 will be approved, and in such cases the Secretary shall by regulations prescribe the maximum penal sum of such bonds.

[(d) RECTIFIER'S BOND.—Every person intending to commence or continue the business of a rectifier shall give bond in a penal sum not less than the amount of tax the rectifier will be liable to pay in a period of 30 days under sections 5021 and 5022, except that such bond shall not exceed the sum of $100,000, and shall not be less than $1,000.

[(e) COMBINED OPERATIONS.—

[(1) DISTILLED SPIRITS PLANTS.—Except as provided in paragraph (2), any person intending to commence or continue business as proprietor of a distilled spirits plant who would otherwise be required to give more than one bond under the provisions of subsections (b) (other than indemnity bonds), (c), and (d), shall, in lieu thereof, give bond in a penal sum equal to the combined penal sums which would have been required under such subsections; but in no case shall the combined operations bond be in a penal sum in excess of $200,000 if all operations are to be conducted on bonded premises, or in excess of $250,000 for the distilled spirits plant. Bonds given under this paragraph shall contain the terms and conditions of the bonds in lieu of which they are given.

[(2) DISTILLED SPIRITS PLANTS AND ADJACENT BONDED WINE CELLARS.—Any person intending to commence or continue business as proprietor of a bonded wine cellar and an adjacent distilled spirits plant qualified for the production of distilled spirits shall in lieu of the bonds which would otherwise be required under the provisions of subsection (b) (other than indemnity bonds), (c), and (d), and section 5354 (other than supplemental bonds to cover additional liability arising as a result of deferral of payment of tax), give bond in a penal sum equal to the combined penal sums which would have been required under such provisions; but in no case shall the combined operations bond be in a penal sum in excess of $150,000 if the distilled spirits plant is qualified solely for the production of distilled spirits in excess of $250,000 if the distilled spirits plant is qualified only for production and bonded warehousing or for production and rectification and bottling, or in excess of $300,000 for the distilled spirits plant and bonded wine cellar. Bonds given under this paragraph shall contain the terms and conditions of the bonds in lieu of which they are given.

[(f) BLANKET BONDS.—The Secretary may be regulations authorize any person (including, in the case of a corporation, controlled or wholly owned subsidiaries) operating more than one distilled spirits plant in a geographical area designated in regulations prescribed by the Secretary to give a blanket bond covering the operation of any two or more of such plants and any bonded wine cellars which are adjacent to such plants and which otherwise could be covered under a combined operations bond as provided for in subsection (e) (2). The penal sum of such blanket bond shall be calculated in accordance with the following table:

Total Penal Sums as Determined under Subsections (b), (c), (d), and (e)	*Requirement for Penal Sum of Blanket Bond*
First $300,000 or any part thereof	100%
Next $300,000 or any part thereof	70%
Next $400,000 or any part thereof	50%
Next $1,000,000 or any part thereof	35%
All over $2,000,000	25%

Bonds given under this subsection shall be in lieu of the bonds required under subsection (b) (other than indemnity bonds), (c), (d), and (e), as the case may be, and shall contain the terms and conditions of such bonds.

[(g) LIABILITY UNDER COMBINED OPERATIONS AND BLANKET BONDS.—The total amount of any bond given under subsection (e) or (f) shall be available for the satisfaction of any liability incurred under the terms or conditions of such bond.]

SEC. 5173. BONDS.

(a) OPERATIONS AT, AND WITHDRAWALS FROM, DISTILLED SPIRITS PLANTS MUST BE COVERED BY BOND.—

(1) OPERATIONS.—No person intending to establish a distilled spirits plant may commence operations at such plant unless such person has furnished bond covering operations at such plant.

(2) WITHDRAWALS.—No distilled spirits (other than distilled spirits withdrawn under section 5214 or 7510 may be withdrawn from bonded premises except on payment of tax unless the proprietor of the bonded premises has furnished bond covering such withdrawal.

(b) OPERATIONS BONDS.—The bond required by paragraph (1) of subsection (a) shall meet the requirements of paragraph (1), (2), or (3) of this subsection:

(1) ONE PLANT BOND.—The bond covers operations at a single distilled spirits plant.

(2) ADJACENT WINE CELLAR BOND.—The bond covers operations at a distilled spirits plant and at an adjacent bonded wine cellar.

(3) AREA BOND.—The bond covers operations at 2 or more distilled spirits plants (and adjacent bonded wine cellars) which—

(A) are located in the same geographical area (as designated in regulations prescribed by the Secretary), and

(B) are operated by the same person (or, in the case of a corporation, by such corporation and its controlled subsidiaries).

(c) WITHDRAWAL BONDS.—The bond required by paragraph (2) of subsection (a) shall cover withdrawals from 1 or more bonded premises the operations at which could be covered by the same operations bond under subsection (b).

(d) UNIT BONDS.—Under regulations prescribed by the Secretary, the requirements of paragraphs (1) and (2) of subsection (a) shall be treated as met by a unit bond which covers both operations at, and withdrawals from, 1 or more bonded premises which could be covered by the same operations bond under subsection (b).

(e) TERMS AND CONDITIONS.—

(1) IN GENERAL.—Any bond furnished under this section shall be conditioned that the person furnishing the bond—

(A) will faithfully comply with all provisions of law and regulations relating to the activities covered by such bond, and

(B) will pay—

(i) all taxes imposed by this chapter, and

(ii) all penalties incurred by, or fines imposed on, such person for violation of any such provision.

(2) OTHER TERMS AND CONDITIONS.—Any bond furnished under this section shall contain such other terms and conditions as may be required by regulations prescribed by the Secretary.

(f) AMOUNT.—

(1) IN GENERAL.—The penal sum of any bond shall be the amount determined under regulations prescribed by the Secretary.

(2) MAXIMUM AND MINIMUM AMOUNT.—The Secretary shall by regulations prescribe a minimum amount and a maximum amount for each type of bond which may be furnished under this section.

(g) TOTAL AMOUNT AVAILABLE.—The total amount of any bond furnished under this section shall be available for the satisfaction of any liability incurred under the terms and conditions of such bond.

(h) SPECIAL RULES.—For purposes of this section—

(1) WITHDRAWAL BONDS.—In the case of any bond furnished under this section which covers withdrawals but not operations—

(A) such bond shall be in addition to the operations bond, and

(B) if distilled spirits are withdrawn under such bond, the operations bond shall no longer cover liability for payment of the tax on the spirits withdrawn.

(2) ADJACENT WINE CELLARS.—

(A) REQUIREMENTS.—No wine cellar shall be treated as being adjacent to a distilled spirits plant unless—

(i) such distilled spirits plant is qualified under this subchapter for the production of distilled spirits, and

(ii) such wine cellar and the distilled spirits plant are operated by the same person (or, in the case of a corporation, by such corporation and its controlled subsidiaries).

(B) BOND IN LIEU OF WINE CELLAR BOND.—In the case of any adjacent wine cellar, a bond furnished under this section which covers operations at such wine cellar shall be in lieu of any bond which would otherwise be required under section 5354 with respect to such wine cellar (other than supplemental bonds required under the second sentence of section 5354).

[SEC. 5174. WITHDRAWAL BONDS.

[(a) REQUIREMENTS.—No distilled spirits, other than distilled spirits withdrawn under section 5214 or section 7510, shall be withdrawn from bonded premises except on payment of tax unless—

[(1) the proprietor of the bonded premises has furnished such bond (in addition to that required in section 5173) to secure payment of the tax on such spirits, under such regulations and conditions, and in such form and penal sum, as the Secretary may prescribe; or

[(2) the proprietor of a distilled spirits plan authorized to rectify or bottle distilled spirits has—

[(A) made application to the Secretary to withdraw distilled spirits from bond and has assumed liability at the receiving plant for payment of the tax thereon;

[(B) furnished bond (in addition to any bond required by section 5173) to secure payment of the tax on such spirits, under such regulations and conditions, and in such form and penal sum, as the Secretary may prescribe; and

[(C) complied with such other requirements as the Secretary may by regulations prescribe.

[(b) RELEASE OF OTHER BONDS.—When a bond has been filled under subsection (a) and distilled spirits have been withdrawn from bonded premises thereunder, bonds of proprietors covering operations on bonded premises, and bonds given under prior provisions of internal revenue law to cover similar operations, shall no longer cover liability for payment of the tax on such spirits.]

SEC. 5175. EXPORT BONDS.

(a) REQUIREMENTS.—No distilled spirits shall be withdrawn from bonded premises for exportation, or for transfer to a customs bonded warehouse [for storage therein pending exportation], without payment of tax unless the exporter has furnished bond to cover such withdrawal, under such regulations and conditions, and in such form and penal sum, as the Secretary may prescribe.

[(b) EXCEPTION.—In case of distilled spirits withdrawn for exportation without payment of tax on application of the proprietor of bonded premises, the bond of such proprietor covering such bonded premises shall cover such exportation and subsection (a) shall not be applicable.]

(b) EXCEPTION WHERE PROPRIETOR WITHDRAWS SPIRITS FOR EXPORTATION.—In the case of distilled spirits withdrawn from bonded premises by the proprietor for exportation without payment of tax, the bond of such proprietor required to be furnished under paragraph (1) of section 5173(a) covering such premises shall cover such exportation, and subsection (a) shall not apply.

* * * * * * *

SEC. 5176. NEW OR RENEWED BONDS.

(a) GENERAL.—New bonds shall be required under sections 5173 [, 5174,] and 5175 in case of insolvency or removal of any surety, and may, at the discretion of the Secretary, be required in any other contingency affecting the validity or impairing the efficiency of such bond.

[(b) BONDED WAREHOUSEMAN'S BONDS.—In case the proprietor of a distilled spirits plant fails or refuses—

[(1) to give a warehouseman's bond required under section 5173(c), or to renew the same, and neglects to immediately withdraw the spirits and pay the tax thereon; or

[(2) to withdraw any spirits from storage on bonded premises before the expiration of the time limited in the bond and, except as otherwise provided by law, pay the tax thereon;

the Secretary shall proceed to collect the tax.]

(b) BONDS.—If the proprietor of a distilled spirits plant fails or refuses to furnish a bond required under paragraph (1) of section 5713(a) or to renew the same, and neglects to immediately withdraw the spirits and pay the tax thereon, the Secretary shall proceed to collect the tax.

SEC. 5177. OTHER PROVISIONS RELATING TO BONDS.

(a) GENERAL PROVISIONS RELATING TO BONDS.—The provisions of section 5551 shall be applicable to the bonds required by or given under sections 5173[, 5174,] and 5175.

* * * * * * *

SEC. 5178. PREMISES OF DISTILLED SPIRITS PLANTS.

(a) LOCATION, CONSTRUCTION, AND ARRANGEMENT.—

(1) GENERAL.—

(A) The premises of a distilled spirits plant shall be as described in the application required by section 5171[(a).] (*e*). The Secretary shall prescribe such regulations relating to the location, construction, arrangement, and protection of distilled spirits plants as he deems necessary to facilitate inspection and afford adequate security to the revenue.

(B) No distilled spirits plant for the production of distilled spirits shall be located in any dwelling house, in any shed, yard, or inclosure connected with any dwelling house, or on board any vessel or boat, or on premises where beer or wine is made or produced, or liquors of any description are retailed, or on premises where any other business is carried on (except when authorized under subsection (b)).

(C) Notwithstanding any other provision of this chapter relating to distilled spirits plants the Secretary may approve the location, construction, arrangement, and method of operation of any establishment which was qualified to operate on the date preceding the effective date of this section if he deems that such location, construction, arrangement, and method of operation will afford adequate security to the revenue.

[(2) PRODUCTION FACILITIES.—

[(A) Any person establishing a distilled spirits plant may, as described in his application for registration, provide facilities which may be used for the production of distilled spirits from any source or substance.

[(B) The distilling system shall be continuous and closed at all points where potable or readily recoverable spirits are present and the distilling apparatus shall be so designed and constructed and so connected as to prevent the unauthorized removal of such spirits prior to their production gauge.

[(C) The Secretary is authorized to order and require such identification of, changes of, or additions to, distilling apparatus, connecting pipes, pumps, tanks, or any machinery connected with or used in or on the bonded premises, or require to be put on any of the stills, tubs, pipes, tanks, or other equipment, such fastenings, locks or seals as he may deem necessary to facilitate inspection and afford adequate security to the revenue.

[(3) BONDED WAREHOUSING FACILITIES.—

[(A) Any person establishing a distilled spirits plant for the production of distilled spirits may, as described in his application for registration, establish warehousing facilities on the bonded premises of such plant.

[(B) Distilled spirits plants for the bonded warehousing of distilled spirits elsewhere than as described in subparagraph (A) may be established at the discretion of the Secretary, by proprietors referred to in subparagraph (A) or by other persons, under such regulations as the Secretary shall prescribe.

[(C) Facilities for the storage on bonded premises of distilled spirits in casks, packages, cases, or similar portable approved containers shall be established in a room or building used exclusively for the storage, bottling, or packaging of distilled spirits, and activities related thereto.

[(D) A proprietor who has established facilities for the storage on bonded premises of distilled spirits under subparagraph (C) may establish a portion of such premises as an export storage facility for the storage of distilled spirits returned to bonded premises under section 5215(b).

[(4) BOTTLING FACILITIES.—

[(A) The proprietor of a distilled spirits plant authorized to store distilled spirits in casks, packages, cases, or similar portable approved containers on bonded premises—

[(i) may establish a separate portion of such premises for the bottling in bond of distilled spirits under section 5233 prior to payment or determination of tax, or

[(ii) may elect to use facilities on his bottling premises established under subparagraph (B) or (C) for bottling in accordance with the conditions and requirements of section 5233 and under the supervision provided for in section 5202(g), but after determination of tax.

Distilled spirits bottled after determination of the internal revenue tax under clause (ii) shall be stamped and labeled in the same manner as distilled spirits bottled before determination of tax under clause (i).

[(B) Facilities for rectification of distilled spirits or wines upon which the tax has been paid or determined, may be established as a separate distilled spirits plant or as a part of a distilled spirits plant qualified for the production or bonded warehousing of distilled spirits. Such facilities, when qualified, may be used for the rectification of distilled spirits or wines, or the bottling or packaging of rectified or unrectified distilled spirits or wines on which the tax has been paid or determined.

[(C) Facilities for bottling or packaging any distilled spirits upon which the tax has been paid or determined (other than bottling facilities established under subparagraph (B)), may be established and maintained only by a State or political subdivision thereof, or by the proprietor of a distilled spirits plant qualified for the production or bonded warehousing of distilled spirits, as a part of such plant or as a separate distilled spirits plant. Such facilities, when qualified, may be used for the bottling or packaging of rectified or unrectified distilled spirits or wines but may not be used for the rectification of distilled spirits or wines.

[(D) Bottling premises established under subparagraphs (B) or (C) may not be located on bonded premises, and if the distilled spirits plant contains both bonded premises and bottling premises they shall be separated by such means or in such manner as the Secretary may by regulations prescribe.

[(5) DENATURING FACILITIES.—The Secretary may by regulations require such arrangement and segregation of denaturing facilities as he deems necessary.]

(2) PRODUCTION OPERATIONS.—

(A) Any person establishing a distilled spirits plant may, as described in his application for registration, produce distilled spirits from any source or substance.

(B) The distilling system shall be continuous and shall be so designed and constructed and so connected as to prevent the unauthorized removal of distilled spirits before their production gauge.

(C) The Secretary is authorized to order and require—

(i) such identification of, changes of, and additions to, distilling apparatus, connecting pipes, pumps, tanks, and any machinery connected with or used in or on the premises, and

(ii) such fastenings, locks, and seals to be part of any of the stills, tubs, pipes, tanks, and other equipment,

as he may deem necessary to facilitate inspection and afford adequate security to the revenue.

(3) WAREHOUSING OPERATIONS.—

(A) Any person establishing a distilled spirits plant for the production of distilled spirits may, as described in the application for registration, warehouse bulk distilled spirits on the bonded premises of such plant.

(B) Distilled spirits plants for the bonded warehousing of bulk distilled spirits elsewhere than as described in subparagraph (A) may be established at the discretion of the Secretary by proprietors referred to in subparagraph (A) or by other persons under such regulations as the Secretary shall prescribe.

(4) PROCESSING OPERATIONS.—Any person establishing a distilled spirits plant may, as described in the application for registration, process distilled spirits on the bonded premises of such plant.

* * * * * * *

SEC. 5180. SIGNS.

(a) REQUIREMENTS.—Every person engaged in [distilling, bonded warehousing, rectifying, or bottling of distilled spirits] *distilled spirits operations* shall place and keep conspicuously on the outside of his place of business a sign showing the name of such person and denoting the business, or businesses, in which engaged. The sign required by this subsection shall be in such form and contain such information as the Secretary shall by regulation prescribe.

* * * * * * *

SEC. 5181. CROSS REFERENCES.

For provisions requiring payment of special (occupational) tax [as rectifier, see section 5081, or] as wholesale liquor dealer, see section 5111, or as retail liquor dealer, see section 5121.

Subchapter C—Operation of Distilled Spirits Plants

PART I—GENERAL PROVISIONS

* * * * * * *

SEC. 5201. REGULATION OF OPERATIONS.

[(a) GENERAL.—Proprietors of distilled spirits plants shall conduct their operations relating to the production, storage, denaturing, rectification, and bottling of distilled spirits, and all other operations authorized to be conducted on the premises of such plants, under such regulations as the Secretary shall prescribe.]

(a) IN GENERAL.—Proprietors of distilled spirits plants shall conduct all operations authorized to be conducted on the premises of such plants under such regulations as the Secretary shall prescribe.

[SEC. 5202. SUPERVISION OF OPERATIONS.

[(a) GENERAL.—The operations on the premises of distilled spirits plants shall be conducted under such supervision as the Secretary shall by regulation prescribe. The Secretary shall assign such number of internal revenue officers to distilled spirits plants as he deems necessary to maintain supervision of the operations conducted on such premises.

[(b) REMOVAL OF DISTILLED SPIRITS FROM DISTILLING SYSTEM.—The removal of distilled spirits from the closed distilling system shall be controlled by Government locks or seals, or by meters or other devices or methods as the Secretary may prescribe.

[(c) STORAGE TANKS.—Approved containers for the storage of distilled spirits on bonded premises (other than containers required by subsection (d) to be in a locked room or building or those containing distilled spirits denatured as authorized by law) shall be kept securely closed, and the flow of distilled spirits into and out of such containers shall be controlled by Government locks or seals, or by meters or other devices or methods as the Secretary may prescribe.

[(d) STORAGE ROOMS OR BUILDINGS.—Distilled spirits (other than denatured distilled spirits) on bonded premises in casks, packages, cases, or similar portable approved containers must be stored in a room or building provided as required by section 5178(a)(3)(C), which room or building shall be in the joint custody of the internal revenue officer assigned to such premises and the proprietor thereof, and shall be kept securely locked with Government locks and at no time be unlocked or opened, or remain open, except when such officer or person who may be designated to act for him is on the premises. Deposits of distilled spirits in, or removals of distilled spirits from, such room or building shall be under such supervision by internal revenue officers as the Secretary shall by regulations prescribe.

[(e) DENATURATION OF DISTILLED SPIRITS.—The denaturation of distilled spirits on bonded premises shall be conducted under such supervision and controlled by such meters or other devices or methods as the Secretary shall prescribe.

[(f) GAUGING.—The gauge of production of distilled spirits, gauge for determination of the tax imposed under section 5001(a)(1), and gauge for tax-free removal of other than denatured distilled spirits from bonded premises, shall be made or supervised by internal revenue officers, under such regulations as the Secretary shall prescribe.

[(g) BOTTLING IN BOND.—The bottling of distilled spirits in bond shall be supervised by the internal revenue officer assigned to the premises in such manner as the Secretary shall by regulations prescribe.

SEC. 5202. SUPERVISION OF OPERATIONS.

All operations on the premises of a distilled spirits plant shall be conducted under such supervision and controls (including the use of Government locks and seals) as the Secretary shall by regulations prescribe.

SEC. 5203. ENTRY AND EXAMINATION OF PREMISES.

(a) KEEPING PREMISES ACCESSIBLE.— * * *

(b) RIGHT OF ENTRY AND EXAMINATION.—It shall be lawful for any internal revenue officer at all times, as well by night as by day, to enter any distilled spirits plant, or any other premises where distilled spirits [are produced or rectified,] *operations are carried on*, or structure or place used in connection therewith for storage or other purposes; to make examination of the materials, equipment, and facilities thereon; and make such gauges and inventories as he deems necessary. Whenever any officer, having demanded admittance, and having declared his name and office, is not admitted into such premises by the proprietor or other person having charge thereof, it shall be lawful for such officer, at all times, as well by night as by day, to use such force as is necessary for him to gain entry to such premises.

* * * * * * *

(c) FURNISHING FACILITIES AND ASSISTANCE.—On the demand of any internal revenue officer or agent, every proprietor of a distilled spirits plant shall furnish the necessary facilities and assistance to enable the officer or agent to gauge the spirits in any container or to examine any apparatus, equipment, containers, or materials on such premises. Such proprietor shall also, on demand of such officer or agent, open all doors, and open for examination all boxes, packages, and all casks, barrels, and other vessels [not under the control of the internal revenue officer in charge.] *on such premises.*

(d) AUTHORITY TO BREAK UP GROUNDS OR WALLS.—It shall be lawful for any internal revenue officer, and any person acting in his aid, to break up the ground on any part of a distilled spirits plant or any other premises where distilled spirits [are produced or rectified,] *operations are carried on* or any ground adjoining or near to such plant or premises, or any wall or partition thereof, or belonging thereto, or other place, to search for any pipe, cock, private conveyance, or utensil; and, upon finding any such pipe or conveyance lead-

ing therefrom or thereto, to break up any ground, house, wall, or other place through or into which such pipe or other conveyance leads, and to break or cut away such pipe or other conveyance, and turn any cock, or to examine whether such pipe or other conveyance conveys or conceals any distilled spirits, mash, wort, or beer, or other liquor, from the sight or view of the officer, so as to prevent or hinder him from taking a true account thereof.

* * * * * * *

SEC. 5204. GAUGING.

(a) GENERAL.—The Secretary may by regualtions require the gauging of distilled spirits for such purposes [, in addition to those specified in section 5202(f),] as he may deem necessary, and all required gauges shall be made at such times and under such conditions as he may by regulations prescribe.

* * * * * * *

SEC. 5205. STAMPS.

(a) STAMPS FOR CONTAINERS OF DISTILLED SPIRITS.—

[(1) CONTAINER OF DISTILLED SPIRITS BOTTLED IN BOND.—Every container of distilled spirits bottled in bond under section 5233 when filled shall be stamped by a stamp evidencing the bottling of such spirits in bond under the provisions of this paragraph and section 5233.]

[(2)] (*1*) CONTAINERS OF OTHER DISTILLED SPIRITS.—No person shall transport, possess, buy, sell, or transfer any distilled spirits, unless the immediate container thereof is stamped by a stamp evidencing the determination of the tax or indicating compliance with the provisions of this chapter. The provisions of this paragraph shall not apply to—

(a) distilled spirits, lawfully withdrawn from bond, placed in containers for immediate consumption on the premises or for preparation for such consumption;

(B) distilled spirits in bond or in customs custody;

(C) distilled spirits, lawfully withdrawn from bond, in immediate containers stamped under other provisions of internal revenue or customs law or regulations issued pursuant thereto;

[(D) distilled spirits, lawfully withdrawn from bond, in actual process of rectification, blending, or bottling, or in actual use in processes of manufacture;]

[(E)] (*D*) distilled spirits on which no internal revenue tax is required to be paid;

[(F)] (*E*) distilled spirits lawfully withdrawn from bond and not intended for sale or for use in the manufacture or production of any article intended for sale; or

[(G)] (*F*) any regularly established common carrier receiving, transporting, delivering, or holding for transportation or delivery distilled spirits in the ordinary course of its business as a common carrier.

[(3)](*2*) STAMP REGULATIONS.—The Secretary shall prescribe regulations with respect to the supplying or procuring of stamps

required under this subsection or section 5235, the time and manner of applying for, issuing, affixing, and destroying such stamps, the form or such stamps and the information to be shown thereon, applications for the stamps, proof that applicants are entitled to such stamps, and the method of accounting for such stamps, and such other regulations as he may deem necessary for the enforcement of this subsection. In the case of a container of a capacity of 5 wine gallons or less, the stamp shall be affixed in such a manner as to be broken when the container is opened, unless the container is one that cannot again be used after opening.

* * * * * * * *

(c) STAMPS FOR CONTAINERS OF DISTILLED SPIRITS WITHDRAWN FOR EXPORTATION.—

(1) EXPORTATION WITHOUT PAYMENT OF TAX.—Every container of distilled spirits withdrawn for exportation under section 5214 (a) (4) shall be stamped by a stamp under such regulations as the Secretary shall describe. This paragraph shall not be construed to require stamps on cases of bottled distilled spirits filled and stamped on bonded premises.

(2) EXPORTATION WITH BENEFIT OF DRAWBACK.—The Secretary may require any container of distilled spirits bottled or packaged especially for export with benefit of drawback to be stamped by a stamp under such regulations as he may prescribe. [This paragraph shall also apply to every container of distilled spirits returned to the bonded premises under the provisions of section 5215(b).]

[(d) STAMPS FOR CONTAINERS OF 5 WINE GALLONS OR MORE OF DISTILLED SPIRITS FILLED ON BOTTLING PREMISES.—All containers of distilled spirits containing 5 wine gallons or more, which are filled on bottling premises of a distilled spirits plant for removal therefrom, shall be stamped by a stamp under such regulations as the Secretary shall prescribe.]

[(e)] (*d*) ISSUE FOR RESTAMPING.—The Secretary, under regulations prescribed by him, may authorize restamping of containers of distilled spirits which have been duly stamped but from which the stamps have been lost or destroyed by unavoidable accident.

[(f)] (*e*) ACCOUNTABILITY.—All stamps relating to distilled spirits shall be used and accounted for under such regulations as the Secretary may prescribe.

[(g)] (*f*) EFFACEMENT OF STAMPS, MARKS, AND BRANDS ON EMPTIED CONTAINERS.—Every person who empties, or causes to be emptied, any immediate container of distilled spirits bearing any stamp, mark, or brand required by law or regulations prescribed pursuant thereto (other than containers stamped under subsection (a) of section 5235) shall at the time of emptying such container efface and obliterate such stamp, mark, or brand, except that the Secretary may, by regulations, waive any requirement of this subsection as to the effacement or obliteration of marks or brands (or portions thereof) where he determines that no jeopardy to the revenue will be involved.

[(h)] (*g*) FORM OF STAMP.—Any stamp required or prescribed pursuant to the provisions of this section or section 5235 may consist of such coupon, serially-numbered ticket, imprint, design, other form of

stamp, or other device as the Secretary shall by regulations prescribe.

[(i)] (*h*) CROSS REFERENCES.—

(1) For general provisions relating to stamps, see chapter 69.

(2) For provisions relating to the stamping, marking, and branding of containers of distilled spirits by proprietors, see section 5204(c).

(3) For provisions relating the the stamping of bottled alcohol, see section 5235.

[(4) For authority of the Secretary to prescribe regulations regarding stamps for distilled spirits withdrawn to manufacturing bonded warehouses, see section 5522(a).]

[(5)] (*4*) For penalties and forfeitures relating to stamps, marks, and brands, see sections 5604, 5613, 7208, and 7209.

* * * * * * *

[SEC. 5207. RECORDS AND REPORTS.

[(a) RECORDS OF DISTILLERS AND BONDED WAREHOUSEMEN.—Every distiller and every bonded warehouseman shall keep records in such form and manner as the Secretary shall by regulations prescribe of—

[(1) the receipt of materials intended for use in the production of distilled spirits, and the use thereof,

[(2) the receipt and use of distilled spirits received for redistillation,

[(3) the kind and quantity of distilled spirits produced,

[(4) the kind and quantity of distilled spirits entered into storage,

[(5) the bottling of distilled spirits in bond,

[(6) the kind and quantity of distilled spirits removed from bonded premises, and from any taxpaid storeroom operated in connection therewith, and the purpose for which removed,

[(7) the kind and quantity of denaturants received and used or otherwise disposed of,

[(8) the kind and quantity of distilled spirits denatured,

[(9) the kind and quantity of denatured distilled spirits removed,

[(10) the kind and quantity of distilled spirits returned to bonded premises, and

[(11) such additional information as may by regulations be required.

[(b) RECORDS OF RECTIFIERS AND BOTTLERS.—Every rectifier and every bottler of distilled spirits shall keep records in such form and manner as the Secretary shall by regulations prescribe of—

[(1) all distilled spirits and wines received,

[(2) the kind and quantity of distilled spirits and wines rectified and packaged or bottled, or packaged or bottled without rectification,

[(3) the kind and quantity of distilled spirits and wines removed from his premises,

[(4) the receipt, use, and balance on hand of all stamps required by law or regulations to be used by him, and

[(5) such additional information as may by regulations be required.

[(c) REPORTS.—Every person required to keep records under subsection (a) or (b) shall render such reports covering his operations,

at such times and in such form and manner and containing such information, as the Secretary shall by regulation prescribe.

[(d) PRESERVATION AND INSPECTION.—The records required by subsection (a) and (b), and a copy of each report required by subsection (c) shall be kept on the premises where the operations covered by the record are carried on and shall be available for inspection by any internal revenue officer during business hours, and shall be preserved by the person required to keep such records and reports for such period as the Secretary shall by regulations prescribe.

[(e) PENALTY.—

[For penalty and forfeiture for refusal or neglect to keep records required under this section, or for false entries therein, see sections 5603 and 5615(5).]

SEC. 5207. RECORDS AND REPORTS.

(a) RECORDS OF DISTILLED SPIRITS PLANT PROPRIETORS.—Every distilled spirits plant proprietor shall keep records in such form and manner as the Secretary shall by regulations prescribe of:

(1) The following production activities—

(A) the receipt of materials intended for use in the production of distilled spirits, and the use thereof,

(B) the receipt and use of distilled spirits received for redistillation, and

(C) the kind of quantity of distilled spirits produced.

(2) The following storage activities—

(A) the kind and quantity of distilled spirits, wines, and alcoholic ingredients entered into storage,

(B) the kind and quantity of distilled spirits, wines, and alcoholic ingredients removed, and the purpose for which removed, and

(C) the kind and quantity of distilled spirits returned to storage.

(3) The following denaturation activities—

(A) the kind and quantity of denaturants received and used or otherwise disposed of,

(B) the kind and quantity of distilled spirits denatured, and

(C) the kind and quantity of denatured distilled spirits removed.

(4) The following processing activities—

(A) all distilled spirits, wines, and alcoholic ingredients received or transferred,

(B) the kind and quantity of distilled spirits packaged or bottled,

(C) the kind and quantity of distilled spirits removed from his premises, and

(D) the receipt, use, and balance on hand of all stamps required by law or regulations to be used by him.

(5) Such additional information with respect to activities described in paragraphs (1), (2), (3), and (4), and with respect to other activities, as may by regulations be required.

(b) REPORTS.—Every person required to keep records under subsection (a) shall render such reports covering his operations, at such times and in such form and manner and containing such information, as the Secretary shall be regulations prescribe.

(c) PRESERVATION AND INSPECTION.—The records required by subsection (a) and a copy of each report required by subsection (b) shall be kept on the premises where the operations covered by the record are carried on and shall be available for inspection by any internal revenue officer during business hours, and shall be preserved by the person required to keep such records and reports for such period as the Secretary shall by regulations prescribe.

(d) PENALTY.—

For penalty and forfeiture for refusal or neglect to keep records required under this section, or for false entries therein, see sections 5603 and 5615(5).

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PART II—OPERATIONS ON BONDED PREMISES

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Subpart A—General

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SEC. 5211. PRODUCTION AND ENTRY OF DISTILLED SPIRITS.

Distilled spirits in the process of production in a distilled spirits plant may be held prior to the production gauge only for so long as is reasonably necessary to complete the process of production. Under such regulations as the Secretary shall prescribe, all distilled spirits produced in a distilled spirits plant shall be gauged and a record made of such gauge within a reasonable time after the production thereof has been completed. The proprietor shall, pursuant to such production gauge and in accordance with such regulations as the Secretary shall prescribe, make appropriate entry for—

(1) deposit of such spirits [in storage] on bonded premises *for storage or processing*;

(2) withdrawal upon determination of tax as authorized by law;

(3) withdrawal under the provisions of section 5214; *and*

(4) transfer for redistillation under the provisions of section 5223 [; or].

[(5) immediate denaturation.]

SEC. 5212. TRANSFER OF DISTILLED SPIRITS BETWEEN BONDED PREMISES.

[Distilled] *Bulk distilled* spirits on which the internal revenue tax has not been paid or determined as authorized by law may, under such regulations as the Secretary shall prescribe, be transferred in bond between bonded premises in any approved contained. For the purposes of this chapter, the removal of *bulk* distilled spirits for transfer in bond between bonded premises shall not be construed to be a withdrawal from bonded premises.

SEC. 5213. WITHDRAWAL OF DISTILLED SPIRITS FROM BONDED PREMISES ON DETERMINATION OF TAX.

[On application to the Secretary and subject to the provisions of section 5174(a), distilled spirits may be withdrawn from the bonded premises of a distilled spirits plant on payment or determination of tax thereon, in approved containers, under such regulations as the Secretary shall prescribe.]

Subject to the provisions of section 5173, distilled spirits may be withdrawn from the bonded premises of a distilled spirits plant on payment or determination of tax thereon, in approved containers, under such regulations as the Secretary shall prescribe.

SEC. 5214. WITHDRAWAL OF DISTILLED SPIRITS FROM BONDED PREMISES FREE OF TAX OR WITHOUT PAYMENT OF TAX.

(a) PURPOSES.—Distilled spirits on which the internal revenue tax has not been paid or determined may, subject to such regulations as the Secretary shall prescribe, be withdrawn from the bonded premises of any distilled spirits plant in approved containers—

(1) free of tax after denaturation of such spirits in the manner prescribed by law for—

(A) exportation;

(B) use in the manufacture of ether, chloroform, or other definite chemical substance where such distilled spirits are changed into some other chemical substance and do not appear in the finished product; or

(C) any other use in the arts and industries (except for uses prohibited by section 5273(b) or (d)) and for fuel, light, and power; or

(2) free of tax by, and for the use of, the United States or any governmental agency thereof, any State, any political subdivision of a State, or the District of Columbia, for nonbeverage purposes; or

(3) free of tax for nonbeverage purposes and not for resale or use in the manufacture of any product for sale—

(A) for the use of any educational organization described in section 170(b)(1)(A)(ii) which is exempt from income tax under section 501(a), or for the use of any scientific university or college of learning;

(B) for any laboratory for use exclusively in scientific research;

(C) for use at any hospital, blood bank, or sanitarium (including use in making any analysis or test at such hospital, blood bank, or sanitarium), or at any pathological laboratory exclusively engaged in making analyses, or tests, for hospitals or sanitariums; or

(D) for the use of any clinic operated for charity and not for profit (including use in the compounding of bona fide medicines for treatment outside of such clinics of patients thereof); or

(4) without payment of tax for exportation, after making such application and entries, filing such bonds as are required by sec-

tion 5175, and complying with such other requirements as may by regulations be prescribed; or

(5) without payment of tax for use in wine production, as authorized by section 5373; or

(6) without payment of tax for transfer to manufacturing bonded, warehouses [, as authorized by section 5522(a); or] *for manufacturing such warehouses for export, as authorized by law; or*

(7) without payment of tax for use of certain vessels and aircraft, as authorized by law; or

(8) without payment of tax for transfer to foreign-trade zones, as authorized by law; or

(9) without payment of tax, [in the case of distilled spirits bottled in bond for export under section 5233 or distilled spirits returned to bonded premises under section 5215(b),] for transfer (for the purpose of storage pending exportation) to any customs bonded warehouse from which distilled spirits may be exported, and distilled spirits transferred to a customs bonded warehouse under this paragraph shall be entered, stored and accounted for under such regulations and bonds as the Secretary may prescribe; or

(10) without payment of tax by a proprietor of bonded premises for use in research, development, or testing (other than consumer testing or other market analysis) of processes, systems, materials, or equipment, relating to distilled spirits or [distillery] *distilled spirits* operations, under such limitations and conditions as to quantities, use, and accountability as the Secretary may by regulations require for the protection of the revenue[.]; *or*

(11) free of tax when contained in an article (within the meaning of section 5002(a)(14)).

(b) CROSS REFERENCES.—

(1) For provisions relating to denaturation, see sections 5241 and 5242.

(2) For provisions requiring permit for users of distilled spirits withdrawn free of tax and for users of specially denatured distilled spirits, see section 5271.

(3) For provisions relating to withdrawal of distilled spirits without payment of tax for use of certain vessels and aircraft, as authorized by law, see 19 U.S.C. 1309.

(4) For provisions relating to withdrawal of distilled spirits without payment of tax for manufacture in manufacturing bonded warehouse, see 19 U.S.C. 1311.

[(4)] *(5)* For provisions relating to foreign-trade zones, see 19 U.S.C. 81c.

[(5)] *(6)* For provisions authorizing regulations for withdrawal of distilled spirits free of tax for use of the United States, see section 7510.

[(6)] *(7)* For provisions authorizing removal of distillates to bonded wine cellars for use in the production of distilling material, see section 5373(c).

[(7)] *(8)* For provisions relating to distilled spirits for use of foreign embassies, legations, etc., see section 5066.

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[SEC. 5215. RETURN OF TAX DETERMINED DISTILLED SPIRITS TO BONDED PREMISES.

[(a) GENERAL.—On such application and under such regulations as the Secretary may prescribe, distilled spirits withdrawn from bonded premises on payment or determination of tax (other than products to which any alcoholic ingredients other than such distilled spirits have been added) may be returned to the bonded premises of a distilled spirits plant. Such returned distilled spirits shall be destroyed, denatured, or redistilled, or shall be mingled as authorized in section 5234(a)(1) (other than subparagraph (C) thereof).

[(b) DISTILLED SPIRITS RETURNED TO BONDED PREMISES FOR STORAGE PENDING EXPORTATION.—On such application and under such conditions as the Secretary may by regulations prescribe, distilled spirits which would be eligible for allowance of drawback under section 5062(b) on exportation, may be returned by the bottler or packager of such distilled spirits to an export storage facility on the bonded premises of the distilled spirits plant where bottled or packaged, solely for the purpose of storage pending withdrawal without payment of tax under section 5214(a)(4), (7), (8), or (9), or free of tax under section 7510.

[(c) DISTILLED SPIRITS STAMPED AND LABELED AS BOTTLED IN BOND.—On such application and under such regulations as the Secretary may prescribe, a proprietor of bonded premises who has bottled distilled spirits under section 5178(a)(4)(A)(ii), which are stamped and labeled as bottled in bond for domestic consumption, may return cases of such bottled distilled spirits to appropriate storage facilities on the bonded premises of the distilled spirits plant where bottled for storage pending withdrawal for any purpose for which distilled spirits bottled under section 5178(a)(4)(A)(i) may be withdrawn from bonded premises.

[(d) APPLICABILITY OF CHAPTER TO DISTILLED SPIRITS RETURNED TO BONDED PREMISES.—Except as otherwise provided in this section, all provisions of this chapter applicable to distilled spirits in bond shall be applicable to distilled spirits returned to bonded premises under the provisions of this section on such return.

[(e) CROSS REFERENCES.—

[(1) For provisions relating to the remission, abatement, credit, or refund of tax on distilled spirits returned to bonded premises under this section, see section 5008(d).

[(2) For provisions relating to the establishment of an export storage facility on the bonded premises of a distilled spirits plant, see section 5178(a)(3)(D).]

SEC. 5215. RETURN OF TAX DETERMINED DISTILLED SPIRITS TO BONDED PREMISES.

(a) GENERAL RULE.—Under such regulations as the Secretary may prescribe, distilled spirits on which tax has been determined or paid may be returned to the bonded premises of a distilled spirits plant but only for destruction, denaturation, redistillation, reconditioning, or rebottling.

(b) APPLICABILITY OF CHAPTER TO DISTILLED SPIRITS RETURNED TO A DISTILLED SPIRITS PLANT.—All provisions of this chapter applicable

to distilled spirits in bond shall be applicable to distilled spirits returned to bonded premises under the provisions of this section on such return.

(c) RETURN OF BOTTLED DISTILLED SPIRITS FOR RELABELING AND RESTAMPING.—Under such regulations as the Secretary shall prescribe, bottled distilled spirits withdrawn from bonded premises may be returned to bonded premises for relabeling or restamping, and the tax under section 5001 shall not again be collected on such spirits.

(d) CROSS REFERENCE.—

For provisions relating to the abatement, credit, or refund of tax on distilled spirits returned to a distilled spirits plant under this section, see section 5008(c).

Subpart B—Production

* * * * * * *

SEC. 5221. COMMENCEMENT, SUSPENSION, AND RESUMPTION OF OPERATIONS.

(a) COMMENCEMENT, SUSPENSION, AND RESUMPTION.—The proprietor of a distilled spirits plant authorized to produce distilled spirits shall not commence production operations [until an internal revenue officer has been assigned to the premises] *until written notice has been given to the Secretary stating when operations will begin.* Any proprietor of a distilled spirits plant desiring to suspend production of distilled spirits shall give notice in writing to the Secretary, stating when he will suspend such operations. Pursuant to such notice, an internal revenue officer shall take such action as the Secretary shall prescribe to prevent the production of distilled spirits. No proprietor, after having given such notice, shall, afer the time stated therein, produce distilled spirits on such premises until he again gives notice in writing to the Secretary stating the time when he will resume operations. At the time stated in the notice for resuming such operation an internal revenue officer shall take such action as is necessary to permit operations to be resumed. The notices submitted under this section shall be in such form and submitted in such manner as the Secretary may by regulations require. Nothing in this section shall apply to suspensions caused by unavoidable accidents; and the Secretary shall prescribe regulations to govern such cases of involuntary suspension.

* * * * * * *

SEC. 5222. PRODUCTION, RECEIPT, REMOVAL, AND USE OF DISTILLING MATERIALS.

(a) PRODUCTION, REMOVAL, AND USE.—

* * * * * * *

(c) PROCESSING OF DISTILLED SPIRITS CONTAINING EXTRANEOUS SUBSTANCES.—The Secretary may by regulations provide for the removal from the distilling system, and the addition to the fermented or unfermented distilling materials [, in the production facilities of a distilled spirits plant], of distilled spirits containing substantial quantities of fusel oil or aldehydes, or other extraneous substances.

* * * * * * *

SEC. 5223. REDISTILLATION OF SPIRITS, ARTICLES, AND RESIDUES.

(a) SPIRITS ON BONDED PREMISES.— * * *

* * * * * * *

(c) REDISTILLATION OF ARTICLES AND RESIDUES.—Articles, containing denatured distilled spirits, which were manufactured under the provisions of subchapter D *or on the bonded premises of a distilled spirits plant*, and the spirits residues of manufacturing processes related thereto, may be received, and the distilled spirits therein recovered by redistillation, on the bonded premises of a distilled spirits plan authorize to produce distilled spirits, under such regulations as the Secretary may prescribe.

* * * * * * *

(e) PRODUCTS OF REDISTILLATION.—All distilled spirits redistilled on bonded premises subsequent to production gauge shall be treated the same as if such spirits had been originally produced by the redistiller and all provisions of this chapter applicable to the original production of distilled spirits shall be applicable thereto. Any prior obligation as to taxes, liens, and bonds with respect to such distilled spirits shall be extinguished on redistillation. Nothing in this subsection shall be construed as affecting any provision of law relating to the labeling of distilled spirits or as limiting the authority of the Secretary to regulate the marking, branding, or identification of distilled spirits redistilled under this section. [The processing of distilled spirits, subsequent to production gauge, in the manufacture of vodka in the production facilities of a distilled spirits plant shall be treated for the purposes of this subsection, subsection (a), and sections 5025(d) and 5215 as redistillation of the spirits.]

Subpart C—Storage

[SEC. 5231. ENTRY FOR DEPOSIT IN STORAGE.

[(a) GENERAL.—All distilled spirits entered for deposit in storage under section 5211 shall, under such regulations as the Secretary shall prescribe, be deposited in storage facilities on the bonded premises designated in the entry for deposit.

[(b) CROSS REFERENCE.—

[For provisions requiring that all distilled spirits entered for deposit be withdrawn within 20 years from date of original entry for deposit, see section 5006(a)(2).]

SEC. 5231. ENTRY FOR DEPOSIT.

All distilled spirits entered for deposit on the bonded premises of a distilled spirits plant under section 5211 shall, under such regulations as the Secretary shall prescribe, be deposited in the facilities on the bonded premises designated in the entry for deposit.

(a) TRANSFER TO DISTILLED SPIRITS PLANT WITHOUT PAYMENT OF TAX.—* * *

(b) WITHDRAWALS, ETC.—Imported distilled spirits transferred pursuant to subsection (a)—

[(1) may not be bottled in bond under section 5233,]

[(2)] (*1*) may be redistilled or denatured only if of 185 degrees or more of proof, and

[(3)] (*2*) may be withdrawn for any purpose authorized by this chapter, in the same manner as domestic distilled spirits.

* * * * * * *

[SEC. 5233. BOTTLING OF DISTILLED SPIRITS IN BOND.

[(a) GENERAL.—Distilled spirits stored on bonded premises which have been duly entered for bottling in bond before determination of tax or for bottling in bond for export, shall be dumped, gauged, bottled, packed, and cased in the manner which the Secretary shall by regulations prescribe. Such bottling, packing, and casing shall be conducted in the separate facilities provided therefor under section 5178 (a)(4)(A).

[(b) BOTTLING REQUIREMENTS.—

[(1) The proprietor of a distilled spirits plant who has made entry for withdrawal of distilled spirits for bottling in bond may, under such regulations as the Secretary shall prescribe,

[(A) remove extraneous insoluble materials, and effect minor changes in the soluble color or soluble solids solely by filtrations or other physical treatments (which do not involve the addition of any substance which will remain incorporated in the completed product), as may be necessary or desirable to produce a stable product, provided such changes shall not exceed maximum limitations prescribed under regulations issued by the Secretary, and

[(B) reduce the proof of such spirits by the addition of pure water only to 100 proof for spirits for domestic use, or to not less than 80 proof for spirits for export purposes, and

[(C) mingle, when dumped for bottling, distilled spirits of the same kind, differing only in proof, produced in the same distilling season by the same distiller at the same distillery.

[(2) Nothing in this section shall authorize or permit any mingling of different products, or of the same products of different distilling seasons, or the addition or subtraction of any substance or material or the application of any method or process to alter or change in any way the original condition or character of the product except as authorized in this section.

[(3) Distilled spirits (except gin and vodka for export) shall not be bottled in bond until they have remained in bond in wooden containers for at least 4 years.

[(4) Nothing in this section shall authorize the labeling of spirits in bottles contrary to regulations issued pursuant to the Federal Alcohol Administration Act (27 U.S.C., chapter 8, or any amendment thereof.

[(c) TRADEMARKS ON BOTTLES.—No trademarks shall be put on any bottles unless the real name of the actual bona fide distiller, or the name of the individual, firm, partnership, corporation, or association in whose name the spirits were produced and warehoused, shall also be placed conspicuously on such bottle.

[(d) RETURN OF BOTTLED DISTILLED SPIRITS FOR REBOTTLING, RELABELING, OR RESTAMPING.—Under such regulations as the Secretary shall prescribe, distilled spirits which have been bottled under this section and removed from bonded premises may, on application to the Secretary, be returned to bonded premises for rebottling, relabeling, or restamping, and tax under section 5001(a)(1) shall not again be collected on such spirits.

[(e) CROSS REFERENCES.—

[(1) For provisions relating to stamps and stamping of distilled spirits bottled in bond, see section 5205.

[(2) For provisions relating to marking or branding of cases of distilled spirits bottled in bond, see section 5206.

[SEC. 5234. MINGLING AND BLENDING OF DISTILLED SPIRITS.

[(a) MINGLING OF DISTILLED SPIRITS ON BONDED PREMISES.—

[(1) IN GENERAL.—Under such regulations as the Secretary shall prescribe, distilled spirits may be mingled on bonded premises if such spirits—

[(A) were distilled at 190 degrees or more of proof;

[(B) are heterogeneous and are being dumped for gauging in bulk gauging tanks for immediate removal to bottling premises for use exclusively in taxable rectification, or for blending under section 5025(f), or for other mingling or treatment under section 5025(k);

[(C) are homogeneous;

[(D) are for immediate denaturation or immediate removal for an authorized tax-free purpose; or

[(E) are for immediate redistillation.

[(2) CONSOLIDATION OF PACKAGES.—Under such regulations as the Secretary shall prescribe, distilled spirits—

[(A) of the same kind,

[(B) distilled at the same distillery,

[(C) distilled by the same proprietor (under his own or any trade name), and

[(D) which have been stored in internal revenue bond in the same kind of cooperage for not less than 4 years (or 2 years in the case of rum or brandy),

may, within 20 years of the date of original entry for deposit of the spirits, be mingled on bonded premises.

[(b) MINGLING OF DISTILLED SPIRITS FOR NATIONAL DEFENSE.—Under such regulations as the Secretary shall prescribe, distilled spirits may be mingled on bonded premises or in the course of removal therefrom, for any purpose incident to the national defense.

[(c) BLENDING OF BEVERAGE RUMS OR BRANDIES.—Fruit brandies distilled from the same kind of fruit at not more than 170 degrees of proof may, for the sole purpose of perfecting such brandies according to commercial standards, be mixed or blended with each other, or with

any such mixture or blend, on bonded premises. Rums may, for the sole purpose of perfecting them according to commercial standards, be mixed or blended with each other, or with any such mixture or blend, on bonded premises. Such rums or brandies so mixed or blended may be packaged, stored, transported, transferred in bond, withdrawn free of tax, withdrawn upon payment or determination of tax, or be otherwise disposed of, in the same manner as rums or brandies not so mixed or blended. The Secretary may make such rules or regulations as he may deem necessary to carry this subsection into effect.

[(d) CROSS REFERENCE.—

[For provisions imposing a tax on the blending of beverage rums or brandies under subsection (c), see section 5023.]

SEC. 5235. BOTTLING OF ALCOHOL FOR INDUSTRIAL PURPOSES.

Alcohol for industrial purposes may be bottled, stamped, labeled, and cased on bonded premises of a distilled spirits plant prior to payment or determination of tax, under such regulations as the Secretary may prescribe. The provisions of [sections 5178(a)(4)(A), 5205(a)(1), and 5233 (relating to the bottling of distilled spirits in bond) shall not be applicable] *section 5205(a)(1) shall not apply to* alcohol bottled, stamped, and labeled as such under this section.

* * * * * * *

Subpart D—Denaturation

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[SEC. 5241. AUTHORITY TO DENATURE.

[Under such regulations as the Secretary shall prescribe, distilled spirits may be denatured on the bonded premises of any distilled spirits plant operated by a proprietor who is authorized to produce distilled spirits at such plant or on other bonded premises. Any other person operating bonded premises may, at the discretion of the Secretary and under such regulations as he may prescribe, be authorized to denature distilled spirits on such bonded premises. Distilled spirits to be denatured under this section shall be of such kind and of such degree of proof as the Secretary shall by regulations prescribe.]

SEC. 5241. AUTHORITY TO DENATURE.

Under such regulations as the Secretary shall prescribe, distilled spirits may be denatured on the bonded premises of a distilled spirits plant qualified for the processing of distilled spirits. Distilled spirits to be denatured under this section shall be of such kind and such degree of proof as the Secretary shall by regulations prescribe. Distilled spirits denatured under this section may be used on the bonded premises of a distilled spirits plant in the manufacture of any article.

* * * * * * *

PART III—OPERATIONS ON BOTTLING PREMISES

[SEC. 5251. NOTICE OF INTENTION TO RECTIFY.

[The Secretary may by regulations require the proprietor of any distilled spirits plant authorized to rectify distilled spirits or wines to

give notice of his intention to rectify or compound any distilled spirits or wines. Any notice so required shall be in such form, shall be submitted at such time, and shall contain such information as the Secretary may by regulations prescribe.

[SEC. 5252. REGULATION OF OPERATIONS.

[(1) For general provisions relating to operations on bottling premises, see part I of this subchapter.

[(2) For provisions relating to bottling and packaging of wines on bottling premises, see section 5363.]

Subchapter D—Industrial Use of Distilled Spirits

* * * * * * *

SEC. 5273. SALE, USE, AND RECOVERY OF DENATURED DISTILLED SPIRITS.

(a) * * *

* * * * * * *

(e) CROSS REFERENCES.—

(1) For penalty and forfeiture for unlawful use or concealment of denatured distilled spirits, see section 5607.

(2) For applicability of all provisions of law relating to distilled spirits that are not denatured, including those requiring payment of tax, to denatured distilled spirits or articles produced, withdrawn, sold, transported, or used in violation of law or regulations, see section 5001(a)(6).

(3) For definition of "articles", see section 5002(a)[(11)](*14*).

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Subchapter E—General Provisions Relating to Distilled Spirits

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PART I—RETURN OF MATERIALS USED IN THE MANUFACTURE OR RECOVERY OF DISTILLED SPIRITS

* * * * * * *

SEC. 5291. GENERAL.

(a) * * *

(b) CROSS REFERENCES.—

(1) For the definition of distilled spirits, see section 5002(a)[(6)](*8*).

(2) For the definition of articles, see section 5002(a)[(11)](*14*).

(3) For penalty for violation of subsection (a), see section 5605.

* * * * * * *

PART II—REGULATION OF TRAFFIC IN CONTAINERS OF DISTILLED SPIRITS

* * * * * * *

SEC. 5301. GENERAL.

(a) REQUIREMENTS.—Whenever in his judgment such action is necessary to protect the revenue, the Secretary is authorized, by the regulations prescribed by him and permits issued thereunder if required by him—

(1) to regulate the kind, size, branding, marking, sale, resale, possession, use, and reuse of containers (of a capacity of not more than 5 wine gallons) designed or intended for use for the sale of distilled spirits (within the meaning of such term as it is used in section 5002(a)[(6)](8) for other than industrial use; and

(2) to require, of persons manufacturing, dealing in, or using any such containers, the submission to such inspection, the keeping of such records, and the filing of such reports as may be deemed by him reasonably necessary in connection therewith.

Any requirements imposed under this section shall be in addition to any other requirements imposed by, or pursuant to, law and shall apply as well to persons not liable for tax under the internal revenue laws as to persons so liable.

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Subchapter F—Bonded and Taxpaid Wine Premises

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PART I—ESTABLISHMENT

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SEC. 5352. TAXPAID WINE BOTTLING HOUSE.

Any person bottling, packaging, or repackaging taxpaid wines [at premises other than the bottling premises of a distilled spirits plant] shall, before commencing such operations, make application to the Secretary and receive permission to operate. Such premises shall be known as "taxpaid wine bottling houses".

* * * * * * *

PART II—OPERATIONS

SEC. 5361. BONDED WINE CELLAR OPERATIONS.

In addition to the operations described in section 5351, the proprietor of a bonded wine cellar may, subject to regulations prescribed by the Secretary, on such premises receive unmerchantable taxpaid wine for return to bond, reconditioning, or destruction; prepare for market and store commercial fruit products and by-products not taxable as wines; produce or receive distilling material or vinegar stock; produce (with or without added wine spirits, and without added sugar) or receive on [standard] wine premises [only] subject to tax as wine

but not for sale or consumption as beverage wine, (1) heavy bodied blending wines and Spanish-type blending sherries, and (2) other wine products made from natural wine for nonbeverage purposes; and such other operations as may be conducted in a manner that will not jeopardize the revenue or conflict with wine operations.

SEC. 5362. REMOVALS OF WINE FROM BONDED WINE CELLARS.

(a) WITHDRAWALS ON DETERMINATION OF TAX.—Wine may be withdrawn from bonded wine cellars on payment or determination of the tax thereon, under such regulations as the Secretary shall prescribe.

[(b) TRANSFERS OF WINE BETWEEN BONDED WINE CELLARS.—Wine on which the internal revenue tax has not been paid or determined may, under such regulations as the Secretary shall prescribe, be transferred in bond between bonded wine cellars. For the purposes of this chapter, the removal of wine for transfer in bond between bonded wine cellers shall not be construed to be a removal for consumption or sale.]

(b) TRANSFERS OF WINE BETWEEN BONDED PREMISES.—

(1) IN GENERAL.—Wine on which the tax has not been paid or determined may, under such regulations as the Secretary shall prescribe, be transferred in bond between bonded premises.

(2) WINE TRANSFERRED TO A DISTILLED SPIRITS PLANT MAY NOT BE REMOVED FOR CONSUMPTION OR SALE AS WINE.—Any wine transferred to the bonded premises of a distilled spirits plant—

(A) may be used in the manufacture of a distilled spirits product, and

(B) may not be removed from such bonded premises for consumption or sale as wine.

(3) CONTINUED LIABILITY FOR TAX.—The liability for tax on wine transferred to the bonded premises of a distilled spirits plant pursuant to paragraph (1) shall (except as otherwise provided by law) continue until the wine is used in a distilled spirits product.

(4) TRANSFER IN BOND NOT TREATED AS REMOVAL FOR CONSUMPTION OR SALE.—For purposes of this chapter, the removal of wine for transfer in bond between bonded premises shall not be treated as a removal for consumption or sale.

(5) BONDED PREMISES.—For purposes of this subsection, the term "bonded premises" means a bonded wine cellar or the bonded premises of a distilled spirits plant.

SEC. 5363. TAXPAID WINE BOTTLING HOUSE OPERATIONS.

In addition to the operations described in section 5352, the proprietor of a taxpaid wine bottling house may, subject to regulations issued by the Secretary, on such premises mix wine of the same kind and taxable grade to facilitate handling; preserve, filter, or clarify wine; and conduct operations not involving wine where such operations will not jeopardize the revenue or conflict with wine operations. [This subchapter shall apply to any wine received on the bottling premises of any distilled spirits plant for bottling, packaging, or repackaging, and to all operations relative thereto. Sections 5021, 5081, and 5082 shall not apply to the mixing or treatment of taxpaid wine under this section.]

SEC. 5364. STANDARD WINE PREMISES.

[Except as otherwise specifically provided in this subchapter, no proprietor of a bonded wine cellar or taxpaid wine bottling house engaged in producing, receiving, storing or using any standard wine, shall produce, receive, store, or use any wine other than standard wine. The limitation contained in the preceding sentence shall not prohibit the production or receipt of high fermentation wines, distilling material, or vinegar stock in any bonded wine cellar.]

SEC. 5365. SEGREGATION OF OPERATIONS.

The Secretary may require by regulations such segregation of operations within the premises, by partitions or otherwise, as may be necessary to prevent jeopardy to the revenue, to prevent confusion between untaxpaid wine operations and such other operations as are authorized in this subchapter, [or] to prevent substitution with respect to the several methods of producing effervescent wines, *and to prevent the commingling of standard wines with other than standard wines.*

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PART III—CELLAR TREATMENT AND CLASSIFICATION OF WINE

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SEC. 5381. NATURAL WINE.

Natural wine is the product of the juice or must of sound, ripe grapes or other sound, ripe fruit, made with such cellar treatment as may be authorized under section 5382 and containing not more than 21 percent by weight of total solids. Any wine conforming to such definition except for having become substandard by reason of its condition shall be deemed not to be natural wine [and shall, unless the condition is corrected, be removed in due course for distillation, destroyed under Government supervision, or transferred to premises in which wines other than natural wine may be stored or used], *unless the condition is corrected.*

* * * * * * *

PART IV—GENERAL

[SEC. 5391. EXEMPTION FROM RECTIFYING AND SPIRITS TAXES.

[Notwithstanding any other provision of law, the taxes imposed by sections 5001 and 5021 on distilled spirits generally and on rectified spirits and wines shall not, except as provided in this subchapter, be assessed, levied, or collected from the proprietor of any bonded wine cellar with respect to his use or treatment of wine, or use of wine spirits in wine production, in such premises, nor shall such proprietor, by reason of such treatment or use, be deemed to be a rectifier within the meaning of section 5082; except that, whenever wine or wine spirits are used in violation of this subchapter, the applicable tax imposed by sections 5001 and 5021 shall be collected unless the proprietor satisfactorily shows that such wine or wine spirits were not knowingly used in violation of law.]

SEC. 5391. EXEMPTION FROM DISTILLED SPIRITS TAXES.

Notwithstanding any other provision of law, the tax imposed by section 5001 on distilled spirits shall not, except as provided in this subchapter, be assessed, levied, or collected from the proprietor of any bonded wine cellar with respect to his use of wine spirits in wine production, in such premises; except that, whenever wine or wine spirits are used in violation of this subchapter, the applicable tax imposed by section 5001 shall be collected unless the proprietor satisfactorily shows that such wine or wine spirits were not knowingly used in violation of law.

Subchapter H—Miscellaneous Plants and Warehouses

* * * * * * *

[PART III—MANUFACTURING BONDED WAREHOUSES

[SEC. 5521. ESTABLISHMENT AND OPERATION.

[(a) ESTABLISHMENT.—All medicines, preparations, compositions, perfumery, cosmetics, cordials, and other liquors manufactured wholly or in part of domestic spirits, intended for exportation, as provided by law, in order to be manufactured and sold or removed, without being charged with duty and without having a stamp affixed thereto, shall, under such regulations as the Secretary may prescribe, be made and manufactured in warehouses similarly constructed to those known and designated in Treasury regulations as bonded warehouses, class six. The manufacturer shall first give satisfactory bonds to the Secretary for the faithful observance of all the provisions of law and the regulations as aforesaid, in amount not less than half of that required by the regulations of the Secretary from persons allowed bonded warehouses.

[(b) SUPERVISION.—All labor performed and services rendered under this section shall be under the supervision of an officer of the customs, and at the expense of the manufacturer.

[(c) MATERIALS FOR MANUFACTURE.—

[(1) EXPORTABLE FREE OF TAX.—Any manufacturer of the articles specified in subsection (a), or of any of them, having such bonded warehouse, shall be at liberty, under such regulations as the Secretary may prescribe, to convey therein any materials to be used in such manufacture which are allowed by the provisions of law to be exported free from tax or duty, as well as the necessary materials, implements, packages, vessels, brands, and labels for the preparation, putting up, and export of such manufactured articles; and every article so used shall be exempt from the payment of stamp and excise duty by such manufacturer. Articles and materials so to be used may be transferred from any bonded ware-

house under such regulations as the Secretary may prescribe, into any bonded warehouse in which such manufacture may be conducted, and may be used in such manufacture, and when so used shall be exempt from stamp and excise duty; and the receipt of the officer in charge shall be received as a voucher for the manufacture of such articles.

[(2) IMPORTED MATERIALS.—Any materials imported into the United States may, under such regulations as the Secretary may prescribe, and under the direction of the proper officer, be removed in original packages from on shipboard, or from the bonded warehouse in which the same may be, into the bonded warehouse in which such manufacture may be carried on, for the purpose of being used in such manufacture, without payment of duties thereon, and may there be used in such manufacture. No article so removed, nor any article manufactured in said bonded warehouse, shall be taken therefrom except for exportation, under the direction of the proper officer having charge thereof, whose certificate, describing the articles by their mark or otherwise, the quantity, the date of importation, and name of vessel, with such additional particulars as may from time to time be required, shall be received by the collector of customs in cancellation of the bond, or return of the amount of foreign import duties.

[(d) REMOVALS.—

[(1) GENERAL.—Such goods, when manufactured in such warehouses, may be removed for exportation under the direction of the proper officer having charge thereof, who shall be designated by the Secretary, without being charged with duty and without having a stamp affixed thereto.

[(2) TRANSPORTATION FOR EXPORT.—Any article manufactured in a bonded warehouse established under subsection (a) may be removed therefrom for transportation to a customs bonded warehouse at any port, for the purpose only of being exported therefrom, under such regulations and on the execution of such bonds or other security as the Secretary may prescribe.

[SEC. 5522. WITHDRAWAL OF DISTILLED SPIRITS TO MANUFACTURING BONDED WAREHOUSES.

[(a) AUTHORIZATION.—Under such regulations and requirement as to stamps, bonds, and other security as shall be prescribed by the Secretary, any manufacturer of medicines, preparations, compositions, perfumery, cosmetics, cordials, and other liquors, for export, manufacturing the same in a duly constituted manufacturing bonded warehouse, shall be authorized to withdraw, from the bonded premises of any distilled spirits plant, so much distilled spirits as he may require for such purpose, without the payment of the internal revenue tax thereon.

[(b) ALLOWANCE FOR LOSS OR LEAKAGE.—

[For provisions relating to allowance for loss of distilled spirits withdrawn under subsection (a), see section 5008(f).

[SEC. 5523. SPECIAL PROVISIONS RELATING TO DISTILLED SPIRITS AND WINES RECTIFIED IN MANUFACTURING BONDED WAREHOUSES.

[Distilled spirits and wines which are rectified in manufacturing bonded warehouses, class six, and distilled spirits which are reduced

in proof and bottled or packaged in such warehouses, shall be deemed to have been manufactured within the meaning of section 311 of the Tariff Act of 1930 (19 U.S.C. 1311), and may be withdrawn as provided in such section, and likewise for shipment in bond to Puerto Rico, subject to the provisions of such section, and under such regulations as the Secretary may prescribe, there to be withdrawn for consumption or be rewarehoused and subsequently withdrawn for consumption. No internal revenue tax shall be imposed on distilled spirits and wines rectified in class six warehouses if such distilled spirits and wines are exported or shipped in accordance with such section 311. No person rectifying distilled spirits or wines in such warehouses shall be subject by reason of such rectification to the payment of special tax as a rectifier.]

Subchapter I—Miscellaneous General Provisions

SEC. 5551. GENERAL PROVISIONS RELATING TO BONDS.

(a) APPROVAL AS CONDITION TO COMMENCING BUSINESS.—No individual, firm, partnership, corporation, or association, intending to commence or to continue the business of a distiller, [bonded warehouseman, rectifier] brewer, or winemaker, shall commence or continue the business of a distiller, [bonded warehouseman, rectifier] *warehouseman, processor*, brewer, or winemaker until all bonds in respect of such a business, required by any provision of law, have been approved by the Secretary of the Treasury or the officer designated by him.

Subchapter J.—Penalties, Seizures, and Forfeitures Relating to Liquors

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PART I—PENALTY, SEIZURE, AND FORFEITURE PROVISIONS APPLICABLE TO DISTILLING, RECTIFYING, AND DISTILLED AND RECTIFIED PRODUCTS

* * * * * * *

SEC. 5601. CRIMINAL PENALTIES.

(a) OFFENSES.—Any person who—

(1) UNREGISTERED STILLS.—has in his possession or custody, or under his control, any still or distilling apparatus set up which is not registered, as required by section 5179(a); or

(2) FAILURE [OF DISTILLER OR RECTIFIER] TO FILE APPLICATION.—engages in the business of a distiller or [rectifier] *processor* without having filed application for and received notice of registration, as required by section 5171[(a)] (*c*); or

(3) FALSE OR FRAUDULENT APPLICATION.—engages, or intends to engage, in the business of distiller, [bonded warehouseman, rectifier, or bottler] *warehouseman, or processor* of distilled spirits, and files a false or fraudulent application under section 5171; or

(4) FAILURE OR REFUSAL OF DISTILLER [OR RECTIFIER], *WAREHOUSEMAN, OR PROCESSOR* TO GIVE BOND.—carries on the business of a distiller [or rectifier], *warehouseman, or processor* without having given bond as required by law; or

(5) FALSE, FORGED, OR FRAUDULENT BOND.—engages, or intends to engage, in the business of distiller, [bonded warehouseman, rectifier, or bottler] *warehouseman, or processor* of distilled spirits, and gives any false, forged, or fraudulent bond, under subchapter B; or

(6) DISTILLING ON PROHIBITED PREMISES.—uses, or possesses with intent to use, any still, boiler, or other utensil for the purpose of producing distilled spirits, or aids or assists therein, or causes or procures the same to be done, in any dwelling house, or in any shed, yard, or inclosure connected with such dwelling house (except as authorized under section 5178(a)(1)(C)), or on board any vessel or boat, or on any premises where beer or wine is made or produced, or where liquors of any description are retailed, or on premises where any other business is carried on (except when authorized under section 5178(b)); or

(7) UNLAWFUL PRODUCTION, REMOVAL, OR USE OF MATERIAL FIT FOR PRODUCTION OF DISTILLED SPIRITS.—except as otherwise provided in this chapter, makes or ferments mash, wort, or wash, fit for distillation or for the production of distilled spirits, in any building or on any premises other than the designated premises of a distilled spirits plant lawfully qualified to produce distilled spirits, or removes, without authorization by the Secretary, any mash, wort, or wash, so made or fermented, from the designated premises of such lawfully qualified plant before being distilled; or

(8) UNLAWFUL PRODUCTION OF DISTILLED SPIRITS.—not being a distiller authorized by law to produce distilled spirits, produces distilled spirits by distillation or any other process from any mash, wort, wash, or other material; or

(9) UNAUTHORIZED USE OF DISTILLED SPIRITS IN MANUFACTURING PROCESSES.—except as otherwise provided in this chapter, uses distilled spirits in any process of manufacture unless such spirits—

(A) have been produced in the United States by a distiller authorized by law to produce distilled spirits and withdrawn in compliance with law; or

(B) have been imported (or otherwise brought into the United States) and withdrawn in compliance with law; or

(10) UNLAWFUL [RECTIFYING OR BOTTLING] *PROCESSING.*—engages in or carries on the business of a [rectifier, or a bottler of distilled spirits] *processor*—

(A) with intent to defraud the United States of any tax on the distilled spirits [rectified or bottled] *processed* by him; or

(B) with intent to aid, abet, or assist any person or persons in defrauding the United States of the tax on any distilled spirits; or

(11) UNLAWFUL PURCHASE, RECEIPT, [RECTIFICATION, OR BOTTLING OF DISTILLED SPIRITS.—purchases, receives, rectifies, or bottles] OR PROCESSING OF DISTILLED SPIRITS.—*purchases, receives, or processes* any distilled spirits, knowing or having reasonable grounds to believe that any tax due on such spirits has not been paid or determined as required by law; or

(12) UNLAWFUL REMOVAL OR CONCEALMENT OF DISTILLED SPIRITS.—removes, other than as authorized by law, any distilled spirits on which the tax has not been paid or determined, from the place of manufacture or storage, or from any instrument of transportation, or conceals spirits so removed; or

(13) CREATION OF FICTITIOUS PROOF.—adds, or causes to be added any ingredient or substance (other than ingredients or substances authorized by law to be added) to any distilled spirits before the tax is paid thereon, or determined as provided by law, for the purpose of creating fictitious proof; or

(14) DISTILLING AFTER NOTICE OF SUSPENSION.—after the time fixed in the notice given under section 5221(a) to suspend operations as a distiller, carries on the business of a distiller on the premises covered by the notice of suspension, or has mash, wort, or beer on such premises, or on any premises connected therewith, or has in his possession or under his control any mash, wort, or beer, with intent to distill the same on such premises;

shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, for each offense.

(b) PRESUMPTION.—Whenever on trial for violation of subsection (a)(4) the defendant is shown to have been at the site or place where, and at the time when, the business of a distiller or [rectifier] *processor* was so engaged in or carried on, such presence of the defendant shall be deemed sufficient evidence to authorize conviction, unless the defendant explains such presence to the satisfaction of the jury (or of the court when tried without jury).

* * * * * * *

SEC. 5604. PENALTIES RELATING TO STAMPS, MARKS, BRANDS, AND CONTAINERS.

(a) GENERAL.—Any person who shall—

(1) transport, possess, buy, sell, or transfer any distilled spirits, required to be stamped under the provisions of section 5205(a) [2] (*1*), unless the immediate container thereof has affixed thereto a stamp as required by such section; or

(2) with intent to defraud the United States, empty a container stamped under the provisions of section 5205(a)(1) [or (2)] or section 5235 without destroying the stamp thereon as required by section 5205(a)[3] (*2*) or regulations prescribed pursuant thereto; or

(3) empty, or cause to be emptied, any distilled spirits from any immediate container (other than a container stamped under section 5205(a) or section 5235) bearing any stamp, mark, or brand required by law without effacing and obliterating such stamp, mark, or brand as required by section 5205[g] (*f*); or

(4) with intent to defraud the United States, falsely make, forge, alter, or counterfeit any stamp required under section 5205 or section 5235; or

(5) use, sell, or have in his possession any forged or fraudulently altered stamp, or counterfeit of any stamp, required under sertion 5205 or section 5235, or any plate or die used or which may be used in the manufacture thereof; or

(6) with intent to defraud the United States, use, reuse, sell, or have in his possession any stamp required to be destroyed by section 5205(a)[3](2) or regulations prescribed pursuant thereto; or

(7) remove any stamp required by law or regulations from any cask or package containing, or which had contained, distilled spirits, without defacing or destroying such stamp at the time of such removal; or

(8) have in his possession any undestroyed or undefaced stamp removed from any cask or package containing, or which had contained, distilled spirits; or

(9) have in his possession any cancelled stamp or any stamp which has been used, or which purports to have been used, upon any cask or package of distilled spirits; or

(10) make, use, sell, or have in his possession any paper in imitation of the paper used in the manufacture of any stamp required under section 5205 or section 5235; or

(11) reuse any stamp required under section 5205(a) or section 5235, after the same shall have once been affixed to a container as provided in such sections or regulations issued pursuant thereto; or

(12) place any distilled spirits in any bottle, or reuse any bottle for the purpose of containing distilled spirits, which has once been filled and stamped under the provisions of this chapter, without removing and destroying the stamp so previously affixed to such bottle; or

(13) affix any stamp issued pursuant to section 5205(a)[2] and [3] to any container containing distilled spirits on which any tax due is unpaid or undetermined; or

(14) make any false statement in any application for stamps under section 5205; or

(15) possess any stamp prescribed under section 5205 or section 5235 obtained by him otherwise than as provided by such sections or regulations issued pursuant thereto; or

(16) willfully and unlawfully remove, change, or deface any stamp, mark, brand, label, or seal affixed to any case of distilled spirits, or to any bottle contained therein; or

(17) with intent to defraud the United States, purchase, sell, receive with intent to transport, or transport any empty cask or package having thereon any stamp, mark, or brand required by law to be affixed to any cask or package containing distilled spirits; or

(18) change or alter any stamp, mark, or brand on any cask or package containing distilled spirits, or put into any cask or package spirits of greater strength than is indicated by the inspection-mark thereon, or fraudulently use any cask or package having any inspection-mark or stamp thereon, for the purpose of selling other spirits, or spirits of quantity or quality different from the spirits previously inspected therein; or

(19) affix, or cause to be affixed, to or on any cask or package containing, or intended to contain, distilled spirits, any imitation stamp or other engraved, printed, stamped, or photographed label,

device, or token, whether the same be designed as a trade mark, caution notice, caution, or otherwise, and which shall be in the similitude or likeness of, or shall have the resemblance or general appearance of, any internal revenue stamp required by law to be affixed to or upon any cask or package containing distilled spirits; shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, for each such offense.

* * * * * * *

SEC. 5610. DISPOSAL OF FORFEITED EQUIPMENT AND MATERIAL FOR DISTILLING

All boilers, stills, or other vessels, tools and implements, used in distilling or [rectifying] *processing*, and forfeited under any of the provisions of this chapter, and all condemned material, together with any engine or other machinery connected therewith, and all empty barrels, and all grain or other material suitable for fermentation or distillation, shall be sold at public auction or otherwise disposed of as the court in which such forfeiture was recovered shall in its discretion direct.

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SEC. 5612. FORFEITURE OF TAXPAID DISTILLED SPIRITS REMAINING ON BONDED PREMISES.

(a) * * *

(b) EXCEPTIONS.—Subsection (a) shall not apply in the case of—

[(1) distilled spirits which have been bottled in bond under section 5233, and which are returned to bonded premises for rebottling, relabeling, or restamping in accordance with the provisions of section 5233(d); or]

[(2)] (*1*) distilled spirits in the process of prompt removal from bonded premises on payment or determination of the tax; or

[(3)] (*2*) distilled spirits returned to bonded premises in accordance with the provisions of section 5215[; or].

[(4) distilled spirits, held on bonded premises, on which the tax has become payable by operation of law, but on which the tax has not been paid.]

* * * * * * *

SEC. 5615. PROPERTY SUBJECT TO FORFEITURE.

The following property shall be forfeited to the United States:

(1) UNREGISTERED STILL OR DISTILLING APPARATUS.—Every still or distilling apparatus not registered as required by section 5179, together with all personal property in the possession or custody or under the control of the person required by section 5179 to register the still or distilling apparatus, and found in the building or in any yard or inclosure connected with the building in which such still or distilling apparatus is set up; and

(2) DISTILLING APPARATUS REMOVED WITHOUT NOTICE OR SET UP WITHOUT PERMIT.—Any still, boiler, or other vessel to be used for the purpose of distilling which is removed without notice having been given as required by section 5105(a) or which is set up without permit first having been obtained as required by such section; and

(3) DISTILLING WITHOUT GIVING BOND OR WITH INTENT TO DEFRAUD.—Whenever any person carries on the business of a distiller without having given bond as required by law or gives any false, forged, or fraudulent bond; or engages in or carries on the business of a distiller with intent to defraud the United States of the tax on the distilled spirits by him, or any part thereof; or after the time fixed in the notice declaring his intention to suspend work, filed under section 5221(a), carries on the business of a distiller on the premises covered by such notice, or has mash, wort, or beer on such premises, or on any premises connected therewith, or has in his possession or under his control any mash, wort, or beer, with intent to distill the same on such premises—

(A) all distilled spirits or wines, and all stills or other apparatus fit or intended to be used for the installation or rectification of spirits or, for the compounding of liquors, owned by such person, wherever found, and

(B) all distilled spirits, raw materials for the production of distilled spirits, and personal property found in the distillery or in any building, room, yard, or inclosure connected therewith and used with or constituting a part of the premises; and

(C) all the right, title, and interest of such person in the lot or tract of land on which the distillery is situated; and

(D) all the right, title, and interest in the lot or tract of land on which the distillery is located of every person who knowingly has suffered or permitted the business of a distiller to be there carried on, or has connived at the same; and

(E) all personal property owned by or in possession of any person who has permitted or suffered any building, yard, or inclosure, or any part thereof, to be used for purposes of ingress or egress to or from the distillery, which shall be found in any such building, yard, or inclosure; and

(F) all the right, title, and interest of every person in any premises used for ingress or egress to or from the distillery who knowingly has suffered or permitted such premises to be used for such ingress or egress; and

(4) UNLAWFUL PRODUCTION AND REMOVALS FROM VINEGAR PLANTS.—

(A) all distilled spirits in excess of 15 percent of alcohol by volume produced on the premises of a vinegar plant; and

(B) all vinegar or other fluid or other material containing a greater proportion than 2 percent of proof spirits removed from any vinegar plant; and

(5) FALSE OR OMITTED ENTRIES IN RECORDS, RETURNS, AND REPORTS.—Whenever any person reequired by section 5207 to keep or file any record, return report, summary, transcript, or other document, shall, with intent to defraud the United States—

(A) fail to keep any such document or to make required entries therein; or

(B) make any false entry in such document; or

(C) cancel, alter, or obliterate any part of such document, or any entry therein, or destroy any part of such document, or entry therein; or

(D) hinder or obstruct any internal revenue officer from inspecting any such document or taking any abstracts therefrom; or

(E) fail or refuse to preserve or produce any such document, as required by this chapter or regulations issued pursuant thereto; or

(F) permit any of the acts described in the preceding subparagraphs to be performed;

all interest of such person in the [distillery, bonded warehouse, or rectifying or bottling establishment] *distilled spirits plant* where such acts or omissions occur, and in the equipment thereon, and in the lot or tract of land on which such [distillery, bonded warehouse, or rectifying or bottling establishment] *distilled spirits plant* stands, and in all personal property on the premises of the [distillery, bonded warehouse, or rectifying or bottling establishment] *distilled spirits plant* where such acts or omissions occur, used in the business there carried on; and

(6) UNLAWFUL REMOVAL OF DISTILLED SPIRITS.—All distilled spirits on which the tax has not been paid or determined which have been removed, other than as authorized by law, from the place of manufacture, storage, or instrument of transportation; and

(7) CREATION OF FICTITIOUS PROOF.—All distilled spirits on which the tax has not been paid or determined as provided by law to which any ingredient or substance has been added for the purpose of creating fictitious proof.

PART II—PENALTY AND FORFEITURE PROVISIONS APPLICABLE TO WINE AND WINE PRODUCTION

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SEC. 5663. CROSS REFERENCE.

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For penalties of common application pertaining to liquors, including wines, see part IV[, and for penalties for rectified products, see part I].

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PART IV—PENALTY, SEIZURE, AND FORFEITURE PROVISIONS COMMON TO LIQUORS

* * * * * * *

SEC. 5681. PENALTY RELATING TO SIGNS.

(a) FAILURE TO POST REQUIRED SIGN.—Every person engaged in [distilling, warehousing of distilled spirits, rectifying, or bottling of distilled spirits] *distilled spirits operations*, and every wholesale dealer in liquors, who fails to post the sign required by section 5115(a) or section 5180(a) shall be fined not more than $1,000, or imprisoned not more than 1 year, or both.

(b) POSTING OR DISPLAYING FALSE SIGN.—Every person, other than a [distiller, warehouseman of distilled spirits, rectifier, or bottler of

distilled spirits] *distiller, warehouseman, or processor of distilled spirits*, who has received notice of registration of his plant under the provisions of section 5171[(a),] (*c*), or other than a wholesale dealer in liquors who has paid the special tax (or who is exempt from payment of such special tax by reason of the provisions of section 5113(a)), who puts up or keeps up any sign indicating that he may lawfully carry on the business of a [distiller, bonded warehouseman, rectifier, bottler of distilled spirits] *distiller, warehouseman, or processor of distilled spirits*, or wholesale dealer in liquors, as the case may be, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both.

[(c) PREMISES WHERE NO SIGN IS PLACED OR KEPT.—Every person who works in any distillery, or in any rectifying, distilled spirits bottling, or wholesale liquor establishment, on which no sign required by section 5115(a) or section 5180(a) is placed or kept, and every person who knowingly receives at, or carries or conveys any distilled spirits to or from any such distillery, or to or from any such rectifying, distilled spirits bottling, or wholesale liquor establishment, or who knowingly carries or delivers any grain, molasses, or other raw material to any distillery on which said sign is not placed and kept, shall forfeit all vehicles, aircraft, or vessels used in carrying or conveying such property and shall be fined not more than $1,000, or imprisoned not more than 1 year, or both.]

(*c*) *PREMISES WHERE NO SIGN IS PLACED OR KEPT.—Every person who works in any distilled spirits plant or wholesale liquor establishment, on which no sign required by section 5115(a) or section 5180(a) is placed or kept, and every person who knowingly receives at, or carries or conveys any distilled spirits to or from any such distilled spirits plant or wholesale liquor establishment, or who knowingly carries or delivers any grain, molasses, or other raw material to any distilled spirits plant on which such a sign is not placed and kept, shall forfeit all vehicles, aircraft, or vessels used in carrying or conveying such property and shall be fined not more than $1,000, or imprisoned not more than 1 year, or both.*

(d) PRESUMPTION.—Whenever on trial for violation of subsection (c) by working in a [distillery or rectifying establishment] *distilled spirits plant* on which no sign required by section 5180(a) is placed or kept, the defendant is shown to have been present at such premises, such presence of the defendant shall be deemed sufficient evidence to authorize conviction, unless the defendant explains such presence to the satisfaction of the jury (or of the court when tried without jury).

SEC. 5682. PENALTY FOR BREAKING LOCKS OR GAINING ACCESS.

Every person, who destroys, breaks, injures, or tampers with any lock or seal which may be placed on any room, building, tank, vessel, or apparatus, by any [duly authorized internal revenue officer, or] *authorized internal revenue officer or any approved lock or seal placed thereon by a distilled spirits plant proprietor, or who* opens said lock, seal, room, building, tank, vessel, or apparatus, or in any manner gains access to the contents therein, in the absence of the proper officer, or otherwise than as authorized by law, shall be fined not more than $5,000, or imprisoned not more than 3 years, or both.

* * * * * * *

SEC. 5691. PENALTY FOR NONPAYMENT OF SPECIAL TAXES RELATING TO LIQUORS.

(a) GENERAL.—Any person who shall carry on the business of a brewer, [rectifier,] wholesale dealer in liquors, retail dealer in liquors, wholesale dealer in beer, retail dealer in beer, limited retail dealer, or manufacturer of stills, and willfully fail to pay the special tax as requird by law, shall be fined not more than $5,000, or imprisoned not more than 2 years, or both, for each such offense.

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SECTION 503 OF THE AUTOMOTIVE PRODUCTS TRADE ACT OF 1965

TITLE V—GENERAL PROVISIONS

* * * * * * *

APPLICABILITY OF ANTIDUMPING AND ANTITRUST LAWS

SEC. 503. Nothing contained in this Act shall be construed to affect or modify the provisions of [the Anti-Dumping Act, 1921 (19 U.S.C. 160–173)] *subtitle B of title VII of the Tariff Act of 1930*, or of any of the antitrust laws as designated in section 1 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other puropses", approved October 15, 1914 (15 U.S.C. 12).

SECTION 2 OF THE ACT OF AUGUST 22, 1964

AN ACT To provide for the free importation of certain wild animals, and to provide for the imposition of quotas on certain meat and meat products

* * * * * * *

[SEC. 2. (a) It is the policy of the Congress that the aggregate quantity of the articles specified in items 106.10 (relating to fresh, chilled, or frozen cattle meat) and 106.20 (relating to fresh, chilled, or frozen meat of goats and sheep (except lambs)) of the Tariff Schedules of the United States which may be imported into the United States in any calendar year beginning after December 31, 1964, should not exceed 725,400,000 pounds; except that this quantity shall be increased or decreased for any calendar year by the same percentage that estimated average annual domestic commercial production of these articles in that calendar year and the two preceding calendar years increases or decreases in comparison with the average annual domestic commercial production of these articles during the years 1959 tshrough 1963, inclusive.]

SEC 2. (a) (1) It is the policy of the Congress that the aggregate quantity of the articles specified in items 106.10 (relating to fresh, chilled, or frozen cattle meat), 106.22 (relating to fresh, chilled, or frozen meat of sheep (except lambs)), 106.25 (relating to fresh, chilled, or frozen meat of goats), and 107.61 (relating to certain prepared fresh, chilled, or frozen beef) of the Tariff Schedules of the United

States which may be imported into the United States in any calendar year beginning after December 31, 1964, should not exceed 725,400,000 pounds, increased or decreased as provided in paragraph (2).

(2) The amount referred to in paragraph (1) shall be increased or decreased for any calendar year by the same percentage that estimated average annual domestic commercial production of the articles specified in items 106.10, 106.22,, and 106.25 of the Tariff Schedules of the United States in that calendar year and the two preceding calendar years increases or decreases in comparison with the average annual domestic commercial production of such articles during the years 1959 through 1963, inclusive.

(b) The Secretary of Agriculture, for each calendar year after 1964, shall estimate and publish—

(1) before the beginning of such calendar year, the aggregate quantity prescribed for such calendar year by subsection (a) (*1*), and

(2) before the first day of each calendar quarter in such calendar year, the aggregate quantity of the articles described in subsection (a) (*1*) which (but for this section) would be imported in such calendar year.

In applying paragraph (2) for the second or any succeeding calendar quarter in any calendar year, actual imports for the preceding calendar quarter or quarters in such calendar year shall be taken into account to the extent data is available.

(c) (1) If the aggregate quantity estimated before any calendar quarter by the Secretary of Agriculture pursuant to subsection (b) (2) equals or exceeds 110 percent of the aggregate quantity estimated by him pursuant to subsection (b) (1), and if there is no limitation in effect under this section with respect to such calendar year, the President shall by proclamation limit the total quantity of the articles described in subsection (a) (*1*) which may be entered, or withdrawn from warehouse, for consumption, during such calendar year, to the aggregate quantity estimated for such calendar year by the Secretary of Agriculture pursuant to subsection (b) (1). *Notwithstanding the preceding sentence, no limitation proclaimed for a calendar year after 1979 shall be less than 1,200,000,000 pounds.*

(2) If the aggregate quantity estimated before any calendar quarter by the Secretary of Agriculture pursuant to subsection (b) (2) does not equal or exceed 110 percent of the aggregate quantity estimated by him pursuant to subsection (b) (1), and if a limitation is in effect under this section with respect to such calendar year, such limitation shall cease to apply as of the first day of such calendar quarter; except that any limitation which has been in effect for the third calendar quarter of any calendar year shall continue in effect for the fourth calendar quarter of such year unless the proclamation is suspended or the total quantity is increased pursuant to subsection (d).

(3) The Secretary of Agriculture shall allocate the total quantity proclaimed under paragraph (1), and any increase in such quantity pursuant to subsection (d), among supplying countries on the basis of the shares such countries supplied to the United States market during a representative period of the articles described in subsection

(a)(*1*), except that due account may be given to special factors which have affected or may affect the trade in such articles. The Secretary of Agriculture shall certify such allocations to the Secretary of the Treasury.

(d) The President may suspend any proclamation made under subsection (s), or increase the total quantity proclaimed under such subsection, if he determines and proclaims that—

(1) such action is required by overriding economic or national security interests of the United States, giving special weight to the importance to the nation of the economic well-being of the domestic livestock industry;

(2) the supply of articles of the kind described in subsection (a)(*1*) will be inadequate to meet domestic demand at reasonable prices; or

(3) trade agreements entered into after the date of the enactment of this Act ensure that the policy set forth in subsection (a)(*1*) will be carried out.

Any such suspension shall be for such period, and any such increase shall be in such amount, as the President determines and proclaims to be necessary to carry out the purposes of this subsection.

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SECTION 5315 OF TITLE 5, UNITED STATES CODE

§ 5315. Positions at level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

(1) * * *

* * * * * * *

(24) Members, United States International Trade Commission (*5*).

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TRADE EXPANSION ACT OF 1962

* * * * * * *

TITLE II—TRADE AGREEMENTS

* * * * * * *

CHAPTER 5—ADMINISTRATIVE POSITIONS

* * * * * * *

SEC. 242. INTERAGENCY TRADE ORGANIZATION.

(a) The President shalll establish an interagency organization to assist him in carrying out the functions vested in him by this title and

sections 201, 202, and 203 of the Trade Act of 1974. Such organization shall, in addition to the Special Representative for Trade Negotiations, be composed of the heads of such departments and of such other officers as the President shall designate. It shall meet at such times and with respect to such matters as the President or the chairman of the organization shall direct. The organization may invite participation in its activities of any agency not represented in the organization when matters of interest to such agency are under consideration.

(b) In assisting the President, the organization shall—

(1) make recommendations to the President on basic policy issues arising in the administration of the trade agreements program,

(2) make recommendations to the President as to what action, if any, he should take on reports submitted to him by the Tariff Commission under section 201(d) of the Trade Act of 1974,

(3) advise the President of the results of hearings held pursuant to [subsections (c) and (d)] *subsection (d)*, of section 301 of the Trade Act of 1974, and recommend appropriate action with respect thereto, and

(4) perform such other functions with respect to the trade agreements program as the President may from time to time designate.

(c) The organization shall, to the maximum extent practicable, draw upon the resources of the agencies represented in the organization, as well as such other agencies as it may determine, including the Tariff Commission. In addition, the President may establish by regulation such procedures and committees as he may determine to be necessary to enable the organization to provide for the conduct of hearings pursuant to [subsections (c) and (d)] *subsetion (d)*, of section 301 of the Trade Act of 1974, and for the carrying out of other functions assigned to the organization pursuant to this section.

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SECTION 301 OF TITLE 13, UNITED STATES CODE

Chapter 9.—COLLECTION AND PUBLICATION OF FOREIGN COMMERCE AND TRADE STATISTICS

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§ 301. Collection and publication

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(e) There shall be reported, on monthly and cumulative bases, for each item in the Tariff Schedules of the United States Annotated, the United States port of entry value (as determined under subsection (b)(6)). There shall be reported, on monthly and cumulative bases, the balance of international trade for the United States reflecting (1) the aggregate value of all United States imports as reported in accordance with the first sentence of this subsection, and (2) the aggregate value of all United States exports. The values and balance of trade required to be reported by this subsection shall be released

no later than 48 hours before the release of any government statistics concerning values of United States imports or United States balance of trade, or statistics from which such values or balance may be derived.

(f) On or before January 1, 1981, and as often thereafter as may be necessary to reflect significant changes in rates, there shall be reported for each item of the Tariff Schedules of the United States Annotated, the ad valorem or ad valorem equivalent rate of duty which would have been required to be imposed on dutiable imports under that item, if the United States customs values of such imports were based on the United States port of entry value (as reported in accordance with the first sentence of subsection (e)) in order to collect the same amount of duties on imports under that item as are currently collected.

TITLE 28, UNITED STATES CODE

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CHAPTER 93—COURT OF CUSTOMS AND PATENT APPEALS

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§ 1541. Appeals from Customs Court decisions

(a) The Court of Customs and Patent Appeals has jurisdiction of appeals from all final judgments or orders of the United States Customs Court, *and from any interlocutory order granting, continuing, modifying, refusing, or dissolving an injunction, under section 516A (c) (2) of the Tariff Act of 1930.*

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CHAPTER 95—CUSTOMS COURT

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§ 1582. Jurisdiction of the Customs Court

(a) The Customs Court shall have exclusive jurisdiction of civil actions instituted by any person whose protest pursuant to the Tariff Act of 1930, as amended, has been denied, in whole or in part, by the appropriate customs officer, where the administrative decision, including the legality of all orders and findings entering into the same, involves: (1) the appraised value of merchandise; (2) the classification and rate and amount of duties chargeable; (3) all charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury; (4) the exclusion of merchandise from entry or delivery under any provisions of the customs laws; (5) the liquidation or reliquidation of an entry, or a modification thereof; (6) the refusal to pay a claim for drawback; or (7) the refusal to reliquidate an entry under section 520(c) of the Tariff Act of 1930, as amended.

(b) The Customs Court shall have exclusive jurisdiction of civil actions brought by [American manufacturers, producers, or wholesalers pursuant to section 516] *interested parties under section 516 and 516A* of the Tariff Act of 1930, as amended.

(c) The Customs Court shall not have jurisdiction of an action unless (1) either a protest has been filed, as prescribed by section 514 of the Tariff Act of 1930, as amended, and denied in accordance with the provisions of section 515 of the Tariff Act of 1930, as amended, or if the action relates to a decision under section 516 *and 516A* of the Tariff Act of 1930, as amended, all remedies prescribed therein have been exhausted, and (2) except in the case of an action relating to a decision under section 516 *and 516A* of the Tariff Act of 1930, as amended, all liquidated duties, charges or exactions have been paid at the time the action is filed.

(d) Only one civil action may be brought in the Customs Court to contest the denial of a single protest. However, any number of entries of merchandise involving common issues may be included in a single civil action. Actions may be consolidated by order of the court or by request of the parties, with approval of the court, if there are common issues.

(e) The Customs Court shall have exclusive jurisdiction of any civil action brought by a party-at-interest to review a final determination made under section 305(b)(1) of the Trade Agreements Act of 1979. For purposes of this subsection, the term "party-at-interest" means—

(1) a foreign manufacturer, producer, or exporter, or a United States importer of merchandise which is the subject of a final determination under section 305(b) of the Trade Agreements Act of 1979,

(2) a manufacturer, producer, or wholesaler in the United States of a like product,

(3) United States members of a labor organization or other association of workers whose members are employed in the manufacture, production, or wholesale in the United States of a like product, and

(4) a trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States.

(f) The Customs Court shall have exclusive jurisdiction of any application for the issuance of a protective order under section 777(c)(2) of the Tariff Act of 1930.

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CHAPTER 169—CUSTOMS COURT PROCEDURE

Sec.
2631. Time for commencement of action.
2632. Customs Court procedures and fees.
2633. Precedence of [American manufacturer, producer, or wholesaler] cases.
2634. Notice.
2635. Burden of proof; evidence of value.
2636. Analysis of imported merchandise.
2637. Witnesses: inspection of documents.
2638. Decisions; findings of fact and conclusions of law; effect of opinions.
2639. Retrial or rehearing.
[2640 to 2642. Repealed.]

§ 2632. Customs Court procedure and fees

(a) * * *

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(f) [Upon] *Except as provided in section 516A of the Tariff Act of 1930, upon* service of the summons on the Secretary of the Treasury or his designee in any action brought under subsection (a) (1) or (a) (2), the appropriate customs officer shall forthwith transmit the following items, if they exist, to the United States Customs Court as part of the official record of the civil action: (1) consumption or other entry; (2) commercial invoice; (3) special Customs invoice; (4) copy of protest; (5) copy of denial of protest in whole or in part; (6) importer's exhibits; (7) official samples; (8) any official laboratory reports; and (9) the summary sheet. If any of the aforesaid items do not exist in the particular case, an affirmative statement to that effect shall be transmitted as part of the official record.

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§ 2633. Precedence of [American manufacturer, producer, or wholesaler] cases

(a) Every proceeding in the Customs Court arising under section 516 *and section 516A* of the Tariff Act of 1930, as amended, shall be given precedence over other cases on the docket of the court, and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way.

(b) Of those proceedings given precedence under subsection (a) of this section, any proceeding for the review of a determination under section 516A (a) (1) (B) or 516A (a) (1) (E) of the Tariff Act of 1930 shall be given priority over other such proceedings.

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§ 2637. Witnesses; inspection of documents

(a) [In] *Except as otherwise provided by law, in* any proceeding in the Customs Court, under rules prescribed by the court, the parties and their attorneys shall have an opportunity to introduce evidence, to hear and cross-examine the witnesses of the other party, and to inspect all samples and all papers admitted or offered as evidence, except as provided in subsection (b) of this section.

(b) In an action instituted [by an American manufacturer, producer, or wholesaler] *under section 2632(a) of this title*, the plaintiff may not inspect any documents or papers of a consignee or importer disclosing any information which the Customs Court deems unnecessary or improper to be disclosed.

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