

Proposed Reorganization of U.S. International Trade Relief Laws

Investigation No. 332-341

Publication 2717

December 1993

U.S. International Trade Commission

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PREFACE

The Commission instituted this investigation, No. 332-341, **pmpott** Reorganization of U.S. International Trade Relief Laws, on February 22, 1993, following receipt, on December 16, 1992, of a request from the House Committee on Ways and Means under section 332(g) of the Tariff Act of 1930 (19 U.S.C. § 1332(g)). The Committee requested that the Commission conduct a study and prepare a report concerning the proposed reorganization of U.S. trade relief laws under which tariffs (including countervailing and antidumping duties) or quantitative or other import restrictions may be imposed (other than the Harmonized Tariff Schedule of the United States). The Committee letter also indicated that the Commission proposals should seek to achieve the following objectives: (1) the logical and accessible arrangement of the law; (2) the elimination of duplicative provisions; and (3) the elimination or simplification of anomalous or illogical provisions, to the extent that this is possible without substantive or procedural changes to the existing provisions of law. The Committee also indicated that the Commission study not include the customs laws administered by the U.S. Customs Service or the laws governing the administration of the Commission or the Office of the United States Trade Representative. The Committee asked that the Commission submit its report by January 1, 1994.

Copies of the notice of the investigation were posted at the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and the notice was published in the Federal Register of March 3, 1993 (58 F.R. 12253). Notice of the availability of a draft text was similarly posted at the Office of the Secretary and published in the Federal Register of August 11, 1993 (58 F.R. 42745); interested agencies and the public were given until October 12, 1993, to submit comments on the draft text. The Commission received comments from five U.S. Government agencies: the Department of Commerce, the Department of State, the Department of Labor, the Department of the Treasury, and the U.S. Customs Service, and from one bar association group, the ITC Trial Lawyers Association.

A copy of the Committee request is reproduced in appendix A, copies of the notices published in the Federal Register are reproduced in appendix B, and copies of the agency and other public comments received regarding the August 1993 draft text are reproduced in appendix C.

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PREAMBLE

Overview

This proposed reorganization of U.S. international trade relief laws was requested by the House Committee on Ways and Means under section 332(g) of the Tariff Act of 1930 (19 U.S.C. § 1332(g)) in a letter dated December 16, 1992. The Committee's letter requested that the Commission conduct a study and prepare a report concerning the proposed reorganization of U.S. trade relief laws under which tariffs (including countervailing and antidumping duties) or quantitative or other import restrictions may be imposed (other than the Harmonized Tariff Schedule of the United States (HTS)). The Committee letter also indicated that the Commission proposals should seek to achieve the following objectives: (1) the logical and accessible arrangement of the law; (2) the elimination of duplicative provisions; and (3) the elimination or simplification of anomalous or illogical provisions, to the extent possible without substantive or procedural changes to the existing provisions of law. The Committee also indicated that the Commission study not include the customs laws administered by the U.S. Customs Service or the laws governing the administration of the Commission or the Office of the United States Trade Representative (USTR). The Committee asked that the Commission submit its report by January 1, 1994.

The Commission published a notice of institution of its Investigation No. 332-341, Proposed Reorganization of U.S. International Trade Relief Laws, in the Federal Register of March 3, 1993 (58 F.R. 12253). In that notice, the Commission stated that it would prepare a draft text which would be available for comment by other interested government agencies and the public. The draft text was made available to such agencies and the public in August 1993. Notice of availability of the draft text was published in the Federal Register of August 11, 1993 (58 F.R. 42745), and interested agencies and the public were given until October 12, 1993, to submit comments. The Commission received comments from five U.S. Government agencies: the Department of Commerce, the Department of State, the Department of Labor, the Department of the Treasury, and the U.S. Customs Service, and from one bar association group, the ITC Trial Lawyers Association. Only four of the six offered specific suggestions. Except for the Department of Labor request that the worker adjustment assistance provisions be included, all of the suggested changes were technical or editorial in nature and were readily incorporated. No one identified any significant substantive errors in the draft or suggested major revisions. With respect to the Department of Labor request, it was the Commission view that the worker adjustment assistance provisions fell outside the scope of the Committee request, which was to cover laws "under which tariffs, countervailing and antidumping duties, or quantitative or other restrictions may be imposed on imports."

In conducting the study, the Commission first created a list of the trade laws that it believed fall within the scope of the Committee request. It then sought to group them by subject matter into categories, first separating those relating to unfair trade and other foreign practices from those not relating to such practices, and then grouping those within these two broader categories into related categories. The Commission found that the laws covered fall into 10 categories, which the Commission has labeled as subtitles, which include all or part of the identified statutes as follows--

Subtitle I -- Global Safeguard Actions

**Chapter I of Title II (Sections 201-204) of the
Trade Act of 1974, as amended
(19 U.S.C. §§ 2251-2254)**

**Section 330(d) of the Tariff Act of 1930, as amended
(19 U.S.C. § 1330(d))**

**Section 302(b) of the U.S.-Canada Free Trade Agreement
Implementation Act
(19 U.S.C. § 2112 note)**

**Sections 403 and 404 of the Trade
and Tariff Act of 1984
(19 U.S.C. § 2112 note)**

**Section 213 of the Caribbean Basin Economic
Recovery Act
(19 U.S.C. § 2703)**

**Section 204 of the Andean Trade Preference Act
(19 U.S.C. § 3203)**

Subtitle 11 -- Bilateral Safeguard Actions

**Section 302(a) of the U.S.-Canada Free Trade Agreement
Implementation Act
(19 U.S.C. § 2112 note)**

**Subtitle III -- Market Disruption From Imports From Communist
Countries**

**Section 406 of the Trade Act of 1974, as amended
(19 U.S.C. § 2436)**

Subtitle IV -- Safeguarding National Security

**Sections 232, 234 of the Trade Expansion Act of
1962, as amended
(19 U.S.C. *I 1862, 1864)**

Subtitle V — Provisions Concerning Agricultural

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**Section 204 of the Agricultural Act of 1956
(7 U.S.C. § 1854)**

**Section 22 of the Agricultural Adjustment Act of
1933, as amended
(7 U.S.C. § 624)**

Subtitle VI -- Trade Preferences for Developing Countries

**Title V (Sections 501-506) of the Trade Act of 1974,
as amended
(19 U.S.C. §§ 2461-2466)**

**Sections 211-216 of the Caribbean Basin Economic
Recovery Act
(19 U.S.C. §§ 2701-2706)**

**Sections 202-208 of the Andean Trade Preference Act
(19 U.S.C. §§ 3201-3206)**

Subtitle VII -- Antidumping and Countervailing Duties

**Section 303 of the Tariff Act of 1930, as amended
(19 U.S.C. § 1303)**

**Subtitle A of Title VII (Sections 701-709) of the
Tariff Act of 1930, as amended
(19 U.S.C. § 1671 fa mg.)**

**Subtitle B of Title VII (Sections 731-739) of the
Tariff Act of 1930, as amended
(19 U.S.C. § 1673 a gm.)**

**Subtitle C of Title VII (Sections 751, 761 and 762)
of the Tariff Act of 1930, as amended
(19 U.S.C. § 1675 It figg.)**

**Subtitle D of Title VII (Sections 771-781) of the
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(19 U.S.C. § 1677 gllog.)**

**Section 1317 of the Omnibus Trade and Competitiveness
Act of 1988
(19 U.S.C. § 1677k)**

**Section 516A of the Tariff Act of 1930, as amended
(19 U.S.C. § 1516a)**

**Subtitle VIII -- Retaliatory and Other Relief For Certain
Discriminatory Foreign Practices**

**Antidumping Act of 1916
(15 U.S.C. § 71 a lsg.)**

Subtitle IX -- Relief From Unfair Practices in Import Trade

**Section 337 of the Tariff Act of 1930, as amended
(19 U.S.C. § 1337)**

**Section 603 of the Trade Act of 1974
(19 U.S.C. § 2482)**

**Subtitle X -- Enforcement of United States Rights Under Trade
Agreements. Response to Certain Foreign Trade
Practices. and Other Matters**

**Section 181 of the Trade Act
of 1974, as amended
(19 U.S.C. § 2241)**

**Title III, Chapter 1 (Sections 301-310) of
the Trade Act of 1974, as amended
(19 U.S.C. §§ 2411-2420)**

**Section 307(b) of the Trade and
Tariff Act of 1984
(19 U.S.C. § 2114d)**

**Section 182 of the Trade Act of 1974
(19 U.S.C. § 2242)**

**Sections 1373-1382 of the Omnibus Trade and
Competitiveness Act of 1988
(provisions of the Telecommunications
Trade Act of 1988)
(19 U.S.C. §§ 3102-3111)**

**Section 305(d)-(k) of the Trade Agreements
Act of 1979, as amended
(19 U.S.C. § 2515(d)-(k))**

**41 U.S.C.A. § 10b--Historical and
Statutory Notes, Pub. L.101-514, Title V,
§ 511, Nov. 5, 1990, 104 Stat. 2098; and
Pub. L.101-516, Title III, § 340
Nov. 5, 1990, 104 Stat. 2187**

In keeping with the Committee objectives of creating a more logical and accessible arrangement of the law, eliminating duplicative provisions, and eliminating or simplifying anomalous provisions, the Commission sought to (1) logically consolidate and rearrange in one place the various provisions relating to a given

authority when those provisions are set out in several places in the code; and (2) make the various provisions more accessible to users by introducing additional headings and parentheticals.

A principal goal in the rearrangement of certain subtitles was to separate the substantive and procedural provisions within an authority. The substantive provisions (including definitions) related to a given determination are set out first, followed by the procedural provisions. This permits the reader to see what the Commission or other applicable agency determines, what factors the relevant agency must consider in making the determination, and the relevant procedural requirements (e.g., who may file a petition, the time for making a determination, and the contents of a Commission report).

To help the reader distinguish between cross-references to subtitles that are included in the text and cross-references to provisions in title 19 that are not included in this text, references to text provisions are to "section of this subtitle," and references to other title 19 provisions are either to "19 U.S.C. § " or to "section of title 19."

A brief summary of each of the 10 subtitles is set forth below.

Subtitle I—Global Safeguard Actions

This subtitle includes the U.S. safeguard law provisions of 19 U.S.C. §§ 2251-2254 (sections 201-204 of the Trade Act of 1974, as amended). It also includes provisions found in several other statutory provisions (such as the U.S.-Canada Free Trade Agreement (CFTA) Implementation Act, the Caribbean Basin Economic Recovery Act (CBERA), as amended, the Andean Trade Preference Act, and the Trade and Tariff Act of 1974) that require certain findings by the Commission or the President under the escape clause provisions.¹ The subtitle has been named "Global

In some instances, standards and factors related to a determination under a given authority are in several different areas of title 19. For example, certain of the standards and considerations relating to determinations and recommendations by the Commission under 19 U.S.C. § 2252 (section 201 of the Trade Act of 1974) are found in 19 U.S.C. § 2703 (the Caribbean Basin Economic Recovery Act), 19 U.S.C. § 3203 (the Andean Trade Preference Act), and 19 U.S.C. § 2112 note (the United States-Canada Free-Trade Agreement Implementation Act). Where appropriate, the Commission has included such related provisions together in the same section.

² A large number of subject matter headings have been added to make it easier for the reader to locate relevant provisions. To reduce the need for the reader to flip back and forth in the United States Code to determine the subject matter of a cross-reference, parentheticals briefly describing the subject matter have been added where clarification would be useful.

³ The North American Free Trade Agreement Implementation Act, P.L. 103-182 (107 Stat. 2057), enacted Dec. 8, 1993, provides for certain Commission findings with
(continued...)

Safeguard Actions" to reflect the term that has increasingly been used in recent years to describe such actions. For example, special findings that the Commission must make under 19 U.S.C. §2252 with respect to imports from Canada and Mexico under the recently enacted North American Free Trade Agreement Implementation Act are under a subtitle entitled "Safeguards." The modifier "global" is used to distinguish these actions from "bilateral" actions involving imports from a single country, which are provided for in subtitle II of this proposed reorganization of the trade relief laws. The modifiers "global" and "bilateral" are similarly used in the Administration's Statement of Administrative Action which accompanied the Administration's proposed NAFTA implementation bill.

The subtitle is divided into four chapters relating to (1) investigations and determinations by the Commission, (2) actions by the President, (3) monitoring, modification, and termination of actions, and (4) investigations by the Secretary of Agriculture with respect to perishable agricultural products.

Chapter 1, which concerns Commission investigations and determinations, is based largely on current section 2252 of title 19. It is rearranged and divided into 10 sections. The first section (new section 102) sets out the determinations that the Commission must make with regard to injury. The text is drawn in part from current section 2252(b), but also from section 2252(d) (provisional relief), section 2252(h) (limitations on investigations), and section 302(b) of the CFTA Implementation Act (19 U.S.C. § 2112 note). It sets out the basic standard (new section 102(a)) and the determination that must be made if the article that is the subject of the investigation is a perishable agricultural product, the determination with respect to critical circumstances (if such circumstances are alleged), findings with respect to goods from Canada, and limitations on the institution of investigations. The second section in the chapter provides the various definitions, factors, and considerations that the Commission is to follow or take into account in making its determinations. Subsequent sections group into one place the procedural and notice requirements relating to the filing of petitions and adjustment plans, the filing of industry commitments, Commission deadlines for making determinations and submitting reports, public hearing requirements, remedy recommendations, report requirements, and notification requirements.

New section 108 relates to remedy recommendations. It is drawn from provisions both within and outside of section 2252 of title 19. Although it is drawn principally from current section 2252(e), which sets forth the basic standard that the Commission is to apply, the forms of relief it can recommend, and the factors it must take into account, it also includes required findings concerning whether and to what extent its recommendations apply to CBERA and Andean Pact beneficiary countries and Israel that are currently found in other statutes. It also includes the provision in the CFTA Implementation Act that directs the Commission to exclude Canada from its recommendation if it has made a negative injury determination with respect to imports from Canada. New section 108 also sets out the various Commission remedy

'(...continued)

respect to imports from Mexico and makes certain changes in the nature of the findings that the Commission must make with respect to imports from Canada. These new requirements, which are not incorporated in this proposed reorganization, become effective Jan. 1, 1994.

obligations concerning perishable agricultural products and critical circumstances, which are in current section 2252(d), and limitations on the relief that the Commission can recommend. A final section in chapter 1 (new section 111) incorporates the provisions in current section 1330(d) of title 19 (section 330(d) of the Tariff Act of 1930) relating to divided Commission injury and remedy votes.

Chapter 2, relating to actions by the President, is based largely on present section 2253 of title 19. It rearranges and divides this provision into nine sections. The first section (new section 121) sets out the determination and findings that the President must make with respect to a remedy action after receiving an affirmative Commission determination. It includes the basic standard the President must apply found in current section 2253(a)(1), as well as provisions relating to perishable agricultural products and critical circumstances found in current section 2252(d), and findings with respect to imports from Canada in current section 302 of the CFTA Implementation Act. Additional sections describe the types of action that the President may take, the limitations on such action, the factors to be considered, the time for taking action, and the authority for requesting additional information from the Commission. They also provide for reports to Congress, authorize the President to negotiate orderly marketing agreements, and authorize the President to issue regulations.

Chapter 3 provides for industry monitoring by the Commission during the relief period and for modification and termination of relief actions by the President. It is based on and largely follows current section 2254. However, added to chapter 3 (in new section 142) is the provision in current section 302 of the CFTA Implementation Act, which provides for special inquiries in the case of import surges from Canada that arise subsequent to the taking of a relief action from which Canada has been excluded. Also, current section 2254(d), concerning certain Presidential authority, is moved into new section 124 in chapter 2, which lists the factors that the President is required to take into account in determining what action to take.

Chapter 4 combines virtually identical provisions in the CBERA, Andean Trade Preference Act, and Trade and Tariff Act of 1984 (relating to the free-trade agreement with Israel) that authorize the filing of a petition with the Secretary of Agriculture for provisional relief with respect to imports of a perishable agricultural product if a petition has been filed with the Commission under section 202 of the Trade Act of 1974. Language has been added to give reference to the three acts as well as to identify separately the respective perishable agricultural products from the three areas that may be the subject of such an investigation.

Subtitle II--Bilateral Safeguard Actions

This subtitle has only one section that incorporates provisions in section 302(a) of the CFTA Implementation Act (19 U.S.C. § 2112 note) that provide for bilateral "escape clause" actions with respect to Canada.' This provision is operational

The North American Free Trade Agreement Implementation Act, enacted Dec. 8, 1993, changes the existing legislation to adapt the existing bilateral CFTA safeguards framework for use with respect to both Canadian and Mexican imports, consistent with the terms of Chapter 8 of NAFTA. These new provisions, which are not incorporated in this proposed reorganization, become effective Jan. 1, 1994.

during the 10-year CFA transition period. While procedurally similar to the provisions in current sections 2252-2253, the relief action is bilateral rather than global in nature. Accordingly, the provision does not belong in subtitle I, which is a global action safeguard subtitle.

The provisions have been rearranged in a manner similar to that in subtitle I to present the substantive provisions first and then the procedural sections. The cross-referencing to the pre-August 1988 provisions in section 2252 (the provision in effect prior to the time that the law was amended by the Omnibus Trade and Competitiveness Act of 1988) is updated to refer to the equivalent provision in current law. There is no substantive difference between these pre- and post-1988 provisions.

Subtitle DI—Market Disruption From Communist Countries

This subtitle incorporates the provisions of 19 U.S.C. § 2436 (section 406 of the Trade Act of 1974, as amended). The new subtitle is divided into four sections: (1) Commission investigations and determinations, (2) Presidential action in response to an affirmative Commission determination, (3) emergency action by the President, and (4) consultations.

Current section 2436 contains cross-references to several provisions in current section 2251 of title 19 (as amended in 1988), but adopts the Presidential action provisions in the version of sections 2252 and 2253 that existed immediately prior to the 1988 amendments, which are not readily available to the user. To make the provision more accessible, the appropriate sections of current and pre-1988 sections 2251-2253 have been inserted into the text. An alternative would be to reference provisions in the current provisions in section 2253 relating to Presidential action, but this would pose difficulties because many of the changes made by the 1988 amendments arguably are substantive in nature.

Subtitle IV—Safeguarding National Security

This subtitle incorporates the national security provisions in 19 U.S.C. §§ 1862, 1864 (sections 232-233 of the Trade Expansion Act of 1962). The principal change proposed here is to subdivide current section 1862 into two sections, in order to place in one section the provisions relating to investigations by the Secretary of Commerce.

Subtitle V—Provisions Concerning Agricultural Products

This subtitle incorporates 7 U.S.C. § 1854 (section 204 of the Agricultural Adjustment Act of 1956, as amended) and 7 U.S.C. § 624 (section 22 of the Agricultural Adjustment Act of 1933, as amended). Section 1854 is very short and no changes are proposed. Several minor nonsubstantive changes are proposed for section 624 that would break up several subsections and make them easier to read and reference.

Subtitle VI—Trade Preferences for Developing Countries

This subtitle incorporates pertinent parts of 19 U.S.C. §§ 2461-2466 (title V of the Trade Act of 1974, as amended (Generalized System of Preferences (GSP))), 19 U.S.C. §§ 2701-2706 (CBERA), and 19 U.S.C. § 3201-3206 (the Andean Trade

Preference Act). Each of these three statutes authorizes the President to provide trade preferences to certain developing countries; the GSP authorizes preferences on a global basis, and the CBERA and Andean provisions authorize it on a regional basis. Although the statutes were originally drafted at three different periods of time (1974, 1981, and 1991, respectively), all three are roughly parallel in structure and share similar definitions, limitations, and lists of factors to be considered by the President.

The subtitle is divided into three chapters. Chapter 1 sets forth the provisions relating to the GSP, and chapters 2 and 3 the CBERA and Andean Trade Preference provisions, respectively. While these provisions are similar in many respects, it proved impractical to combine them into a general provision with exceptions for the different regimes. Instead, the Commission reorganized the three individual statutes along common lines of subject matter. Each of the chapters begins with an authority section, which is followed by sections relating to designation of beneficiary countries, designation of eligible articles, and miscellaneous provisions (*e.r.*, reports and termination date of the program). Within the respective sections on country and article designation, which contain the bulk of the text, the Commission also reorganized the material along more uniform lines, beginning with what countries or articles may be designated, limitations on designation, and withdrawal, suspension, and termination. This, the Commission believes, makes the provisions more uniform in format and easier to follow.

As noted above, sections in the CBERA and Andean Preference statutes relating to safeguard law findings and determinations by the Commission and the President and to perishable agricultural product investigations by the Secretary of Agriculture have been moved to subtitle I. Provisions in the CBERA statute that amend other provisions of law (*e.e.*, the Internal Revenue Code) or the HTS or that relate to the tariff treatment of ethyl alcohol were not included in the text.

Subtitle VII—Antidumping and Countervailing Duties

Subtitle VII is a compilation and reorganization of the following laws: 19 U.S.C. §1303 (section 303 of the Tariff Act of 1930, as amended); 19 U.S.C. § 1671 *gi Ng.* (subtitle A of title VII (sections 701-709) of the Tariff Act of 1930, as amended); 19 U.S.C. § 1673 04. (subtitle B of title VII (sections 731-739) of the Tariff Act of 1930, as amended); 19 U.S.C. § 1675 a paq. (subtitle C of title VII (sections 751, 761 and 762) of the Tariff Act of 1930, as amended); 19 U.S.C. § 1677 *gt mg.* (subtitle D of title VII (sections 771-781) of the Tariff Act of 1930, as amended); 19 U.S.C. § 1677k (section 1317 of the Omnibus Trade and Competitiveness Act of 1988); and 19 U.S.C. § 1516a (section 516A of the Tariff Act of 1930).

The reorganization is designed to consolidate and simplify the current organization of the above laws in title 19 of the U.S. Code. It attempts to place all of the laws governing antidumping and countervailing duties in logical order in one subtitle, rather than in various sections of title 19 of the U.S. Code as is currently the

case.³ It also attempts to eliminate duplicative provisions and anomalous or illogical provisions.

This subtitle also consolidates sections 1671 through 1671h (pertaining to countervailing duties) and sections 1673 through 1673h (pertaining to antidumping duties) because these provisions concerning antidumping duties mirror and repeat to a considerable extent the provisions concerning countervailing duties. These consolidated provisions now compose the proposed new sections 702, 705, 706, 707, 710, 711, and 715(a)-(c). A reviewer of the draft text in the Office of the Chief Counsel for Import Administration at Commerce estimated that the merging of the countervailing duty/antidumping provisions in this proposed reorganization eliminates about 50,000 words of current text without changing the substance of the laws.

Current section 1677 has been reorganized considerably. Section 1677 contains, in no particular order, an array of provisions that include definitions, miscellaneous rules, and substantive provisions of the law. Proposed subtitle VII reorganizes section 1677 by separating the various provisions and placing them into specific categories by subject matter. General definitions are in new section 703 entitled "General definitions." Rules applicable to only one agency (either the Commission or Commerce) are in new sections 708 and 709 entitled "Specific Commission findings in antidumping and countervailing duty investigations" and "Specific Commerce findings in antidumping and countervailing duty investigations," respectively. Administrative procedures are in new section 714 entitled "Administrative procedures for conducting antidumping and countervailing duty investigations." New section 715 contains provisions applicable to the administration of antidumping and countervailing duty orders and is entitled "Administration of antidumping and countervailing duty orders."

The reorganization first sets forth the most general provisions such as applicability (section 701), the general statutory requirements for the imposition of antidumping and countervailing duties (section 702), general definitions (section 703), and a summary of applicable time periods in antidumping and countervailing duty determinations (section 704). The time summary, which is a new provision, also serves as a brief procedural overview. The proposed organization then follows the logical progression of antidumping and countervailing duty proceedings from initiation of an investigation through the imposition of an order (sections 705 through 715). Specifically, sections 705, 706, and 707 contain the provisions on initiation of investigations, preliminary investigations, and final investigations, respectively. Section 708 then sets forth those provisions on findings by the Commission (e.s.,

⁵ For example, currently, there are rules governing countervailing duties in 19 U.S.C. § 1303 and 19 U.S.C. § 1671, and the general provisions governing imposition of antidumping and countervailing duties are separate from the provisions governing judicial review of antidumping and countervailing duty determinations.

Commerce recommended, and the Commission agrees, that any legislative history accompanying the reorganization make clear that the consolidation of the antidumping and countervailing duty provisions is not intended to allow a single proceeding before Commerce to encompass both antidumping and countervailing duty claims.

cumulation, material injury, and threat). Section 709 contains the provisions on findings by Commerce (e.g., rules governing pricing and subsidy calculations).

The next four sections contain miscellaneous provisions ancillary to the general antidumping and countervailing duty findings: section 710, the rules on termination or suspension of investigations; section 711, the rules relating to critical circumstances determinations; section 712, the rules for downstream product monitoring; and section 713, the rules governing short life cycle merchandise. Section 714 contains procedural administrative requirements, such as the rules on hearings (section 714(a)) and the rules on access to information and service (section 714(b)). Section 715 includes those provisions relating to the administration of antidumping and countervailing duty orders. These sections are followed by the rules governing administrative review of an antidumping or countervailing duty determination (section 716), and then by the rules governing judicial review (section 717). The last section is a provision governing third country dumping (section 718).

Subtitle Via—Retaliatory And Other Relief For Certain Discriminatory Foreign

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Subtitle VIII incorporates provisions in 15 U.S.C. i i 71-77 (the Antidumping Act of 1916 and several related provisions enacted at the same time relating to retaliation for foreign discrimination against U.S. persons and businesses). Only minor organizational changes were made to these provisions. These provisions were not included in subtitle VII because they involve distinct legal remedies or address different foreign practices than the antidumping duty and countervailing duty provisions in subtitle VII.

Subtitle IX—Relief From Unfair Practices In Import Trade

Subtitle IX is primarily based on 19 U.S.C. § 1337 (section 337 of the Tariff Act of 1930, as amended), which authorizes the Commission, on behalf of domestic industries or domestic trade or commerce, to issue exclusion or cease and desist orders against imports that infringe U.S. intellectual property rights or other unfair acts and methods of competition involving imports.

Subtitle IX is divided into sections 901-903. Section 901 describes the applicability of subtitle IX.

Section 902 contains the reorganized provisions of section 1337 and is divided into subsections (a)-(n). Subsection (a) is a streamlined version of section 1337(a), which sets forth the elements of a section 1337 violation.

Subsections (b), (c), and (d) of section 902 rearrange sections 1337(b), 1337(c), and 1337(h) so that all provisions setting forth basic investigative practices and procedures are adjacent. Section 1337(b), concerning the institution, termination, or suspension of investigations, deadlines for concluding investigations, and consultation with other agencies, has become subsection (b) of section 902. Certain provisions of section 1337(c), *Le.*, those pertaining to the Commission obligation to determine whether a violation has occurred, the procedures that are to be followed in certain investigations, and the defenses that may be asserted in all investigations, have been placed in subsection (c) of section 902. Because sanctions can be a factor in the Commission determination of whether section 1337 has been, or appears to have been,

violated, section 1337(h) concerning sanctions for abuse of process or discovery has become subsection (d) of section 902.

Sections 1337(d), 1337(0(1), and 1337(g), which relate to the issuance of so-called permanent relief, were placed in subsection (e) of section 902 under the heading "Final relief." This eliminated the need for multiple recitations of the public interest factors. Subsection (f) of section 902, "Preliminary relief," was created in a similar manner, from consolidated provisions of sections 1337(e) and 1337(f) concerning the issuance of preliminary (LL, temporary) relief. Section 1337(i), concerning forfeiture of articles imported in violation of a final exclusion order, and section 1337(f)(2), concerning civil penalties for violating a final cease and desist order, collectively became subsection (h) of section 902, "Forfeiture: civil penalties."

To fulfill the objective of eliminating or simplifying anomalous or illogical provisions to the extent possible without making substantive or procedural changes in the existing law, several provisions were reworded. For example, in section 902, the subsections governing hearings (c) and preliminary relief bonds (f) clarify that subsections (c) and (f), respectively, apply in all cases, Lc., whether complainant is seeking an exclusion order, a cease and desist order, or both. To eliminate uncertainty as to whether the Commission may issue preliminary remedial orders under section 902 on the basis of gx Rant affidavits (following a procedure similar to that provided by the Federal Rules of Civil Procedure to Federal District Courts for issuance of temporary restraining orders), the Commission omitted any reference to temporary restraining orders in section 902(0(3). The reworded paragraph states that the Commission is authorized to grant preliminary relief under section 1337 to the extent that courts issue preliminary injunctions under the Federal Rules of Civil Procedure.

Finally, section 903 of subtitle IX states that for the performance of Commission functions under section 902, the Commission may exercise authority conferred by 19 U.S.C. § 2482 (section 603 of the Trade Act of 1974), which enables the Commission to conduct preliminary investigations, to consolidate proceedings, and to take other measures in the performance of its functions under various statutes.

Subtitle X--Enforcement of United States Rights Under Trade Agreements. Response to Certain Foreign Trade Practices, and Other Matters

Subtitle X consists of laws administered by the USTR that provide authority for (1) the enforcement of U.S. rights under international trade agreements, (2) responses to unjustifiable, unreasonable, or discriminatory foreign trade practices that burden or restrict U.S. commerce, and (3) other related purposes.

To achieve the objective of creating a logical and accessible arrangement of the law, the Commission concentrated on putting related or similar provisions together in a coherent sequence. Subtitle X is divided into 27 sections.

In the past, the Commission has used section 2482 (1) to conduct a preliminary investigation to aid the Commission in determining whether to institute a section 1337 investigation and (2) to use compulsory process to obtain necessary information. Most investigations under section 2482 terminated without further action by the Commission, but some resulted in a settlement or the issuance of a consent order.

Section 1001 describes the applicability of subtitle X.

Section 1002 contains the text of 19 U.S.C. § 2241 (section 181 of the Trade Act of 1974, as amended), which requires the USTR to identify, analyze, estimate, and prepare annual reports to Congressional committees concerning the impact on U.S. commerce of foreign acts, policies, and practices that constitute significant barriers to, or distortions of, U.S. exports of goods and services and U.S. foreign direct investment.

Sections 1003-1008, 1010-1013, 1014(1), and 1015 contain the reorganized provisions of 19 U.S.C. §§ 2411-2420 (sections 301-310 of the Trade Act of 1974, as amended). Those sections provide authority and procedures for the President to enforce U.S. rights under international trade agreements and to respond to certain unfair foreign trade practices.

In the existing law, the definitions and special rules for sections 2411-2420 are set forth in section 2411(d). To draw attention to those definitions and special rules in the proposed trade relief laws title, they are set out in a separate section, section 1004.

Texts of related laws are inserted at appropriate places within the provisions of subtitle X that are based on sections 2411-2420. For example, 19 U.S.C. § 2114d (section 307(b) of the Trade and Tariff Act of 1984) is section 1009 of subtitle X. That section authorizes the USTR to respond to export performance requirements of foreign countries that adversely affect the economic interests of the United States.

The Commission also has incorporated the text of 19 U.S.C. § 2242 (section 182 of the Trade Act of 1974) in subsections (a)-(e) of section 1014 of subtitle X. Those subsections require the USTR to identify (1) foreign countries that deny adequate and effective protection of intellectual property rights or fair and equitable market access to U.S. persons that rely upon intellectual property protection, and (2) "priority" foreign countries within that category.

The current provisions governing the USTR's investigation of countries identified in accordance with section 2242 are in 19 U.S.C. § 2412(b)(2). In subtitle X, those provisions are located in subsection (f) of section 1014.

Sections 1016-1025 of subtitle X are based on 19 U.S.C. §§ 3102-3111 (the Telecommunications Trade Act of 1988, i.e., sections 1373-1382 of the Omnibus Trade and Competitiveness Act of 1988). Those provisions contain specific trade negotiating authority and remedies to address the lack of foreign market openness in telecommunications trade. The arrangement of those provisions is not altered. A reference to the HTS is inserted in lieu of a reference to the old Tariff Schedules of the United States.

Section 1026 of subtitle X is based on 19 U.S.C. § 2515(d)-(k) (section 305(d)-(k) of the Trade Agreements Act of 1979, as amended). Those provisions require the USTR to prepare annual reports to Congressional committees concerning foreign countries that discriminate against U.S. products ²¹ services in making government procurements. The current arrangement is unaltered. An apparently erroneous cross-reference in paragraph (3) of section 2515(d) is corrected.

The last section of subtitle X, section 1027, is based on Public Law 101-514, title V, § 511, Nov. 5, 1990, 104 Stat. 2098, and Public Law 101-516, title III, § 340, Nov. 5, 1990, 104 Stat. 2187, which are set forth in the Historical and Statutory Notes to 41 U.S.C.A. § 10b. Those provisions require the USTR to maintain a list of suppliers from foreign countries that deny market opportunities for U.S. products and services for construction contracts. The arrangement of these provisions is unchanged.

PROPOSED TRADE RELIEF LAWS

SUBTITLE I-GLOBAL SAFEGUARD ACTIONS

SEC. 101 Applicability [NEW]

CHAPTER 1: INVESTIGATIONS AND DETERMINATIONS BY COMMISSION

- SEC. 102** Investigations and determinations [19 U.S.C. 2112 note, 2252(b)(1)(A), 2252(b)(3)(A), 2252(d)(1)(C), 2252(h)]
- SEC. 103** Definitions, factors, and considerations [19 U.S.C. 2251(b), 2252(a)(6)(A), 2252(b)(1)(B), 2252(c)(1)-(3), 2252(c)(4), 2252(c)(5), 2252(c)(6)(A), 2252(c)(6)(B), 2252(d)(5)]
- SEC. 104** Petitions and adjustment plans [19 U.S.C. 2252(a)(1), 2252(a)(2), 2252(a)(4), 2252(a)(5), 2252(d)(1)]
- SEC. 105** Industry commitments [19 U.S.C. 2252(a)(6)(B), 2252(a)(7)]
- SEC. 106** Time for making determinations and reports [19 U.S.C. 2252(b)(2)(A), 2252(b)(2)(13), 2252(b)(3)(A), 2252(d)(1)(C), 2252(o)(1)]
- SEC. 107** Public hearings [19 U.S.C. 2252(b)(4), 2252(e)(5)(A)]
- SEC. 108** Recommendations [19 U.S.C. 2112 note, 2252(d)(1)(E), 2252(d)(1)(F), 2252(d)(2)(A), 2252(e)(1), 2252(e)(2), 2252(e)(3), 2252(e)(4), 2252(e)(5)(B), 2252(e)(6), 2253(e)(6)(A), 2703(e)(2), 3203(d)(2)]
- SEC. 109** Report by Commission [19 U.S.C. 1330(d)(3), 2112 note, 2252(f)(1), 2252(f)(2)(A), 2252(f)(2)(B), 2252(o)(2)(C), 2252(o)(2)(D), 2252(o)(2)(E), 2252(o)(2)(F), 2252(o)(2)(G), 2252(f)(3), 2703(e)(2), 3203(d)(2)]
- SEC. 110** Notification to and assistance from other agencies [19 U.S.C. 2252(a)(3), 2252(d)(1)(D), 2252(g)]
- SEC. 111** Special rules with respect to divided Commission findings [19 U.S.C. 1330(d)(1), 1330(d)(2), 1330(d)(4)]

CHAPTER 2: ACTION BY PRESIDENT

- SEC. 121** Action by President after determination of import injury [19 U.S.C. 2112 note, 2252(d)(1)(G), 2252(d)(2)(B), 2253(a)(1)]
- SEC. 122** Actions the President may take [19 U.S.C. 2252(d)(3), 2252(d)(4), 2253(a)(3)]
- SEC. 123** Limitations on actions [19 U.S.C. 2252(e)(3), 2253(e)]
- SEC. 124** Factors to be considered [19 U.S.C. 2253 (a)(2), 2254(d)]
- SEC. 125** Time for taking effect of certain relief [19 U.S.C. 2252(d)(1)(G), 2252(d)(2)(B), 2253(a)(4), 2253(d)]
- SEC. 126** Requests for additional information from Commission [19 U.S.C. 2253(a)(5)]
- SEC. 127** Reports to Congress [19 U.S.C. 2253(b), 2253(c)]
- SEC. 128** Orderly marketing and other agreements [19 U.S.C. 2253(o)]
- SEC. 129** Regulations [19 U.S.C. 2253(g)]

CHAPTER 3: MONITORING, MODIFICATION, AND TERMINATION OF ACTIONS

- SEC. 141** Monitoring, modification, and termination of action [19 U.S.C. 2254(a), 2254(b), 2254(c)]
- SEC. 142** Special inquiries with respect to import surges from Canada [19 U.S.C. 2112 note]

**CHAPTER 4: INVESTIGATIONS BY SECRETARY OF AGRICULTURE
WITH RESPECT TO PERISHABLE AGRICULTURAL PRODUCTS**

**SEC. 151 Emergency relief with respect to perishable
products [19 U.S.C. 2112 note, 2703, 3203(e)-(0)]**

SEC. 101 Applicability

Applicability. This subtitle applies with respect to actions to facilitate positive adjustment to import competition.

**CHAPTER 1: INVESTIGATIONS AND
DETERMINATIONS BY COMMISSION**

SEC. 102 Investigations and determinations

(a) In general.—Upon the filing of a petition by an entity described in section 104(a)(1), the request of the President or the Trade Representative, the resolution of either the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate, or on its own motion, the United States International Trade Commission (hereinafter Commission) shall promptly make an investigation to determine whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article. **19 USC 2252(b)(1)(A)**

(b) With respect to a perishable agricultural product.—If a petition filed under section 104(a)(1)— **19 USC 2252(d)(1)(C)**

(1) alleges injury from imports of a perishable agricultural product that has been, on the date the allegation is included in the petition, subject to monitoring by the Commission under section 104(b)(2) for not less than 90 days; and

(2) requests that provisional relief be provided under this subsection with respect to such imports;

the Commission shall make a determination, on the basis of available information, whether increased imports (either actual or relative to domestic

production) of the perishable agricultural product are a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a like or directly competitive perishable product, and whether either--

(A) the serious injury is likely to be difficult to repair by reason of perishability of the like or directly competitive agricultural product; or

(B) the serious injury cannot be timely prevented through investigation under subsection (a) of this section and action under section 121(a) of this subtitle.

(c) With respect to critical circumstances.—

19 USC 2252(b)(3)

• (1) If the Commission makes an affirmative determination under subsection (a) and the petitioner alleges the existence of critical circumstances, the Commission shall make a determination regarding such allegation.

(2) For purposes of this chapter, critical circumstances exist if a substantial increase in imports (either actual or relative to domestic production) over a relatively short period of time has led to circumstances in which a delay in taking action under this part would cause harm that would significantly impair the effectiveness of such action.

(d) Imports from Canada.—

19 USC 2112 note

(1) If, in any investigation initiated under this chapter, the Commission makes an affirmative determination (or a determination which the President may treat as an affirmative determination) that an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry, the Commission shall also find whether imports from Canada of the article that is the subject of such investigation are substantial and are contributing importantly to such injury or threat thereof.

(2) In determining under paragraph (1) whether imports of an article from Canada are substantial, the Commission shall not normally consider imports from Canada in the range of 5 to 10 percent or less of total imports of such article to be substantial.

(e) Limitations on investigations.—**19 USC 2252(h)**

(1) In general.-- Except for good cause determined by the Commission to exist, no investigation for the purposes of this section shall be made with respect to the same subject matter as a previous investigation under this part, unless 1 year has elapsed since the Commission made its report to the President of the results of such previous investigation.

(2) With respect to an article previously subject to relief. --If an article was the subject of an investigation under this section that resulted in any action described in section 123(a)(1), (2), (3), or (5) being taken under section 121, no other investigation under this part may be initiated with respect to such article while such action is in effect or during the period beginning on the date on which such action terminates that is equal in duration to the period during which such action was in effect.

SEC. 103 Definitions. factors, and considerations**(a) Definitions.—For purposes of this subtitle—**

(1) the term "substantial cause" means a cause which is important and not less than any other cause.

19 USC 2252(b)(1)(13)

(2) the term "significant idling of productive facilities" includes the closing of plants or the underutilization of production capacity.

19 USC 2252(c)(6)(B)

(3) the term "domestic industry" includes producers located in the United States insular possessions.

19 USC 2252(c)(6)(A)

(4) except in the case of chapter 4 of this subtitle, a perishable agricultural product is any agricultural article, including livestock, regarding which the United States Trade Representative (hereinafter Trade Representative) considers action under this section to be appropriate after taking into account--

19 USC 2252(d)(5)**(A) whether the article has--**

- (i) a short shelf life,**
- (ii) a short growing season, or**
- (iii) a short marketing period;**

(B) whether the article is treated as a perishable product under any other Federal law or regulation;

and

(C) any other factor considered appropriate by the Trade Representative.

The presence or absence of any factor which the Trade Representative is required to take into account under subparagraphs (A), (B), or C) is not necessarily dispositive of whether an article is a perishable agricultural product.

(5) The term "provisional relief" means--

(A) any increase in, or imposition of, any duty;

(B) any modification or imposition of any quantitative restriction on the importation of an article into the United States; or

(C) any combination of actions under subparagraphs (A) and (B).

(6) The term "contributing importantly" means an important cause, but not necessarily the most important cause, of the serious injury or threat thereof caused by imports.

19 USC 2112 note

(7)(A) A positive adjustment to import competition occurs when the domestic industry--

19 USC 2251(b)

(i) is able to compete successfully with imports after actions taken under section 121, including any extension thereof, terminate, or the domestic industry experiences an orderly transfer of resources to other productive pursuits; and

(ii) dislocated workers in the industry experience an orderly transition to productive pursuits.

(B) The domestic industry may be considered to have made a positive adjustment to import competition even though the industry is not of the same size and composition as the industry at the time the investigation was initiated under section 102(a).

(b) Factors applied in making determinations.—

19 USC 2252(c)(1)-(3)

(1) In making determinations under section 102, the Commission shall take into account all economic factors which it considers relevant, including (but not limited to)--

(A) with respect to serious injury--

(i) the significant idling of productive facilities in the domestic industry,

(ii) the inability of a significant number of firms to carry out domestic production operations at a reasonable level of profit, and

(iii) significant unemployment or underemployment within the domestic industry;

(B) with respect to threat of serious injury--

(i) a decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, or employment (or increasing underemployment) in the domestic industry,

(ii) the extent to which firms in the domestic industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development,

(iii) the extent to which the United States market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets; and

(C) with respect to substantial cause, an increase in imports (either actual or relative to domestic production) and a decline in the proportion of the domestic market supplied by domestic producers.

(2) In making determinations under section 102, the Commission shall--

(A) consider the condition of the domestic industry over the course of the relevant business cycle, but may not aggregate the causes of declining demand associated with a recession or economic downturn in the United States economy into a single cause of serious injury or threat of injury; and

(B) examine factors other than imports which may be a cause of serious injury, or threat of serious injury, to the domestic industry.

(3) The presence or absence of any factor which the Commission is required to evaluate in subparagraphs (A) and (B) of paragraph (1) is not necessarily dispositive of whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry.

(c) Considerations with respect to domestic industry.—

19 USC 2252(c)(4)

For purposes of section 102, in determining the domestic industry producing an article like or directly competitive with an imported article, the Commission--

(1) to the extent information is available, shall, in the case of a domestic producer which also imports, treat as part of such domestic industry only its domestic production;

(2) may, in the case of a domestic producer which produces more than one article, treat as part of such domestic industry only that portion or subdivision of the producer which produces the like or directly competitive article; and

(3) may, in the *case* of one or more domestic producers which produce a like or directly competitive article in a major geographic area of the United States and whose production facilities in such area for such article constitute a substantial portion of the domestic industry in the United States and primarily serve the market in such area, and where the imports are concentrated in such area, treat as such domestic industry only that segment of the production located in such area.

(d) Investigation of factors contributing to increased imports.—In the course of any proceeding under this chapter, the Commission shall investigate any factor which in its judgment may be contributing to increased imports of the article under investigation. 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 subtitle VII or DC of this title, 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

19 USC 2252(c)(5)

such provisions of law.

(e) Information on industry efforts to adjust.— In the course of any investigation under section 102, the Commission shall seek information (on a confidential basis, to the extent appropriate) on actions being taken, or planned to be taken, or both, by firms and workers in the industry to make a positive adjustment to import competition.

19 USC 2252(a)(6)(A)

SEC. 104 Petitions and adjustment plans

(a) Petitions in general.—

19 USC 2252(a)(1)

(1) Who may file. --A petition requesting action under this subtitle for the purpose of facilitating positive adjustment to import competition may be filed with the Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry.

(2) Contents of a petition.--A petition under paragraph (1)--

19 USC 2252(a)(2)

(A) shall include a statement describing the specific purposes for which action is being sought, which may include facilitating the orderly transfer of resources to more productive pursuits, enhancing competitiveness, or other means of adjustment to new conditions of competition; and

(B) may--

(i) subject to section 102(b)(1), request provisional relief under section 102(b) with respect to a perishable agricultural product; or

(ii) request, or at any time before the 150th day after the date of filing be amended to request, provisional relief with respect to critical circumstances under section 102(c).

(b) Petitions with respect to perishable agricultural products.—

19 USC 2252(d)(1)

(1) An entity representing a domestic industry that produces a perishable agricultural product that is like or directly competitive with an imported perishable agricultural product may file a request with the Trade Representative for the monitoring of imports of that product under paragraph (2). Within 21 days after receiving the request, the Trade Representative shall

determine if--

(A) the imported product is a perishable agricultural product; and

(B) there is a reasonable indication that such product is being imported into the United States in such increased quantities as to be, or likely to be, a substantial cause of serious injury, or the threat thereof, to such domestic industry.

(2) If the determinations under paragraph (1)(A) and (B) are affirmative, the Trade Representative shall request, under section 332(g) of the Tariff Act of 1930 [19 U.S.C. § 1332(g)], the Commission to monitor and investigate the imports concerned for a period not to exceed 2 years. The monitoring and investigation may include the collection and analysis of information that would expedite an investigation under section 102.

(c) Adjustment plans.—

(1) Submission of plans, time for submission.--A petitioner under subsection (a)(1) may submit to the Commission and the Trade Representative, either with the petition, or at any time within 120 days after the date of filing of the petition, a plan to facilitate positive adjustment to import competition.

19 USC 2252(a)(4)

(2) Consultation with Trade Representative.--

19 USC 2252(a)(5)

(A) Before submitting an adjustment plan under paragraph (1), the petitioner and other entities referred to in subsection (a)(1) that wish to participate may consult with the Trade Representative and the officers and employees of any Federal agency that is considered appropriate by the Trade Representative, for purposes of evaluating the adequacy of the proposals being considered for inclusion in the plan in relation to specific actions that may be taken under this subtitle.

(B) A request for any consultation under subparagraph (A) must be made to the Trade Representative. Upon receiving such a request, the Trade Representative shall confer with the petitioner and provide such assistance, including publication of appropriate notice in the Federal Register, as may be practicable in obtaining other participants in the consultation. No consultation may occur under subparagraph (A) unless the Trade Representative, or his delegate, is in attendance.

SEC. 105 Industry commitments.—

(a) In general.—Regardless of whether an adjustment plan is submitted under section 104(c)(1) by the petitioner, if the Commission makes an affirmative determination under section 102, any--

19 USC 2252(a)(6)(B)

- (1) firm in the domestic industry;
- (2) certified or recognized union or group of workers in the domestic industry;
- (3) State or local community;
- (4) trade association representing the domestic industry; or
- (5) any other person or group of persons,

may, individually, submit to the Commission commitments regarding actions such persons and entities intend to take to facilitate positive adjustment to import competition.

(b) Applicability of antitrust laws.—Nothing in section 104(c)(2) and subsection (a) may be construed to provide immunity under the antitrust laws.

19 USC 2252(a)(7)

SEC. 106 Time for made= determinations and
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(a) Determinations.—

(1)(A) Except as provided in subparagraph (B), the Commission shall make the determination under section 102(a)(1) within 120 days after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be.

19 USC 2252(b)(2)(A)

(B) If before the 100th day after a petition is filed under section 102(a) the Commission determines that the investigation is extraordinarily complicated, the Commission shall make the determination under section 102(a)(1) within 150 days after the date referred to in paragraph (1).

19 USC 2252(b)(2)(B)

(2) In the case of an investigation under section 102(b) with respect to imports of a perishable agricultural product for which provisional relief has been requested, the Commission shall make its determination not later than the 21st day after the day on which the request was filed.

19 USC 2252(d)(1)(C)

(3) If the Commission makes an affirmative determination under section 102(a) and the petitioner has alleged the existence of critical circumstances, the Commission shall make its determination regarding such allegation--

19 USC 2252(b)(3)(A)

(A) on or before the 120th day after the day on which the petition was filed, if such allegation was included in the petition on or before the 90th day after such filing date; or

(B) on or before the date the report required under section 106 regarding the determination is submitted to the President, if such allegation was included in the petition after the 90th day, and on or before the 150th day, after such filing date.

(b) Report.—The report of the Commission required under section 109 shall be submitted at the earliest practicable time, but not later than 180 days after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be.

19 USC 2252(f)(1)

SEC. 107 Public hearings

(a) During the injury phase.—In the course of any proceeding under section 102(a), the Commission shall, after reasonable notice, hold public hearings and shall afford interested parties and consumers an opportunity to be present, to present evidence, to comment on the adjustment plan, if any, submitted under section 104(c)(1), and to be heard at such hearings.

19 USC 2252(b)(4)

(b) During the remedy phase, if appropriate.—If the Commission makes an affirmative determination under section 102(a), it shall, for purposes of making its recommendation under section 108(a), after reasonable notice, hold a public hearing at which all interested parties shall be provided an opportunity to present testimony and evidence.

19 USC 2252(e)(5)(A)

SEC. 108 Recommendations**(a) In general.—**

(1) If the Commission makes an affirmative determination under section 102(a), the Commission shall also recommend the action that would address the serious injury, or threat thereof, to the domestic industry and be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition. 19 USC 2252(e)(1)

(2) The Commission is authorized to recommend under paragraph (1)-- 19 USC 2252(e)(2)

(A) an increase in, or the imposition of, any duty on the imported article;

(B) a tariff-rate quota on the article;

(C) a modification or imposition of any quantitative restriction on the importation of the article into the United States;

(D) one or more appropriate adjustment measures, including the provision of trade adjustment assistance under part 2 of chapter 2 of title 19; or

(E) any combination of the actions described in subparagraphs (A) through (D).

(3) The Commission shall specify the type, amount, and duration of the action recommended by it under paragraph (1). 19 USC 2252(e)(3)

(4) In addition to the recommendation made under paragraph (1), the Commission may also recommend that the President-- 19 USC 2252(e)(4)

(A) initiate international negotiations to address the underlying cause of the increase in imports of the article or otherwise to alleviate the injury or threat; or

(B) implement any other action authorized under law that is likely to facilitate positive adjustment to import competition.

(5) For purposes of making its recommendation under this subsection, the Commission shall take into account-- 19 USC 2252(e)(5)(B)

(A) the form and amount of action described in paragraph (2)(A), (B), and (C) that would prevent or remedy the injury or threat thereof,

(B) the objectives and actions specified in the adjustment plan, if any, submitted under section 104(c)(1),

(C) any individual commitment that was submitted to the Commission under section 105,

(D) any information available to the Commission concerning the conditions of competition in domestic and world markets, and likely developments affecting such conditions during the period for which action is being requested, and

(13) whether international negotiations may be constructive to address the injury or threat thereof or to facilitate adjustment.

(6) The Commission shall state whether and to what extent its findings and recommendations apply to such article when imported from beneficiary Caribbean Basin or Andean countries under subtitle VI of this title or from Israel.

**19 USC 2703(e)(2)
19 USC 3203(d)(2)
19 USC 2112 note**

(7) The Commission shall exclude Canada from its recommendation under this section if it has made a negative determination under section 102(d)(1).

19 USC 2112 note

(b) Perishable agricultural products.—

(1) Whenever the Commission makes an affirmative preliminary determination under section 102(b), the Commission shall find the amount or extent of provisional relief that is necessary to prevent or remedy the serious injury or threat thereof. In carrying out this paragraph, the Commission shall give preference to increasing or imposing a duty on imports, if such form of relief is feasible and would prevent or remedy the serious injury or threat thereof.

19 USC 2252(d)(1)(E)

(2) The Commission shall immediately report to the President its determination under section 102(b) and, if the determination is affirmative, the finding under paragraph (1).

19 USC 2252(d)(1)(F)

(c) Critical circumstances.—The Commission shall, at the same time it makes an affirmative determination under section 102(c)(1) regarding the existence of critical circumstances, find the amount or extent of provisional relief that is appropriate to address such critical circumstances. The Commission shall immediately report to the President

19 USC 2252(d)(2)(A)

each such affirmative determination and finding.

(d) Limitations.—

(1) The limitations set forth in section 123 are applicable to the action recommended by the Commission.

19 USC 2252(e)(3)

(2) The Commission may not recommend suspension of--

19 USC 2253(e)(6)(A)

(A) headings 9802.00.60 or 9802.00.80 of the Harmonized Tariff Schedule of the United States;

(B) the designation of any article as an eligible article for purposes of subtitle VI of this subtitle (relating to the Generalized System of Preferences and to trade preferences for Caribbean Basin and Andean countries); and

(C) the reduction or elimination of a duty in the trade agreement with Israel;

unless the Commission, in addition to making an affirmative determination under section 102(a), determines that the serious injury, or threat thereof, substantially caused by imports to the domestic industry producing a like or directly competitive article results from, as the case may be--

(i) the application of heading 9802.00.60 or heading 9802.00.80 of the Harmonized Tariff Schedule of the United States;

(ii) the designation of the article as an eligible article for the purposes of subtitle VI of this subtitle (relating to the Generalized System of Preferences and to trade preferences for Caribbean Basin and Andean countries); or

(iii) the reduction or elimination of any duty provided under any trade agreement provision entered into with Israel under section 102(b)(1) of the Trade Act of 1974.

(3) Only those members of the Commission who agreed to the affirmative determination under section 102 are eligible to vote on the recommendation required to be made under subsection (a)(1) or that may be made under subsection (a)(3). Members of the Commission who did not agree to the affirmative determination may submit, in the report required under section 109, separate views regarding what action, if any, should be taken under section 121.

19 USC 2252(e)(6)

SEC. 109 Report by Commission

- (a) Report required.— The Commission shall submit to the President a report on each investigation undertaken under section 102. **19 USC 2252(0)(1)**
- (b) Contents of report.— The Commission shall include in the report required under subsection (a) the following:
- (1) The determination made under section 102 and an explanation of the basis for the determination. **19 USC 2252(f)(2)(A)**
- (2) If the determination under section 102 is affirmative, the recommendations for action made under section 108 and an explanation of the basis for each recommendation. **19 USC 2252(0)(2)(13)**
- (3) Any dissenting or separate views by members of the Commission regarding the determination and any recommendation referred to in paragraphs (1) and (2). **19 USC 2252(0)(2)(C)**
- (4) The results of its examination of factors other than imports that may be a cause of serious injury, or threat of serious injury, to a domestic industry required by section 103(b)(2)(13). **19 USC 2252(0)(2)(D)**
- (5) The findings with respect to imports from Canada required by section 102(d). **19 USC 2112 note**
- (6) The statement required by section 108(a)(6) concerning whether and to what extent its findings and recommendations apply to such an article when imported from Israel or from beneficiary Caribbean Basin or the Andean countries. **19 USC 2112 note
19 USC 2703(e)(2)
19 USC 3203(d)(2)**
- (7) In any proceeding in which the commissioners voting are equally divided on a determination under section 102, the Commission shall report to the President the determination of each group of commissioners. In any proceeding in which there is an affirmative determination of the Commission, or a determination of the Commission which the President may consider an affirmative determination under section 111(a), and a majority of the commissioners voting are unable to agree on a finding or recommendation described in section 108(a)(1), the Commission shall report to the President the remedy finding of each group of commissioners voting. **19 USC 1330(d)(3)**
- (8) A copy of the adjustment plan, if any, **19 USC 2252(0)(2)(E)**

submitted under section 104(c)(1).

(9) Commitments submitted, and information obtained, by the Commission regarding steps that firms and workers in the domestic industry are taking, or plan to take, to facilitate positive adjustment to import competition.

19 USC 2252(f)(2)(F)

(10) A description of--

19 USC 2252(f)(2)(G)

(A) the short- and long-term effects that implementation of the action recommended under section 108 is likely to have on the petitioning domestic industry, on other domestic industries, and on consumers, and

(B) the short- and long-term effects of not taking the recommended action on the petitioning domestic industry, its workers and the communities where production facilities of such industry are located, and on other domestic industries.

(c) Availability, publication of report.—The Commission, after submitting a report to the President under subsection (a), shall promptly make it available to the public (with the exception of the confidential information obtained under section 105(a) and any other information which the Commission determines to be confidential) and cause a summary thereof to be published in the Federal Register.

19 USC 2252(f)(3)

SEC. 110 Notification to and assistance from other agencies

(a) Transmission of copy of petition to Trade Representative.—Whenever a petition is filed under section 102(a), the Commission shall promptly transmit copies of the petition to the Office of the Trade Representative and other Federal agencies directly concerned.

19 USC 2252(a)(3)

(b) Expedited consideration of adjustment assistance petitions.—

19 USC 2252(g)

(1) If the Commission makes an affirmative determination under section 102(a), the Commission shall promptly notify the Secretary of Labor and the Secretary of Commerce of the determination.

(2) After receiving such notification--

(A) the Secretary of Labor shall give expedited consideration to petitions by workers in the domestic

industry for certification for eligibility to apply for adjustment assistance under part 2 of chapter II of title 19; and

(B) the Secretary of Commerce shall give expedited consideration to petitions by firms in the domestic industry for certification of eligibility to apply for adjustment assistance under part 3 of chapter II of title 19.

(c) Assistance from Secretary of Agriculture.— At the request of the Commission, the Secretary of Agriculture shall promptly provide to the Commission any relevant information that the Department of Agriculture may have for purposes of making determinations and findings under section 102(b).

19 USC 2252(d)(1)(D)

SEC. 111 Special rules with respect to divided CRIBMiSSWILMildillga

(a) When Commission is equally divided on injury.—For purposes of this subtitle, if the commissioners voting are equally divided in their determination under section 102, then the determination agreed upon by either group of commissioners may be considered by the President as the determination of the Commission.

19 USC 1330(d)(1)

(b) When Commission is divided on a remedy fording.—If under section 102 there is an affirmative determination of the Commission, or a determination of the Commission which the President may consider an affirmative determination under subsection (a), and a majority of the commissioners voting are unable to agree on a finding or recommendation described in section 108(a)(1) (hereafter in this subsection referred to as a "remedy finding"), then--

19 USC 1330(d)(2)

(1) if a plurality of not less than three commissioners so voting agree on a remedy finding, such remedy finding shall, for purposes of section 121, be treated as the remedy finding of the Commission, or

(2) if two groups, both of which include not less than 3 commissioners, each agree upon a remedy finding and the President reports under section 127 that--

(A) he is taking the action agreed upon by one such group, then the remedy finding agreed upon by the other group shall, for purposes of section 127, be treated as the remedy finding of the Commission, or

(B) he is taking action which differs from the action agreed upon by both such groups, or that he will not take any action, then the remedy finding agreed upon by either such group may be considered by the Congress as the remedy finding of the Commission and shall, for purposes of section 127, be treated as the remedy finding of the Commission.

(c) Congressional resolution.—In a case to which subsection (b)(2)(B) applies, for purposes of section 121, notwithstanding 19 U.S.C. 2192(a)(1)(A), the second blank space in the concurrent resolution described in such section 152 shall be filled with the appropriate date and the following: "The action which shall take effect under section 127(b) of * * * is the finding or recommendation agreed upon by Commissioners _____ and _____." The three blank spaces shall be filled with the names of the appropriate Commissioners.

19 USC 1330(d)(4)

SECS. 112-120 (RESERVED!)

CHAPTER 2: ACTION BY PRESIDENT**SEC. 121 Action by President after determination of import injury****(a) In general****19 USC 2251(a)
19 USC 2253(a)(1)**

(1) After receiving a report under section 109 containing an affirmative finding regarding serious injury, or the threat thereof, to a domestic industry, or a determination which the President considers to be an affirmative determination of the Commission under section 111(a) of Chapter 1 of this subtitle, the President shall take all appropriate and feasible action within his power which the President determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs.

(2) The action taken by the President under paragraph (1) shall be to such extent, and for such duration, subject to section 123(a), that the President determines to be appropriate and feasible under such paragraph.

(3) The interagency trade organization established under section 1872(a) of title 19 shall, with respect to each affirmative determination reported under section 109, make a recommendation to the President as to what action the President should take under paragraph (1).

(b) Perishable agricultural products.—After receiving a report from the Commission under section 108(b)(2) containing an affirmative preliminary determination, the President, if he considers provisional relief to be warranted and after taking into account the finding of the Commission under section 108(b)(1), shall proclaim such provisional relief that the President considers necessary to prevent or remedy the serious injury or threat thereof.

19 USC 2252(d)(1)(G)

(c) Critical circumstances.—After receiving a report from the Commission under section 108(c), the President shall, after taking into account the finding of the Commission under section 108(c), proclaim such provisional relief, if any, that the President considers appropriate to address the critical circumstances.

19 USC 2252(d)(2)(13)

(d) Imports from Canada.—

19 USC 2112 note

(1)(A) In determining whether to take action with respect to imports from Canada, the President shall determine whether imports from Canada of such article are substantial and contributing importantly to the serious injury or threat of serious injury found by the Commission.

(B) In determining the nature and extent of action to be taken under this section, the President shall exclude from such action imports from Canada if the President has made a negative determination under subparagraph (A) regarding imports from Canada.

(2)(A) In determining under paragraph (1) whether imports of an article from Canada are substantial, the President shall not normally consider imports from Canada in the range of 5 to 10 percent or less of total imports of such article to be substantial.

(B) For purposes of paragraph (1), the term "contributing importantly" means an important cause, but not necessarily the most important cause, of the serious injury or threat thereof caused by imports.

SEC. 122 Actions the President may take.—

19 USC 2253(a)(3)

(a) In general.—The President may, for purposes of taking action under section 121(a)--

(1) proclaim an increase in, or the imposition of, any duty on the imported article;

(2) proclaim a tariff-rate quota on the article;

(3) proclaim a modification or imposition of any quantitative restriction on the importation of the article into the United States;

(4) implement one or more appropriate adjustment measures, including the provision of trade adjustment assistance under part 2 of chapter II of title 19;

(5) 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 article;

(6) proclaim procedures necessary to allocate

among importers by the auction of import licenses quantities of the article that are permitted to be imported into the United States;

(7) initiate international negotiations to address the underlying cause of the increase in imports of the article or otherwise to alleviate the injury or threat thereof;

(8) submit to Congress legislative proposals to facilitate the efforts of the domestic industry to make a positive adjustment to import competition;

(9) take any other action which may be taken by the President under the authority of law and which the President considers appropriate and feasible for purposes of section 121(a); and

(10) take any combination of actions listed in paragraphs (1) through (10).

(b) Provisional relief in the case of perishable agricultural products or critical circumstances.—

(1) If provisional relief is proclaimed under section 121(b) or (c) in the form of an increase, or the imposition of, a duty, the President shall order the suspension of liquidation of all imported articles subject to the affirmative determination under section 102(b) or (c), as the case may be, that are entered, or withdrawn from warehouse for consumption, on or after the date of the determination.

19 USC 2252(d)(3)

(2)(A) Any provisional relief implemented under this subsection with respect to an imported article shall terminate on the day on which--

19 USC 2252(d)(4)

(i) if such relief was proclaimed under section 121(b), the Commission makes a negative determination under section 102 regarding injury or the threat thereof by imports of such article;

(ii) action described in section 122(a)(1) or (3) takes effect under section 121 with respect to such article;

(iii) a decision by the President not to take any action under section 121 with respect to such article becomes final; or

(iv) whenever the President determines that, because of changed circumstances, such relief is no longer warranted.

(B) Any suspension of liquidation ordered under

paragraph (1) with respect to an imported article shall terminate on the day on which provisional relief is terminated under subparagraph (A) with respect to the article.

(C) If an increase in, or the imposition of, a duty that is proclaimed under section 121 of this subtitle on an imported article is different from a duty increase or imposition that was proclaimed for such an article under this section, then the entry of any such article for which liquidation was suspended under paragraph (2) shall be liquidated at whichever of such rates of duty is lower.

(D) If provisional relief in the form of an increase in, or the imposition of, a duty is proclaimed under this section with respect to an imported article and neither a duty increase nor a duty imposition is proclaimed under section 121 regarding such article, the entry of any such article for which liquidation was suspended under paragraph (1) may be liquidated at the rate of duty that applied before provisional relief was provided.

SEC. 123 Limitations on actions

19 USC 2253(e)(1)-(5)

(a) Duration.—

(1) The duration of the period in which action taken under this section may be in effect shall not exceed 8 years.

(2) If the initial effective period for action taken under this section is less than 8 years, the President may extend the effective period once, but the aggregate of the initial period and the extension may not exceed 8 years.

(b) Cumulative impact.—Action may be taken under section 122(a)(1), (2), or (3) or under section 121(c) only to the extent the cumulative impact of such action does not exceed the amount necessary to prevent or remedy the serious injury.

(c) Tariff increase.—No action may be taken under this section which would increase a rate of duty to (or impose a rate) which is more than 50 percent ad valorem above the rate (if any) existing at the time the action is taken.

(d) Quantitative restriction.—Any action taken under this section proclaiming a quantitative

restriction shall permit the importation of a quantity or value of the article which is not less than the quantity or value of such article imported into the United States during the most recent period that is representative of imports of such article.

(e) Phase down of action.—To the extent feasible, an effective period of more than 3 years for an action described in section 122(a)(1), (2), or (3) shall be phased down during the period in which the action is taken, with the fast reduction taking effect no later than the close of the day which is 3 years after the day on which such action first takes effect.

(I) Special rules.—

(1) The suspension, pursuant to any action taken under this section, of--

19 USC 2112 note
19 USC 2253(e)(6)(A)
19 USC 2703(e)(3)
19 USC 3203(d)(3)

(A) headings 9802.00.60 or 9802.00.80 of the Harmonized Tariff Schedule of the United States;

(B) the designation of any article as an eligible article for purposes of chapters 1, 2, or 3 of subtitle VI of this title (relating to the Generalized System of Preferences or preferences for Caribbean Basin or Andean beneficiary countries); and

(C) the reduction or elimination of a duty in the trade agreement with Israel;

shall be treated as an increase in duty.

(2) No proclamation providing for a suspension referred to in paragraph (1) with respect to any article may be made by the President unless the Commission, in addition to making an affirmative determination under section 102(a), determines in the course of its investigation under section 102 that the serious injury, or threat thereof, substantially caused by imports to the domestic industry producing a like or directly competitive article results from, as the case may be--

19 USC 2112 note
19 USC 2253(e)(6)(13)
19 USC 2703(c)(4)
19 USC 3203(d)(4)

(A) the application of heading 9802.00.60 or heading 9802.00.80 of the Harmonized Tariff Schedule of the United States;

(B) the designation of the article as an eligible article for the purposes of subtitle VI of this title (relating to the Generalized System of Preferences or preferences for Caribbean Basin or Andean beneficiary countries);

or

(C) the reduction or elimination of any duty provided under any trade agreement provision entered into with Israel under 19 U.S.C. 2112(b)(1).

SEC. 124 Factors to be considered

(a) In general.—In determining what action to take under section 121 the President shall take into account--

19 USC 2253(a)(2)

(1) the recommendation and report of the Commission;

(2) the extent to which workers and firms in the domestic industry are--

(A) benefitting from adjustment assistance and other manpower programs, and

(B) engaged in worker retraining efforts;

(3) the efforts being made, or to be implemented, by the domestic industry (including the efforts included in any adjustment plan or commitment submitted to the Commission under section 104(c)(1) or 105) to make a positive adjustment to import competition;

(4) the probable effectiveness of the actions authorized under section 122 to facilitate positive adjustment to import competition;

(5) the short- and long-term economic and social costs of the actions authorized under section 122 relative to their short- and long-term economic and social benefits and other considerations relative to the position of the domestic industry in the United States economy;

(6) other factors related to the national economic interest of the United States, including, but not limited to--

(A) the economic and social costs which would be incurred by taxpayers, communities, and workers if import relief were not provided under this part,

(B) the effect of the implementation of actions under this section on consumers and on competition

in domestic markets for articles, and

(C) the impact on United States industries and firms as a result of international obligations regarding compensation;

(7) the extent to which there is diversion of foreign exports to the United States market by reason of foreign restraints;

(8) the potential for circumvention of any action taken under this section;

(9) the national security interests of the United States; and

(10) the factors required to be considered by the Commission under section 108(a)(5).

(b) Other considerations.—

19 USC 2254(d)

(1) Action by the President under this subtitle may be taken without regard to 19 U.S.C. 2136(a) (regarding reciprocal nondiscriminatory treatment of imports) but only after consideration of the relation of such actions to the international obligations of the United States.

(2) If the Commission treats as the domestic industry production located in a major geographic area of the United States under section 103(c)(3), then the President shall take into account the geographic concentration of domestic production and of imports in that area in taking any action authorized under paragraph (1).

SEC. 125 Time for taking effect of certain relief

(a) Time for taking action.—

19 USC 2253(a)(4)

(1) Except as provided for in paragraphs (2) and (3), the President shall take action under section 121(a) within 60 days after receiving a report from the Commission containing an affirmative determination under section 102(a) (or a determination under such section which he considers to be an affirmative determination by reason of section 111(a)).

(2) If a supplemental report is requested under section 126, the President shall take action under section 121(a) within 30 days after the supplemental report is received.

19 USC 2253(a)(4)

(3) The President shall take action under section 121(b) or (c), as the case may be, within 7 days after the day on which the report is received from the Commission

**19 USC 2252(d)(1)(G)
19 USC 2252(d)(2)(B)**

(A) under section 108(b)(2) containing an affirmative determination, or

(B) under section 108(c).

(b) Time at which action takes effect.—

19 USC 2253(d)

(1) Except as provided in paragraph (2), any action described in section 122(a)(1), (2), or (3), that is taken under section 122(a) shall take effect within 15 days after the day on which the President proclaims the action, unless the President announces, on the date he decides to take such action, his intention to negotiate one or more orderly marketing agreements in which case the action under section 122(a)(1), (2), or (3) shall be proclaimed and take effect within 90 days after the date of such decision.

(2) If the contingency set forth in section 127(b) occurs, the President shall, within 30 days after the date of the enactment of the joint resolution referred to in such subsection, proclaim the action recommended by the Commission under section 108(a)(1).

SEC. 126 Requests for additional information from Commission

19 USC 2253(a)(5)

The President may, within 15 days after the date on which he receives a report from the Commission containing an affirmative determination under section 102(a), request additional information from the Commission. The Commission shall, as soon as practicable but in no event more than 30 days after the date on which it receives the President's request, furnish additional information with respect to the industry in a supplemental report.

SEC. 127 Reports to Congress

19 USC 2253(b)

(a) In general.—

(1) On the day the President takes action under section 121(a), the President shall transmit to Congress a document describing the action and the reasons for taking the action. If the action taken by the President differs from the action required to be

recommended by the Commission under section 108(a)(1), the President shall state in detail the reasons for the difference.

(2) On the day on which the President decides that there is no appropriate and feasible action to take under section 121(a) with respect to a domestic industry, the President shall transmit to Congress a document that sets forth in detail the reasons for the decision.

(3) On the day on which the President takes any action under section 121(a) that is not reported under paragraph (1), the President shall transmit to Congress a document setting forth the action being taken and the reasons therefor.

(b) Implementation of action recommended by Commission.—If the President reports under subsection (a)(1) or (2) that--

- 19 USC 2253(c)

(1) the action taken under section 121(a) differs from the action recommended by the Commission under section 108(a)(1); or

(2) no action will be taken under section 121(a) with respect to the domestic industry;

the action recommended by the Commission shall take effect (as provided in section 125(b)(2) upon the enactment of a joint resolution described in 19 U.S.C. § 2192(a)(1)(A) within the 90-day period beginning on the date on which the document referred to in subsection (a)(1) or (2) is transmitted to the Congress.

SEC. 128 Orderly marketing and other
agreements

19 USC 2253(f)

(a) If the President takes action under this chapter other than the implementation of orderly marketing agreements, the President may, after such action takes effect, negotiate orderly marketing agreements with foreign countries, and may, after such agreements take effect, suspend or terminate, in whole or in part, any action previously taken.

(b) If an orderly marketing agreement implemented under section 121 is not effective, the President may,

consistent with the limitations contained in section 123, take additional action under section 121.

SEC. 129 Regulations

19 USC 2253(g)

(a) The President shall by regulation provide for the efficient and fair administration of all actions taken for the purpose of providing import relief under this chapter.

(b) In order to carry out an orderly marketing or other international agreement concluded under this chapter, the President may prescribe regulations governing the entry or withdrawal from warehouse of articles covered by such agreement. In addition, in order to carry out any orderly marketing agreement concluded under this chapter 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 may issue regulations governing the entry or withdrawal from warehouse of like articles which are the product of countries not parties to such agreement.

(c) Regulations prescribed under this section 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.

SECS. 130-140 IRESERVED1

**CHAPTER 3: MONITORING,
MODIFICATION, AND TERMINATION OF
ACTIONS**

**SEC. 141 Monitoring, modification, and
termination of action**

(a) Monitoring.—

19 USC 2254(a)

(1) So long as any action taken under section 121 remains in effect, the Commission shall monitor developments with respect to the domestic industry, including the progress and specific efforts made by workers and firms in the domestic industry to make a positive adjustment to import competition.

(2) The Commission shall submit a report on the results of the monitoring under paragraph (1) to the President and to the Congress not later than--

(A) the 2nd anniversary of the day on which the action under section 121 first took effect; and

(B) the last day of each 2-year period occurring after the 2-year period referred to in subparagraph (A).

(3) In the course of preparing each report under paragraph (2), the Commission shall hold a hearing at which interested persons shall be given a reasonable opportunity to be present, to produce evidence, and to be heard.

(4) Upon request of the President, the Commission shall advise the President of its judgment as to the probable economic effect on the industry concerned of any extension, reduction, modification, or termination of the action taken under section 121 which is under consideration.

**(b) Reduction, modification, and termination of
action.—**

19 USC 2254(b)

(1) Action taken under section 121 may be reduced, modified, or terminated by the President (but not before the President receives the report required under subsection (a)(2)(A)) if the President--

(A) After taking into account any report or advice submitted by the Commission under subsection (a) and after seeking the advice of the Secretary of Commerce and the Secretary of Labor,

determines, on the basis that either--

(i) the domestic industry has not made adequate efforts to make a positive adjustment to import competition, or

(ii) the effectiveness of the action taken under section 121 has been impaired by changed economic circumstances,

that changed circumstances warrant such reduction, or termination; or

(B) determines, after a majority of the representatives of the domestic industry submits to the President a petition requesting such reduction, modification, or termination on such basis, that the domestic industry has made a positive adjustment to import competition.

(2) Notwithstanding paragraph (1), the President is authorized to take such additional action under section 121 as may be necessary to eliminate any circumvention of any action previously taken under such section.

(c) Evaluation of effectiveness of action.—

19 USC 2254(c)

(1) After any action taken under section 121 has terminated, the Commission shall evaluate the effectiveness of the actions in facilitating positive adjustment by the domestic industry to import competition, consistent with the reasons set out by the President in the report submitted to the Congress under section 127(a).

(2) During the course of the evaluation conducted under paragraph (1), the Commission shall, after reasonable public notice, hold a hearing on the effectiveness of the action. All interested persons shall have the opportunity to attend such hearing and to present evidence or testimony at such hearing.

(3) A report on the evaluation made under paragraph (1) and the hearings held under paragraph (2) shall be submitted by the Commission to the President and to the Congress by no later than the 180th day after the day on which the actions taken under section 121 of this subtitle terminated.

SEC. 142 Special inquiries with respect to import surges from Canada

19 USC 2112 note

(a) **Determination by the President.**—If the President excludes imports from Canada from action taken under section 121, the President may, if the President thereafter determines that a surge in imports from Canada of the article that is the subject of the action is undermining the effectiveness of the action, take appropriate action under such chapter with respect to such imports from Canada to include such imports in such action.

(b) **Investigation and determination by the Commission.**—

(1) If, under section 121(d)(1)(13), the President excludes imports from Canada from action taken under section 121, any entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of an industry for which such action is being taken under section 121 may request the Commission to conduct an investigation of imports from Canada of the article that is the subject of such action.

(2) Upon receiving a request under paragraph (1), the Commission shall conduct an investigation to determine whether a surge in imports from Canada of the article that is the subject of action being taken under section 121 undermines the effectiveness of such action. The Commission shall submit the findings of such investigation to the President by no later than the date that is 30 days after the date on which such request is received by the Commission.

(c) **Definitions.**—For purposes of this section, the term "surge" means a significant increase in imports over the trend for a reasonable, recent base period for which data are available.

SECS. 143-150 'RESERVED'

**CHAPTER 4: INVESTIGATIONS BY
SECRETARY OF AGRICULTURE WITH
RESPECT TO PERISHABLE AGRICULTURAL
PRODUCTS**

**SEC. 151 Emergency relief with respect to
perishable products**

(a) Filing of petition with, determination by Secretary of Agriculture.—

19 USC 2703(f)
19 USC 3203(e)
19 USC 2112 note

(1) If a petition is filed with the United States International Trade Commission for an investigation and determination under section 102(b) regarding a perishable product and alleging injury from imports from beneficiary countries under chapter 2 or chapter 3 of subtitle VI of this title (regarding Caribbean Basin or Andean preference beneficiary countries, respectively), or injury from imports of a perishable product which is the subject of a reduction or elimination of a duty imposed by the United States under a trade agreement entered into with Israel under 19 U.S.C. 2112(b)(1), as the case may be, then the petition may also be filed with the Secretary of Agriculture with a request that emergency relief be granted pursuant to paragraph (3) of this subsection with respect to such article.

(2) Within 14 days after the filing of a petition under paragraph (1) of this subsection—

(A) if the Secretary of Agriculture has reason to believe that a perishable product from a beneficiary country or from Israel, as the case may be, is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a perishable product like or directly competitive with the imported product and that emergency action is warranted, he shall advise the President and recommend that the President take emergency action; or

(B) the Secretary of Agriculture shall publish a notice of his determination not to recommend the imposition of emergency action and so advise the petitioner.

(3) For purposes of this subsection, the term "perishable product" means--

(A) with respect to beneficiary countries under the Caribbean Basin or the Andean beneficiary

countries under chapters 2 or 3 of subtitle VI of this title or with respect to Israel--

(i) live plants and fresh cut flowers provided for in chapter 6 of the HTS; and

(ii) concentrated citrus fruit juice provided for in subheadings 2009.11.00, 2009.19.40, 2009.20.40, 2009.30.20, and 2009.30.60 of the HTS.

(B) with respect to Caribbean Basin or Andean beneficiary countries under chapters 2 or 3 of subtitle VI of this title--

(i) fresh or chilled vegetables provided for in heading 0701 through 0709 (except subheading 0709.52.00) and heading 0714 of the HTS;

(ii) fresh fruit provided for in subheadings 0804.20 through 0810.90 (except citrons of subheadings 0805.90.00, tamarinds and kiwi fruit of subheading 0810.90.20, and cashew apples, mameyes colorados, , soursops and sweetsops of subheading 0 10.90.40) of the HTS; or

(C) with respect to Israel--vegetables, edible nuts or fruit provided for in chapters 7 and 8, heading 1105, subheadings 1106.10.00 and 1106.30, heading 1202, subheadings 1214.90.00 and 1704.90.60, headings 2001 through 2008 (excluding subheadings 2001.90.20 and 2004.90.10) and subheading 2103.20.40 of the HTS.

(b) Action by the President

(1) Within 7 days after the President receives a recommendation from the Secretary of Agriculture to take emergency action pursuant to paragraph (2) of this section, he shall issue a proclamation withdrawing the duty-free treatment provided under chapter 2 or chapter 3 of subtitle VI of this title or reduction or elimination of duty provided to the perishable product under any trade provision entered into under section 102(b)(1) of the Trade Act of 1974, or publish a notice of his determination not to take emergency action.

(2) The emergency action provided by paragraph (1) of this subsection shall cease to apply--

(A) upon the taking of action under section 121 of this subtitle,

(B) on the day a determination by the President not to take action under section 127(a)(2) of this subtitle becomes final,

(C) in the event of a report of the Commission containing a negative finding, on the day the Commission's report is submitted to the President, or

(D) whenever the President determines that because of changed circumstances such relief is no longer warranted.

1. This provision would combine identical or nearly identical provisions in section 213 (f) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(f)), section 204(e) of the Andean Trade Preference Act (19 U.S.C. 3203(e), and section 404 of the Trade and Tariff Act of 1984 (19 U.S.C. 2112 note) which relate to Israel.

SUBTITLE II — BILATERAL SAFEGUARD ACTIONS

SEC. 201 Applicability [NEW]

**SEC. 202 Bilateral safeguard actions with respect to imports from Canada
[19 U.S.C. 2112 note]**

§EC. 201 Applicability

NEW

Applicability. This subtitle applies with respect to bilateral safeguard actions.

SEC. 202 Bilateral safeguard actions with respect to imports from Canada

19 USC 2112 note

(a) Investigations and determinations by Commission.—

(1)(A) Upon the filing of a petition under paragraph (3), the United States International Trade Commission (hereinafter Commission) shall promptly initiate an investigation to determine whether, as a result of a reduction or elimination of a duty provided for under the United States- Canada Free-Trade Agreement (hereinafter the Agreement), an article originating in Canada is being imported into the United States in such increased quantities, in absolute terms, and under such conditions, so that imports of such Canadian article, alone, constitute a substantial cause of serious injury to the domestic industry producing an article like, or directly competitive with, the imported article.

(B) No investigation may be initiated under paragraph (1)(A) with respect to any article for which import relief has been provided under this subsection.

(2) The provisions of section 103(a)(1) and (2), (b)(1), (c), and (d), other than subsection (b)(1)(B), and section 107(a) of subtitle I (regarding global safeguard actions) shall apply with respect to any investigation initiated under paragraph (1).

(3) A petition requesting action under this section for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry. The Commission shall transmit a copy of

any petition filed under this paragraph to the United States Trade Representative.

(4) If the determination made by the Commission under paragraph (1) with respect to imports of an article is affirmative, the Commission shall find and recommend to the President the amount of import relief that is necessary to remedy the injury found by the Commission in such affirmative determination, which shall be limited to that set forth in subsection (b)(2) of this section.

(5) By no later than the date that is 120 days after the date on which an investigation is initiated under paragraph (1), the Commission shall make a determination under paragraph (1) with respect to such investigation.

(6) By no later than the date that is 30 days after the date on which a determination is made under paragraph (1) with respect to an investigation, the Commission shall submit to the President a report which shall include--

(A) the determination and the basis therefor and any dissenting or separate views;

(B) a transcript of the hearing and any briefs which were submitted to the Commission in the course of the investigation; and

(C) any finding made under paragraph (4).

(7) Upon submitting a report to the President under paragraph (6), the Commission shall promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

(8) For purposes of this subsection—

(A) The provisions of sections 109(b)(5) and 111 of subtitle I shall be applied with respect to determinations and findings made under this paragraph as if such determinations and findings were made under section 102 of subtitle I.

(B) The determination of whether an article originates in Canada shall be made in accordance with 19 U.S.C. 2112 note (section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988), including any proclamations issued thereunder.

(b) Action by the President.—

(1)(A) The President shall provide relief from imports of the article originating in Canada that is the subject of such determination to the extent that, and for such time (not to exceed 3 years) as the President determines to be necessary to remedy the injury found by the Commission.

(B) The President is not required to provide import relief by reason of this paragraph if the President determines that the provision of such import relief is not in the national economic interest.

(2) The import relief that the President is authorized to provide by reason of this paragraph with respect to an article originating in Canada is limited to--

(A) the suspension of any further reductions provided for under the Agreement in the duty imposed on such article originating in Canada,

(B) an increase in the rate of duty imposed on such article originating in Canada to a level that does not exceed the lesser of--

(i) the most-favored-nation rate of duty that is imposed by the United States on such article from any other foreign country at the time such import relief is provided, or

(ii) the most-favored-nation rate of duty that is imposed by the United States on such article from any other foreign country on the day before the date on which the Agreement enters into force, or

(C) in the case of a duty applied on a seasonal basis to such article originating in Canada, an increase in the rate of duty imposed on such article originating in Canada to a level that does not exceed the most-favored-nation rate of duty imposed by the United States on such article originating in Canada for the corresponding season immediately prior to the date on which the Agreement enters into force.

(3) No import relief may be provided under this subsection after the date that is 10 years after the date on which the Agreement enters into force.

(4) The President shall provide relief under paragraph (1) by no later than the date that is 30 days after the date on which the President receives the report of the Commission containing an

affirmative determination under subsection (a)(1).

(5) For purposes of section 2133 of title 19 (regarding compensation authority), any import relief provided by the President under paragraph (1) shall be treated as action taken under chapter 2 of this subtitle.

(c) Petitions under other authorities.—Any entity that is representative of an industry may submit a petition for relief under subsection (a), under chapter 1 of subtitle I (global safeguard actions), or under both subsection (a) and such chapter at the same time. If petitions are submitted by such an entity under subsection (a) and such chapter at the same time, the Commission shall consider such petitions jointly.

**SUBTITLE III — MARKET DISRUPTION FROM
COMMUNIST COUNTRIES**

SEC. 301 Applicability [NEW]

SEC. 302 Investigation and determination by Commission
[19 U.S.C. 2252(a)(3), 2252(b)(4), 2252(c)(4),
2436(a)(1), 2436(a)(2), 2436(a)(3), 2436(a)(4),
2436(e)(1), 2436(e)(2)(A), 2436(e)(2)(B)]

SEC. 303 Action by President [19 U.S.C. 2253 note, 2436(b)]

SEC. 304 Emergency action by President [19 U.S.C. 2436(c)]

SEC. 305 Consultations [19 U.S.C. 2436(d)]

SEC. 301 Applicability

NEW

Applicability. This subtitle applies with respect to market disruption from Communist countries.

SEC. 302 Investigation and determination by Commission

(a) In general.—Upon the filing of a petition by an entity described in subsection (c)(1), upon request of the President or the United States Trade Representative, upon resolution of either the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate, or on its own motion, the United States International Trade Commission (hereinafter Commission) shall promptly make an investigation to determine, with respect to imports of an article which is the product of a Communist country, whether market disruption exists with respect to an article produced by a domestic industry.

19 USC 2436(a)(1)

(b) Definitions.—For purposes of this subtitle:

19 USC 2436(e)(1)

(1) The term "Communist country" means any country dominated or controlled by communism.

(2)(A) Market disruption exists within a domestic industry whenever imports of an article, like or directly competitive with an article produced by such domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry.

19 USC 2436(e)(2)(A)

(B) For purposes of subparagraph (A):

19 USC 2436(e)(2)(B)

(i) Imports of an article shall be considered to be increasing rapidly if there has been a significant increase in such imports (either actual or relative to domestic production) during a recent period of time.

(ii) The term "significant cause" refers to a cause which contributes significantly to the material injury of the domestic industry, but need not be equal to or greater than any other

cause.

(C) The Commission, in determining whether market disruption exists, 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 the merchandise on prices in the United States for like or directly competitive articles;

(iii) the impact of imports of such merchandise on domestic producers of like or directly competitive articles; and

(iv) evidence of disruptive pricing practices, or other efforts to unfairly manage trade patterns.

(D) For purposes of section (a), in determining the domestic industry producing an article like or directly competitive with an imported article, the Commission-

**19 USC 2436(a)(2)
19 USC 2252(c)(4)**

(i) to the extent information is available, shall, in the case of a domestic producer which also imports, treat as part of such domestic industry only its domestic production;

(ii) may, in the case of a domestic producer which produces more than one article, treat as *part* of such domestic industry only that portion or subdivision of the producer which produces the like or directly competitive article; and

(iii) may, in the case of one or more domestic producers which produce a like or directly competitive article in a major geographic area of the United States and whose production facilities in such area for such article constitute a substantial portion of the domestic industry in the United States and primarily serve the market in such area, and where the imports are concentrated in such area, treat as such domestic industry only that segment of the production located in such area.

(c) Petitions, transmittal to Trade Representative.—

**19 USC 2436(a)(1)
19 USC 2436(a)(2)
19 USC 2252(a)(3)**

(1) A petition requesting action under this subtitle may be filed with the Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry.

(2) Whenever a petition is filed under subsection (a), the Commission shall promptly transmit copies of the petition to the Office of the United States Trade Representative and other Federal agencies directly concerned.

(d) Public hearing.—In the course of any proceeding under this subsection, the Commission shall, after reasonable notice, hold public hearings and shall afford interested parties and

**19 USC 2436(a)(2)
19 USC 2252(b)(4)**

consumers an opportunity to be present, to present evidence, to comment on the adjustment plan, if any, submitted, and to be heard at such hearings.

(e) **Commission recommendation.**—If the Commission finds, as a result of its investigation, that market disruption exists with respect to an article produced by a domestic industry, it shall find the amount of the increase in, or imposition of, any duty or other import restriction on such article which is necessary to prevent or remedy such market disruption.

19 USC 2436(a)(3)

(f) **Report.**—

(1)(A) The Commission shall report to the President its determination with respect to each investigation under subsection (a) and the basis therefor and shall include in each report any dissenting or separate views and any finding under subsection (e).

19 USC 2436(a)(3)

(B) The Commission shall furnish to the President a transcript of the hearings and any briefs which may have been submitted in connection with each investigation.

(2) The report of the Commission shall be made at the earliest practicable time, but not later than 3 months after the date on which the petition is filed (or the date on which the request or resolution is received or the motion is adopted, as the case may be).

19 USC 2436(a)(4)

(3) Upon making such report to the President, the Commission shall also promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

19 USC 2436(a)(4)

SEC. 303 Action by President

(a) **In general.**—After receiving a report from the Commission under section 302(0 containing an affirmative finding of market disruption with respect to an article produced by a domestic industry, the President—

19 USC 2436(b)

19 USC 2252, 2253

(as of Aug. 22, 1988)

(1)(A) shall provide import relief for such industry pursuant to this section, unless he determines that provision of such relief is not in the national economic interest of the United States, and

(B) shall evaluate the extent to which adjustment assistance has been made available (or can be made available) under parts 2, 3, and 4 of subchapter II of chapter 12 of title 19 to the workers and firms in such industry and to the communities in which such workers and firms are located, and, after such evaluation, may direct the Secretary of Labor and

the Secretary of Commerce that expeditious consideration be given to the petitions for adjustment assistance; or

(2) If the Commission, under section 302(e), recommends the provision of adjustment assistance, the President shall direct the Secretaries of Labor and Commerce as described in paragraph (1)(B).

(3) Within 60 days (30 days in the case of a supplemental report under subsection (d)) after receiving a report from the Commission containing an affirmative finding under section 302(a) (or a finding under section 302(a) which he considers to be an affirmative finding, within the meaning of section 111 of subtitle I of this title, within such 60-day (or 30-day) period), the President shall--

(A) determine what method and amount of import relief he will provide, or determine that the provision of such relief is not in the national economic interest of the United States, and whether he will direct expeditious consideration of adjustment assistance petitions, and publish in the Federal Register that he has made such determination; or

(B) if such report recommends that provision of adjustment assistance, publish in the Federal Register his order to the Secretary of Labor and Secretary of Commerce for expeditious consideration of petitions.

(4) The President may take action under this section only with respect to imports from the country or countries with respect to which the affirmative determination was made.

(b) Factors to consider.—In determining whether to provide import relief and what method and amount of import relief he will provide pursuant to this section, the President shall take into account, in addition to such other considerations as he may deem relevant--

(1) information and advice from the Secretary of Labor on the extent to which workers in the industry have applied for, are receiving, or are likely to receive adjustment assistance under part 2 of subchapter II of chapter 12 of title 19 or benefits from other manpower programs;

(2) information and advice from the Secretary of Commerce on the extent to which firms in the industry have applied for, are receiving, or are likely to receive adjustment assistance under parts 3 and 4 of subchapter II of chapter 12 of title 19;

(3) the probable effectiveness of import relief as a means to promote adjustment, the efforts being made or to be implemented by the industry concerned to adjust to import competition, and other considerations relative to the position of the industry in the Nation's economy;

(4) the effect of import relief on consumers (including the price and availability of the imported article and the like or directly competitive article produced in the United States) and on competition in the domestic markets for such articles;

(5) the effect of import relief on the international economic interests of the United States;

(6) the impact on United States industries and firms as a consequence of any possible modification of duties or other import restrictions which may result from international obligations with respect to compensation;

(7) the geographic concentration of imported products marketed in the United States;

(8) the extent to which the United States market is the focal point for exports of such article by reason of restraints on exports of such article to, or on imports of such article into, third country markets; and

(9) the economic and social costs which would be incurred by taxpayers, communities, and workers, if import relief were or were not provided.

(c) Authority to request additional information.—The President may, within 15 days after the date on which he receives an affirmative finding of the Commission under section 302(a) with respect to an industry, request additional information from the Commission. The Commission shall, as soon as practicable but in no event more than 30 days after the date on which it receives the President's request, furnish additional information with respect to such industry in a supplemental report.

(d) Actions the President may take.—If the President determines to provide import relief under subsection (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 subsection (b) to prevent or remedy serious injury or the threat thereof to the industry in question and to 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.

(e) Reports to Congress.—

(1) On the day the President determines 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 302(e), 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.

(1) Implementation of action recommended by Commission.—

(1) If the President reports under subsection (e) that he is taking action which differs from the action recommended by the Commission under section 302(e), or that he will not provide import relief, the action recommended by the Commission shall take effect (as provided in paragraph (2)) upon enactment of a joint resolution described in section 2192(a)(1)(A) of title 19 within the 90-day period beginning on the date on which the document referred to in subsection (b) is transmitted to the Congress.

(2) If the contingency set forth in paragraph (1) occurs, the President shall (within 30 days after the enactment of the joint resolution referred to in paragraph (1)) proclaim the increase in, or imposition of, any duty or other import restriction on the article which was recommended by the Commission under section 302(d).

(g) Limitations on actions.—

(1) No proclamation pursuant to subsection (d) or (f) shall

be made increasing a rate of duty to (or imposing) a rate which is more than 50 percent ad valorem above the rate (if any) existing at the time of the proclamation.

(2) Any quantitative restriction proclaimed pursuant to subsection (d) or (f) and any orderly marketing agreement negotiated pursuant to subsection (d) shall permit the importation of a quantity or value of the article which is not less than the quantity or value of such article imported into the United States during the most recent period which the President determines is representative of imports of such article.

(h) Effective date; orderly marketing agreements.—

(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 (d)(4) or (5) in which case import relief shall be proclaimed and take effect within 60 days after the import relief determination date.

(2) If the President provides import relief under subsection (d)(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 agreement under subsection (d)(4) or (5) and such agreement does not continue to be effective, he may, consistent with the limitations contained in subsection (k), provide import relief under subsection (d).

(4) For purposes of this subsection, the term "import relief determination date" means the date of the President's determination under section 303(a).

(i) Special rules.—

(1) For purposes of subsections (d) and (f), the suspension of subheading 9802.00-60 or subheading 9802.00.80 of the Harmonized Tariff Schedule with respect to an article shall be treated as an increase in duty.

(2) For purposes of subsections (d) and (f), the suspension of the designation of any article as an eligible article for purposes of chapter 1 of subtitle VI of this title (regarding the Generalized System of Preferences) shall be treated as an increase in duty.

(3) No proclamation providing for a suspension referred to in paragraph (1) with respect to any article shall be made under subsection (d) or (f) unless the Commission, in addition to

making an affirmative determination with respect to such article under section 302(a), determines in the course of its investigation under section 302(a) that the market disruption with respect to an article produced by a domestic industry results from the application of subheading 9802.00-60 or subheading 9802.00.80.

(4) No proclamation which provides solely for a suspension referred to in paragraph (2) with respect to any article shall be made under subsection (d) or (f) unless the Commission, in addition to making an affirmative determination with respect to such article under section 302(a), determines in the course of its investigation under section 302(b) that the market disruption with respect to a article produced by a domestic industry results from the designation of the article as an eligible article for the purposes of chapter 2 of subtitle VI of this title.

(i) Authority to issue regulations.—

(1) The President shall by regulations provide for the efficient and fair administration of any restriction proclaimed pursuant to this section.

(2) In order to carry out an agreement concluded under subsection (d)(4), (d)(5), (h)(2), or (h)(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 (d)(4), (d)(5), (h)(2), or (h)(3) 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 withdraw 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.

(k) Reduction, termination, or extension of relief.—

(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 1981 or 1982 of title 19 may be extended by the President, at a level of relief no greater than the level in effect immediately before such extension, for one period of not more than 3 years if the President determines, after taking into account the advice received from the Commission under subsection (1)(2) or (1)(3) and after taking into account the considerations described in subsection (b), 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 (1)(2) or (1)(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 (1), the import relief provided in the case of an orderly marketing agreement shall be the level of relief contemplated by such agreement.

(1) Commission monitoring and advice.—

(1) So long as any import relief provided pursuant to this section or section 1981 or 1982 of title 19 remains in effect, the Commission shall keep under review developments with respect to the industry concerned (including the progress and specific efforts made by the firms in the industry concerned to adjust to import competition) and upon request of the President shall make reports to the President concerning such developments.

(2) Upon request of the President or upon its own motion, the Commission shall advise the President of its judgment as to the probable economic effect on the industry concerned of the extension, reduction, or termination of the import relief provided pursuant to this section.

(3) Upon petition on behalf of the industry concerned, filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date any import relief provided pursuant to this section or section 1981 or 1982 of title 19 is to terminate by reason of the expiration of the initial period therefor, the Commission shall advise the President of its judgment as to the probable economic effect on such industry of such termination.

(4) In advising the President under paragraph (2) or (3) as to the probable economic effect on the industry concerned, the

Commission shall take into account all economic factors which it considers relevant, including the considerations set forth in subsection (b) and the progress and specific efforts made by the industry concerned to adjust to import competition.

(5) Advice by the Commission under paragraph (2) or (3) shall be given on the basis of an investigation during the course of which the Commission shall hold a hearing at which interested persons shall be given a reasonable opportunity to be present, to produce evidence, and to be heard.

(m) New investigations; other considerations.—

(1) No investigation for the purposes of section 301 shall be made with respect to an article which has received import relief under this section unless 2 years have elapsed since the last day on which import relief was provided with respect to such article pursuant to this section.

(2) Actions by the President pursuant to this section may be taken without regard to the provisions of section 2136(a) of title 19 (regarding reciprocal nondiscriminatory treatment) but only after consideration of the relation of such actions to the international obligations of the United States.

(3) If the Commission treats as the domestic industry production located in a major geographic area of the United States under section 302(b)(2)(D)(iii), then the President shall take into account the geographic concentration of domestic production and of imports in that area in providing import relief, if any, which may include actions authorized under paragraph (2).

SEC. 304 Emergency action by President

19 USC 2436(c)

(a) If, at any time, the President finds that there are reasonable grounds to believe, with respect to imports of an article which is the product of a Communist country, that market disruption exists with respect to an article produced by a domestic industry, he shall request the Commission to initiate an investigation under section 302. If the President further finds that emergency action is necessary, he may take action under section 303 as if an affirmative determination of the Commission had been made under section 302.

(b) Any action taken by the President under subsection (a) shall cease to apply (1) if a negative determination is made by the Commission under subsection (a) with respect to imports of such article, on the day on which the Commission's report of such determination is submitted to the President, or (2) if an affirmative determination is made by the Commission under section 302(a) with respect to imports of such article, on the day on which the action taken by the President pursuant to such determination becomes effective.

SEC. 305 Consultations

19 USC 2436(d)

(a) A petition may be filed with the President by an entity described in section 302(a) requesting the President to initiate consultations provided for by the safeguard arrangements of any agreement entered into under section 2435 of title 19 with respect to imports of an article which is the product of the country which is the other party to such agreement.

(b) If the President determines that there are reasonable grounds to believe, with respect to imports of such article, that market disruption exists with respect to an article produced by a domestic industry, he shall initiate consultations with such country with respect to such imports.

SUBTITLE IV — SAFEGUARDING NATIONAL SECURITY

- SEC. 401 Applicability [NEW]
 SEC. 402 Actions Under Trade Agreement
 Authority [19 U.S.C. 1862(a)]
 SEC. 403 Investigations and Actions to Restrict
 Imports [19 U.S.C. 1862(b)-(f)]
 SEC. 404 Import Sanctions for Export Violations
 [19 U.S.C. 1864]

SEC. 401 Applicability

Applicability. This subtitle applies with respect to safeguarding national security.

SEC. 402 Actions under trade agreement authority

19 USC 1862(a)

No action shall be taken pursuant to section 1821(a) of title 19 or pursuant to section 1351 of title 19 (which concern the President's authority to enter into trade agreements) to decrease or eliminate the duty or other import restriction on any article if the President determines that such reduction or elimination would threaten to impair the national security.

SEC. 403 Investigations and actions to restrict imports

(a) Investigations and determinations by the Secretary.—

19 USC 1862(b)

(1)(A) Upon request of the head of any department or agency, upon application of an interested party, or upon his own motion, the Secretary of Commerce (hereafter in this section referred to as the "Secretary") shall immediately initiate an appropriate investigation to determine the effects on the national security of imports of the article which is the subject of such request, application, or motion.

(B) The Secretary shall immediately provide notice to the Secretary of Defense of any investigation initiated under this section.

(2)(A) In the course of any investigation conducted under this subsection, the Secretary shall--

(i) consult with the Secretary of Defense regarding the methodological and policy questions raised in any investigation initiated under paragraph (1),

(ii) seek information and advice from, and consult with, appropriate officers of the United States, and

(iii) if it is appropriate and after reasonable notice, hold public hearings or otherwise afford interested parties an opportunity to present information and advice relevant to such investigation.

(B) Upon the request of the Secretary, the Secretary of Defense shall provide the Secretary an assessment of the defense requirements of any article that is the subject of an investigation conducted under this section.

(3)(A) By no later than the date that is 270 days after the date on which an investigation is initiated under paragraph (1) with respect to any article, the Secretary shall submit to the President a report on the findings of such investigation with respect to the effect of the importation of such article in such quantities or under such circumstances upon the national security and, based on such findings, the recommendations of the Secretary for action or inaction under this section. If the Secretary finds that such article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, the Secretary shall so advise the President in such report.

(B) Any portion of the report submitted by the Secretary under subparagraph (A) which does not contain classified information or proprietary information shall be published in the Federal Register.

(4) The Secretary shall prescribe such procedural regulations as may be necessary to carry out the provisions of this subsection.

(b) Determinations and actions by the President.—

19 USC 1862(c)

(1)(A) Within 90 days after receiving a report submitted under subsection (a)(3)(A) of this section in which the Secretary finds that an article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, the President shall--

(i) determine whether the President concurs with the finding of the Secretary, and

(ii) if the President concurs, determine the nature and duration of the action that, in the judgment of the President, must be taken to adjust the imports of the article and its derivatives so that such imports will not threaten to impair the national security.

(B) If the President determines under subparagraph (A) to take action to adjust imports of an article and its derivatives, the President shall implement that action by no later than the date that is 15 days after the day on which the President determines to take action under subparagraph (A).

(2) By no later than the date that is 30 days after the date on which the President makes any determinations under paragraph (1), the President shall submit to the Congress a written statement of the reasons why the President has decided to take action, or refused to take action, under paragraph (1). Such statement shall be included in the report published under subsection (d).

(3)(A) If--

(i) the action taken by the President under paragraph (1) is the negotiation of an agreement which limits or restricts the importation into, or the exportation to, the United States of the article that threatens to impair national security, and

(ii) either--

(I) no such agreement is entered into before the date that is 180 days after the date on which the President make the determination under paragraph (1)(A) to take such action, or

(II) such an agreement that has been entered into is not being carried out or is ineffective in eliminating the threat to the national security posed by imports of such article,

the President shall take such other actions as the President deems necessary to adjust the imports of such article so that such imports will not threaten to impair the national security. The President shall publish in the Federal Register notice of any additional actions being taken under this section by reason of this subparagraph.

(B)

(i) clauses (i) and (ii) of subparagraph (A) apply, and

(ii) the President determines not to take any additional actions under this subsection,

the President shall publish in the Federal Register such determination and the reasons on which such determination is based.

(c) Factors to be considered.—

19 USC 1862(d)

(1) For the purposes of this section, the Secretary and the President shall, in the light of the requirements of national security and without excluding other relevant factors, give consideration to domestic production needed for projected national defense requirements, the capacity of domestic industries to meet such requirements, existing and anticipated availabilities of the human resources, products, raw materials, and other supplies and services essential to the national defense, the requirements of growth of such industries and such supplies and services including the investment, exploration, and development necessary to assure such growth, and the importation of goods in terms of their quantities, availabilities, character, and use of those affect such industries and the capacity of the United States to meet national security requirements.

(2) In the administration of this section, the Secretary and the President shall further recognize the close relation of the economic welfare of the Nation to our national security, and shall take into consideration the impact of foreign competition on the economic welfare of individual domestic industries; and any substantial unemployment, decrease in revenues of government, loss of skills or investment, or other serious effects resulting from the displacement of any domestic products by excessive imports shall be considered, without excluding other factors, in determining whether such weakening of our internal economy may impair the national security.

(d) Reports to the Congress.—

19 USC 1862(e)

(1) Upon the disposition of each request, application, or motion under subsection (a), the Secretary shall submit to the Congress, and publish in the Federal Register, a report on such disposition.

(2) The President shall submit to the Congress an annual report on the operation of the provisions of this section.

(e) Congressional disapproval resolutions.—

19 USC 1862(f)

(1) An action taken by the President under subsection (b) of this section to adjust imports of petroleum or petroleum products shall cease to have force and effect upon the enactment of a disapproval resolution, provided for in paragraph (2), relating to that action.

(2)(A) This paragraph is enacted by the Congress--

(i) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedures to be followed in that House in the case of disapproval resolutions and such procedures supersede other rules only to the extent that they are inconsistent therewith; and

(ii) with the full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as any other rule of that House.

(B) For purposes of this subsection, the term "disapproval resolution" means only a joint resolution of either House of Congress the matter after the resolving clause of which is as follows: "That the Congress disapproves the action taken under section 403 of subtitle IV of title _____ with respect to petroleum imports under _____ dated _____ the first blank space being _____ with the number of the proclamation, Executive order, or other Executive act issued under the authority of subsection (c) of this section for purposes of adjusting imports of petroleum or petroleum products and the second blank being filled with the appropriate date.

(C)(i) All disapproval resolutions introduced in the House of Representatives shall be referred to the Committee on Ways and Means and all disapproval resolutions introduced in the Senate shall be referred to the Committee on Finance.

(ii) No amendment to a disapproval resolution shall be in order in either the House of Representatives or the Senate, and no motion to

suspend the application of this clause shall be in order in either House nor shall it be in order in either House for the Presiding Officer to entertain a request to suspend the application of this clause by unanimous consent.

SEC. 404 Import sanctions for export violations

19 USC 1864

Any person who violates any national security export control imposed under section 2404 of the appendix to title 50, or any regulation, order, or license issued under that section, may be subject to such controls on the importing of goods or technology into the United States as the President may prescribe.

**SUBTITLE V — PROVISIONS CONCERNING
AGRICULTURAL PRODUCTS**

SEC. 501 Applicability [NEW]

**SEC. 502 Authority to Enter Into Agreements to Restrict
Imports of Agricultural and Textile Products
[7 U.S.C. 1854]**

**SEC. 503 Restrictions on Imports that Interfere With
Programs Administered by the Department of
Agriculture [7 U.S.C. 624]**

SEC. 501 Applicability

Applicability. This subtitle applies with respect to agricultural products.

**SEC. 502 Authority to enter into agreements to restrict
imports of agricultural and textile products**

7 USC 1854

The President may, whenever he determines such action appropriate, negotiate with representatives of foreign governments in an effort to obtain agreements limiting the export from such countries and the importation into the United States of any agricultural commodity or product manufactured therefrom or textiles or textile products, and the President is authorized to issue regulations governing the entry or withdrawal from warehouse of any such commodity, product, textiles, or textile products to carry out any such agreement. In addition, if a multilateral agreement has been or shall be concluded under the authority of this section among countries accounting for a significant part of world trade in the articles with respect to which the agreement was concluded, the President may also issue, in order to carry out such an agreement, regulations governing the entry or withdrawal from warehouse of the same articles which are the products of countries not parties to the agreement. Nothing herein shall affect the authority provided under section 502 of this subtitle.

**SEC. 503 Restrictions on imports that interfere with
prorrams administered by the Department of Agriculture**

7 USC 624

(a) Investigations and determinations.—Whenever the Secretary of Agriculture has reason to believe that any article or articles are being or are practically certain to be imported into the United States under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, any program or operation undertaken under this chapter or the Soil Conservation and Domestic Allotment Act, as amended, or 7 U.S.C. 612c, or any loan,

purchase, or other program or operation undertaken by the Department of Agriculture, or any agency operating under its direction, with respect to any agricultural commodity or product thereof, or to reduce substantially the amount of any product processed in the United States from any agricultural commodity or product thereof with respect to which any such program or operation is being undertaken, he shall so advise the President, and, if the President agrees that there is reason for such belief, the President shall cause an immediate investigation to be made by the United States International Trade Commission, which shall give precedence to investigations under this section to determine such facts. Such investigation shall be made after due notice and opportunity for hearing to interested parties, and shall be conducted subject to such regulations as the President shall specify.

(b) Actions the President may take.—

(1) If, on the basis of such investigation and report to him of findings and recommendations made in connection therewith, the President finds the existence of such facts, he shall by proclamation impose such fees not in excess of 50 per centum ad valorem or such quantitative limitations on any article or articles which may be entered, or withdrawn from warehouse, for consumption as he finds and declares shown by such investigation to be necessary in order that the entry of such article or articles will not render or tend to render ineffective, or materially interfere with, any program or operation referred to in subsection (a) of this section, or reduce substantially the amount of any product processed in the United States from any such agricultural commodity or product thereof with respect to which any such program or operation is being undertaken, provided that--

(A) No proclamation under this section shall impose any limitation on the total quantity of any article or articles which may be entered, or withdrawn from warehouse, for consumption which reduces such permissible total quantity to proportionately less than 50 per centum of the total quantity of such article or articles which was entered, or withdrawn from warehouse, for consumption during a representative period as determined by the President and

(B) In designating any article or articles, the President may describe them by physical qualities, value, use, or upon such other bases as he shall determine.

(2) In any case where the Secretary of Agriculture determines and reports to the President with regard to any article or articles that a condition exists requiring emergency treatment, the President may take immediate action under this section without awaiting the recommendations of the

International Trade Commission, such action to continue in effect pending the report and recommendations of the International Trade Commission and action thereon by the President.

(c) Effective date, treatment of fees.—The fees and limitations imposed by the President by proclamation under this section and any revocation, suspension, or modification thereof, shall become effective on such date as shall be therein specified, and such fees shall be treated for administrative purposes and for the purposes of 7 U.S.C. 612c, as duties imposed by the Tariff Act of 1930, but such fees shall not be considered as duties for the purpose of granting any preferential concession under any international obligation of the United States.

(d) Suspension, termination, or modification.—After investigation, report, finding, and declaration in the manner provided in the case of a proclamation issued pursuant to subsection (b) of this section, any proclamation or provision of such proclamation may be suspended or terminated by the President whenever he finds and proclaims that the circumstances requiring the proclamation or provision thereof no longer exist or may be modified by the President whenever he finds and proclaims that changed circumstances require such modification to carry out the purposes of this section.

(e) Finality of decision.—Any decision of the President as to facts under this section shall be final

(f) Effect of international agreements.—No trade agreement or other international agreement heretofore or hereafter entered into by the United States shall be applied in a manner inconsistent with the requirements of this section; except that the President may, pursuant to articles 705.5 and 707 of the United States-Canada Free-Trade Agreement, exempt products of Canada from any import restriction imposed under this section.

- SEC. 601** Applicability [NEW]
SEC. 602 Definitions [19 U.S.C. 2462(a)(4), 2702(a)(1),
 2702(b)(7), 3202(a)(2), 3202(a)(3)]

CHAPTER 1: GENERALIZED SYSTEM OF PREFERENCES

- SEC. 611** Authority to extend preferences [19 U.S.C. 2461]
SEC. 612 Countries eligible for designation
 [19 U.S.C. 2462, 2264(a), 2464(b)]
SEC. 613 Articles eligible for duty-free treatment
 [19 U.S.C. 2463, 2464(a), 2464(c), 2464(d),
 2464(e), 2464(f), 2464(g)]
SEC. 614 Reports to Congress [19 U.S.C. 2464(a)(2),
 2464(c)(2), 2465(b), 2465(c)]
SEC. 615 Agricultural exports of beneficiary developing
 countries [19 U.S.C. 2466]
SEC. 616 Date of termination [19 U.S.C. 2465(a)]

CHAPTER 2: TRADE PREFERENCES FOR CARIBBEAN BASIN COUNTRIES

- SEC. 621** Authority to grant duty-free treatment
 [19 U.S.C. 2701, 2703(g)]
SEC. 622 Countries eligible for determination
 [19 U.S.C. 2702(a), 2702(b), 2702(c), 2702(e)]
SEC. 623 Articles eligible for duty-free treatment
 [19 U.S.C. 2702(e), 2703 (except (h))]
SEC. 624 Duty reductions for certain articles
 [19 U.S.C. 2703(h)]
SEC. 625 Reports by the President [19 U.S.C. 2702(0)]
SEC. 626 Commission reports on impact of this chapter
 [19 U.S.C. 2704]
SEC. 627 Impact study by Secretary of Labor [19 U.S.C. 2705]
SEC. 628 Effective date and termination of duty-free
 treatment [19 U.S.C. 2706]

CHAPTER 3: TRADE PREFERENCES FOR ANDEAN COUNTRIES

- SEC. 631** Authority to grant duty-free treatment
 [19 U.S.C. 3201, 3203(0)]
SEC. 632 Countries eligible for designation
 [19 U.S.C. 3202 (except (0))]
SEC. 633 Articles eligible for duty-free treatment
 [19 U.S.C. 3203 (except (c))]
SEC. 634 Duty reductions for certain articles
 [19 U.S.C. 3203(c)]
SEC. 635 Reports by the President; draft legislation
 [19 U.S.C. 3202(1), 3203(a)]
SEC. 636 Commission reports on impact of this chapter
 [19 U.S.C. 3204]
SEC. 637 Impact study by Secretary of Labor [19 U.S.C. 3205]
SEC. 638 Effective date and termination of duty-free
 treatment [19 U.S.C. 3206]

SEC. 601 Applicability

NEW

Applicability. This subtitle applies with respect to trade preferences provided to developing countries under the Generalized System of Preferences and to certain Caribbean Basin and Andean countries.

SEC. 602 Definitions

For purposes of this subtitle--

(1) The term "entered" means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

19 USC 2702(a)(1)(B)
19 USC 3202(a)(2)

(2) The term "HTS" means the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

19 USC 2702(a)(1)(C)
19 USC 3202(a)(3)

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

NEW

(4) The term "internationally recognized worker rights" includes--

19 USC 2462(a)(4)
ref. 19 USC 2702(b)(7)
ref. 19 USC 3202(c)(7)

(A) the right of association;

(B) the right to organize and bargain collectively;

(C) a prohibition on the use of any form of forced or compulsory labor;

(D) a minimum age for the employment of children; and

(E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

CHAPTER 1: GENERALIZED SYSTEM OF PREFERENCES**SEC. 611 Authority to extend preferences**

19 USC 2461

The President may provide duty-free treatment for any eligible article from any beneficiary developing country in accordance with the provisions of this chapter. In taking any such action, the President shall have due regard for—

(1) the effect such action will have on furthering the economic development of developing countries through the expansion of their exports;

(2) the extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized references with respect to imports of products of such countries;

(3) the anticipated impact of such action on United States producers of like or directly competitive products; and

(4) the extent of the beneficiary developing country's competitiveness with respect to eligible articles.

SEC. 612 Countries eligible for designation

(a) Dermitions.—For purposes of this chapter--

(1) The term "beneficiary developing country" means any country with respect to which there is in effect an Executive order or Presidential proclamation by the President designating such country as a beneficiary country for purposes of this chapter; and

19 USC 2462(a)(1)

(2) 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, or 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 or Presidential proclamation provide that all members of such association other than members which are barred from designation under subsection (c) of this section shall be treated as one country for purposes of this chapter.

19 USC 2462(a)(3)

(b) Factors affecting country designation.--In determining whether to designate any country a beneficiary developing country under this chapter, the President shall take into account--

19 USC 2462(c)

(1) an expression by such country of its desire to be so designated;

(2) the level of economic development of such country, including its per capita gross national product, the living standards of its inhabitants, and any other economic factors which he deems appropriate;

(3) whether or not the other major developed countries are extending generalized preferential tariff treatment to such country;

(4) the extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices;

(5) the extent to which such country is providing adequate and effective means under its laws for foreign nationals to secure, to exercise, and to enforce exclusive rights in intellectual property, including patents, trademarks, and copyrights;

(6) the extent to which such country has taken action to--

(A) reduce trade distorting investment practices and policies (including export performance requirements); and

(B) reduce or eliminate barriers to trade in services; and

(7) whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights.

(c) Countries ineligible for country designation.—

19 USC 2462(b)

(1) No designation shall be made under this section with respect to any of the following:

Australia
Austria
Canada
European Economic Community member states
Finland
Iceland
Japan
Monaco
New Zealand
Norway
Republic of South Africa
Sweden
Switzerland

(2) The President shall not designate any country a beneficiary developing country under this section--

(A) 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; 19 USC 2462(b)(1)

(B) 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; except that the President may exempt from the application of this paragraph-- 19 USC 2462(b)(2)

(i) any country during the period during which such country (i) 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 2118 of title 19 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 (ii) is not in violation of such agreement by action denying the United States such fair and equitable access; and 19 USC 2462(d)(1)

(ii) any country that enters into a bilateral product-specific trade agreement with the United States under section 2111 or 2112 of title 19 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 or petroleum and petroleum products to the United States; 19 USC 2462(d)(2)

(C) if such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce, unless the President has received assurances satisfactory to him that such preferential treatment will be eliminated before January 1, 1976, or that action will be taken before January 1, 1976, to assure that there will be no such significant adverse effect, and he reports those assurances to the Congress; 19 USC 2462(b)(3)

(D) if such country-- 19 USC 2462(b)(4)

(i) has nationalized, expropriated, or otherwise seized ownership or control of property, including patents, trademarks, or copyrights, owned by a United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens,

(ii) has taken steps to repudiate or nullify an existing contract or agreement with a United States citizen or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property, including patents, trademarks, or copyrights, so owned, or

(iii) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property, including patents, trademarks, or copyrights, so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property,

unless--

(iv) the President determines that--

(I) prompt, adequate and effective compensation has been or is being made to such citizen, corporation, partnership, or association,

(II) good faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or such country is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or

(III) a dispute involving such citizen, corporation, partnership, or association over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and promptly furnishes a copy of such determination to the Senate and House of Representatives;

(E) 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, 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;

19 USC 2462(b)(5)

(F) if such country aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism; and

19 USC 2462(b)(6)

(G) if such country has not taken or is not taking steps to afford internationally recognized worker rights (as defined in section 602(4) of this subtitle) to workers in the country (including any designated zone in that country).

19 USC 2462(b)(7)

Subparagraphs (D), (E), (F), and (G) shall not prevent the designation of any country as a beneficiary developing country under this section if the President determines that such designation will be in the national economic interest of the United States and reports such determination to the Congress with his reasons therefor.

(d) Withdrawal, suspension, or limitation of country designation.—

(1) The President may withdraw, suspend, or limit the application of the duty-free treatment accorded under section 611 of this chapter with respect to any country. In taking any action under this subsection, the President shall consider the factors set forth in sections 611 and 612(b) of this chapter.

19 USC 2464(a)(1)

(2) The President shall, after complying with the requirements of paragraph (3) of this subsection, withdraw or suspend the designation of any country as a beneficiary developing country if, after such designation, he determines that as the result of changed circumstances such country would be barred from designation as a beneficiary developing country under section 612(c) of this chapter. Such country shall cease to be a beneficiary developing country on the day on which the President issues an Executive order or Presidential proclamation revoking his designation of such country under subsection (a) of this section.

19 USC 2464(b)

(e) Notification by the President of designation, termination of designation

(1) Before the President designates any country as a beneficiary country for purposes of this chapter, 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.

19 USC 2462(a)(1)

(2) If the President has designated any country as a beneficiary developing country for purposes of this chapter, he shall not terminate such designation (either by issuing an Executive order or Presidential proclamation for that purpose or by issuing an Executive order or Presidential proclamation 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.

19 USC 2462(a)(2)

SEC. 613 Articles eligible for duty-free treatment

(a) In general.--

(1) The President shall designate those articles the President considers appropriate to be eligible articles for purposes of this chapter by Executive order or Presidential proclamation after receiving the advice of the Commission in accordance with subsection (e)(1) of this section.

19 USC 2463(a)

(2) The duty-free treatment provided under section 611 of this chapter shall apply to any eligible article which is the growth, product, or manufacture of a beneficiary developing country if--

19 USC 2463(b)(1)

(A) that article is imported directly from a beneficiary developing country into the customs territory of the United States; and

(B) the sum of

(i) 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 612(a)(2) of this chapter, plus

(ii) 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.

(3) The Secretary of the Treasury, after consulting with the United States Trade Representative, shall prescribe such regulations as may be necessary to carry out this subsection, including, but not limited to, regulations providing that, in order to be eligible for duty-free treatment under this chapter, an article must be wholly the growth, product, or manufacture of a beneficiary developing country, or must be a new or different article of commerce which has been grown, produced, or manufactured in the beneficiary developing country; but no article or material of a beneficiary developing country shall be eligible for such treatment by virtue of having merely undergone--

19 USC 2463(b)(2)

(A) simple combining or packaging operations, or

(B) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

(b) Articles that may not be designated as eligible articles.—

19 USC 2463(c)

(1) The President may not designate any article as an eligible article under subsection (a) of this section if such article is within one of the following categories of import-sensitive articles--

(A) textile and apparel articles which are subject to textile agreements,

(B) watches, except those watches entered after June 30, 1989, that the President specifically determines, after public notice and comment, will not cause material injury to watch or watch band, strap, or bracelet manufacturing and assembly operations in the United States or the United States insular possessions,

(C) import-sensitive electronic articles,

(13) import-sensitive steel articles,

(E) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of this chapter on April 1, 1984,

(F) import-sensitive semimanufactured and manufactured glass products, and

(G) any other articles which the President determines to be import-sensitive in the context of the Generalized System of Preferences.

(2) No article shall be an eligible article for purposes of this chapter for any period during which such article is the subject of any action proclaimed pursuant to chapter 2 of subtitle I of this title or section 401 of subtitle IV of this title.

(c) Withdrawal, suspension, or limitation of duty-free treatment; competitive need limitation.—

(1) In general.—The President may withdraw, suspend, or limit the application of the duty-free treatment accorded under section 611 of this chapter with respect to any article; except that no rate of duty may be established in respect of any article pursuant to this section other than the rate which would apply but for this chapter. In taking any action under this subsection,

19 USC 2464(a)(1)

the President shall consider the factors set forth in sections 611 and 612(b) of this chapter.

(2) Competitive need limitation.--

19 USC 2464(c)(1)

(A) The President shall withdraw duty-free treatment with respect to an article from a beneficiary developing country, subject to subparagraphs B, C, 13, F, G, and H of this paragraph and subsection (d) of this section, not later than July 1 of the next calendar year, whenever he determines that such country--

(i) 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

(ii) 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 the calendar year.

(B) For purposes of this paragraph, the term "country" does not include an association of countries which is treated as one country under section 612(a)(2) of this chapter, but does include a country which is a member of any such association.

19 USC 2464(c)(7)

(C) For purposes of the determination in subparagraph (A), "1984" shall be substituted for "1974" in clause (i) and "25 percent" for "50 percent" in clause (ii) if, after any review under section 614(d) of this chapter, the President determines that a beneficiary developing country has demonstrated a sufficient degree of competitiveness (relative to other beneficiary developing countries) with respect to any eligible article.

19 USC 2464(c)(2)(B)

(D) If the President determines that the per capita gross national product (calculated on the basis of the best available information, including that of the World Bank) of any beneficiary developing country for any calendar year (hereafter in this subparagraph referred to as the "determination year") after 1984, exceeds the applicable limit for the determination year-

19 USC 2464(t)

(i) subparagraph (A)(ii) shall be applied for the 2-year period beginning on July 1 of the calendar year succeeding the determination year by substituting "25 percent" for "50 percent", and

(ii) such country shall not be treated as a beneficiary developing country under this chapter after the close of such 2-year period.

For purposes of this subparagraph, the term "applicable limit" means the sum of \$8,500, plus 50 percent of the amount which is equal to--

(I) \$8,500, multiplied by

(II) the percentage determined by dividing the excess, if any, of the gross national product of the United States (as determined by the Secretary of Commerce) for the determination year over the gross national product of the United States for 1984, by the gross national product for 1984.

(E) For purposes of subparagraph (A), a country which is no longer treated as a beneficiary developing country with respect to an eligible article by reason of this subparagraph may be redesignated a beneficiary developing country with respect to such article, subject to the provisions of sections 611 and 612 of this chapter, if imports of such article from such country did not exceed the limitations in subparagraph (A) (after application of subparagraph (C)) during the preceding calendar year.

19 USC 2464(c)(5)

(F) Subparagraph (A) shall not apply to any beneficiary developing country which the President determines in accordance with subsection (e)(2) of this section to be a least-developed beneficiary developing country.

19 USC 2464(c)(6)(A)

(G) Subparagraph (A)(ii) (after application of subparagraph (C)) shall not apply with respect to any eligible article if a like or directly competitive article is not produced in the United States on January 3, 1985.

19 USC 2464(d)(1)

(H) The President may disregard subparagraph (A)(ii) 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 \$5,000,000 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.

19 USC 2464(d)(2)

(d) Waiver of competitive need limitation

(1)(A) The President, not earlier than January 4, 1987, may waive the application of subsection (c)(2) of this section with respect to any eligible article of any beneficiary developing country if, before July 1 of the calendar year beginning after

19 USC 2464(c)(3)(A)

the calendar year for which a determination described in subsection (c)(2)(A) was made with respect to such eligible article, the President--

(i) receives the advice of the Commission under section 1332 of title 19 on whether any industry in the United States is likely to be adversely affected by such waiver,

(ii) determines, based on the considerations described in sections 611 and 612(b) of this chapter and the advice described in clause (i), that such waiver is in the national economic interest of the United States, and

(iii) publishes the determination described in clause (ii) in the Federal Register.

(B) In making any determination under subparagraph (A), the President shall give great weight to--

19 USC 2464(c)(3)(B)

(i) the extent to which the beneficiary developing country has assured the United States that such country will provide equitable and reasonable access to the markets and basic commodity resources of such country, and

(ii) the extent to which such country provides adequate and effective means under its law for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property, including patent, trademark, and copyright rights.

(C) Any waiver granted pursuant to this subparagraph shall remain in effect until the President determines that such waiver is no longer warranted due to changed circumstances.

19 USC 2464(c)(3)(C)

(2) Except in any case to which subsection (c)(2)(C) applies (regarding a relative degree of competitiveness), the President may waive the application of subsection (c)(2) of this section if, before July 1 of the calendar year beginning after the calendar year for which a determination described in subsection (c)(2)(A) was made, the President determines and publishes in the Federal Register that, with respect to such country--

19 USC 2464(c)(4)

(A) there has been an historical preferential trade relationship between the United States and such country,

(B) there is a treaty or trade agreement in force covering economic relations between such country and the United States, and

(C) such country does not discriminate against, or impose unjustifiable or unreasonable barriers to, United States commerce.

(3)(A) The President may not exercise the waiver authority provided under paragraph (1)(A) with respect to a quantity of eligible articles entered in any calendar year which exceeds an aggregate value equal to 30 percent of the total value of all articles which entered duty-free under this title during the preceding calendar year.

(B) The President may not exercise the waiver authority provided under paragraph (1)(A) with respect to a quantity of eligible articles entered during any calendar year beginning after 1986 the aggregate value of which exceeds 15 percent of the total value of all articles that have entered duty-free under this chapter during the preceding calendar year from those beneficiary developing countries which for the preceding calendar year--

(i) had a per capita gross national product (calculated on the basis of the best available information, including that of the World Bank) of \$5,000 or more; or

(ii) had exported (either directly or indirectly) to the United States a quantity of articles that was duty-free under this subchapter that had an appraised value of more than 10 percent of the total imports of all articles that entered duty-free under this chapter during that year.

(C) There shall be counted against the limitations imposed under subparagraphs (A) and (B) for any calendar year only that quantity of any eligible article of any country that--

(i) entered duty-free under this chapter during such calendar year; and

(ii) is in excess of the quantity of that article that would have been so entered during such calendar year if the 1974 limitation applied under subsection (c)(2)(A)(i) and the 50 percent limitation applied under subsection (c)(2)(A)(ii).

(e) Special actions by the President

(1) Before designating articles as eligible articles under subsection (a) of this section, the President shall, from time to time, publish and furnish the Commission with lists of articles which may be considered for designation as eligible articles for purposes of this chapter. Before any such list is furnished to the Commission, there shall be in effect an Executive order or Presidential proclamation under section 612 of this chapter designating beneficiary developing countries. The provisions of sections 2151, 2152, 2153, and 2154 of title 19 shall be complied with as though action under section 611 of this subtitle were action under section 2111 of title 19 to carry out

a trade agreement entered into under section 2111 of title 19.

(2) The President, based on the considerations described in sections 611 and 612(b) of this chapter, shall make a determination with respect to each beneficiary developing country regarding whether such country is a least-developed developing country. The President shall make such determinations before July 4, 1985, and periodically thereafter, and shall notify the Congress at least 60 days before any such determination becomes final.

19 USC 2464(c)(6)(B)

(f) Special rule concerning Puerto Rico.—No action pursuant to section 611 of this chapter may affect any tariff duty imposed by the Legislature of Puerto Rico pursuant to section 1319 of title 19 on coffee imported into Puerto Rico.

19 USC 2464(e)

SEC. 614 Review and reports to Congress

(a) In general.—The President shall, as necessary, advise the Congress and, by no later than January 4, 1988, submit to the Congress a report on the application of sections 611 and 612(b) of this chapter, and the actions the President has taken to withdraw, to suspend, or to limit the application of duty-free treatment with respect to any country which has failed to adequately take the actions described in section 612(b) of this title.

19 USC 2464(a)(2)

(b) Report on operation of chapter.—On or before January 4, 1990, the President shall submit to the Congress a full and complete report regarding the operation of this chapter.

19 USC 2465(b)

(c) Annual reports on worker rights.—The President shall submit an annual report to the Congress on the status of internationally recognized worker rights within each beneficiary developing country.

19 USC 2465(c)

(d) Review of eligible articles.—Not later than January 4, 1987, and periodically thereafter, the President shall conduct a general review of eligible articles based on the considerations described in section 611 or 612(b) of this chapter.

19 USC 2464(c)(2)(A)

SEC. 615 Agricultural exports of beneficiary developing countries.-

19 USC 2466

The appropriate agencies of the United States shall assist beneficiary developing countries to develop and implement measures designed to assure that the agricultural sectors of their economies are not directed to export markets to the detriment of the production of foodstuffs for their citizenry.

SEC. 616 Date of termination

No duty-free treatment provided under this subchapter shall remain in effect after September 30, 1994.

19 USC 2465(a)

SECS. 617-620 [RESERVED]

**CHAPTER 2: TRADE PREFERENCES FOR
CARIBBEAN SINSRIMBEL**

SEC. 621 Authority to grant duty-free treatment

19 USC 2701
19 USC 2703(g)

The President may proclaim duty-free treatment for all eligible articles from any beneficiary country in accordance with the provisions of this chapter. No proclamation issued pursuant to this chapter shall affect fees imposed pursuant to section 503 of subtitle V of this title (regarding restrictions on imports that interfere with programs administered by the Department of Agriculture).

SEC. 622 Countries eligible for designation

(a) Beneficiary country.—For purposes of this chapter, the term "beneficiary country" means any country listed in subsection (b)(1) of this section with respect to which there is in effect a proclamation by the President designating such country as a beneficiary country for purposes of this chapter.

19 USC 2702(a)(1)(A)

(b) Countries eligible for designation.—In designating countries as beneficiary countries under this chapter the President shall consider only the following countries and territories or successor political entities:

19 USC 2702(b)

Anguilla
Antigua and Barbuda
Bahamas, The
Barbados
Belize
Costa Rica
Dominica
Dominican Republic
El Salvador
Grenada
Guatemala
Guyana
Haiti
Honduras
Jamaica
Nicaragua
Panama
Saint Lucia
Saint Vincent and the Grenadines
Surinam
Trinidad and Tobago
Cayman Islands
Montserrat

Netherlands Antilles
 Saint Christopher-Nevis
 Turks and Caicos Islands
 Virgin Islands, British

19 USC 2702(c)

(c) **Factors affecting country designation.**—In determining whether to designate any country a beneficiary country under this chapter, the President shall take into account--

- (1) an expression by such country of its desire to be so designated;
- (2) the economic conditions in such country, the living standards of its inhabitants, and any other economic factors which he deems appropriate;
- (3) the extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country;
- (4) the degree to which such country follows the accepted rules of international trade provided for under the General Agreement on Tariffs and Trade, as well as applicable trade agreements approved under section 2503(a) of title 19;
- (5) the degree to which such country uses export subsidies or imposes export performance requirements or local content requirements which distort international trade;
- (6) the degree to which the trade policies of such country as they relate to other beneficiary countries are contributing to the revitalization of the region;
- (7) the degree to which such country is undertaking self-help measures to promote its own economic development;
- (8) whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights.
- (9) the extent to which such country provides under its law adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property, including patent, trademark, and copyright rights;
- (10) the extent to which such country prohibits its nationals from engaging in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent; and
- (11) the extent to which such country is prepared to

cooperate with the United States in the administration of the provisions of this chapter.

(d) Countries ineligible for country designation.—The President shall not designate any country a beneficiary country under this chapter--

19 USC 2702(b)

(1) if such country is a Communist country;

(2) if such country--

(A) has nationalized, expropriated or otherwise seized ownership or control of property owned by a United States citizen or by a corporation, partnership, or association which is 50 per centum or more beneficially owned by United States citizens,

(B) has taken steps to repudiate or nullify— -

(i) any existing contract or agreement with, or

(ii) any patent, trademark, or other intellectual property of,

a United States citizen or a corporation, partnership, or association which is 50 per centum or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property so owned, or

(C) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property, unless the President determines that--

(i) prompt, adequate, and effective compensation has been or is being made to such citizen, corporation, partnership, or association,

(ii) good-faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or such country is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or

(iii) a dispute involving such citizen, corporation, partnership, or association, over compensation for such a seizure has been submitted to arbitration under the provisions

of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and promptly furnishes a copy of such determination to the Senate and House of Representatives;

(3) 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 or association which is 50 per centum 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;

(4) if such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce, unless the President has received assurances satisfactory to him that such preferential treatment will be eliminated or that action will be taken to assure that there will be no such significant adverse effect, and he reports those assurances to the Congress;

(5) if a government-owned entity in such country engages in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent;

(6) unless such country is a signatory to a treaty, convention, protocol, or other agreement regarding the extradition of United States citizens; and

(7) if such country has not or is not taking steps to afford internationally recognized worker rights (as defined in section 602(4) of this subtitle) to workers in the country (including any designated zone in that country).

Paragraphs (1), (2), (3), (5), and (7) shall not prevent the designation of any country as a beneficiary country under this chapter if the President determines that such designation will be in the national economic or security interest of the United States and reports such determination to the Congress with his reasons therefor.

(e) **Withdrawal or suspension of country designation.**—

19 USC 2702(e)

(1) The President may, after the requirements of paragraphs (2) and (3) have been met, withdraw or suspend the designation of any country as a beneficiary country if, after such designation, the President determines that as a result of changed circumstances such country would be barred from

designation as a beneficiary country under subsection (b) of this section.

(2)(A) The President shall publish in the Federal Register notice of the action the President proposes to take under paragraph (1) at least 30 days prior to taking such action.

(B) The United States Trade Representative shall, within the 30-day period beginning on the date on which the President publishes under subparagraph (A) notice of proposed action-

(i) accept written comments from the public regarding such proposed action,

(ii) hold a public hearing on such proposed action, and

(iii) publish in the Federal Register--

(I) notice of the time and place of such hearing prior to the hearing, and

(11) the time and place at which such written comments will be accepted.

(f) Notification to Congress of designation, termination of designation

19 USC 2702(a)(1)(A)

(1) Before the President designates any country as a beneficiary country for purposes of this chapter, 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 country for purposes of this chapter, he shall not terminate such designation (either by issuing a proclamation for that purpose or by issuing a proclamation which has the effect of terminating such designation) unless, at least sixty 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.

19 USC 2702(a)(2)

SEC. 623 Articles eligible for duty-free treatment

(a) In general.—

(1) Unless otherwise excluded from eligibility by this chapter, and subject to section 423 of the Tax Reform Act of 1986 [19 U.S.C. 2703 note], the duty-free treatment provided

19 USC 2703(a)(1)

under this chapter shall apply to any article which is the growth, product, or manufacture of a beneficiary country if--

(A) that article is imported directly from a beneficiary country into the customs territory of the United States; and

(B) the sum of--

(i) the cost or value of the materials produced in a beneficiary country or two or more beneficiary countries, plus

(ii) the direct costs of processing operations performed in a beneficiary country or countries is not less than 35 per centum of the appraised value of such article at the time it is entered.

(2) For purposes of determining the percentage referred to in paragraph (1)(B), the term "beneficiary country" includes the Commonwealth of Puerto Rico and the United States Virgin Islands. If the cost or value of materials produced in the customs territory of the United States (other than the Commonwealth of Puerto Rico) is included with respect to an article to which this paragraph applies, an amount not to exceed 15 per centum of the appraised value of the article at the time it is entered that is attributed to such United States cost or value may be applied toward determining the percentage referred to in paragraph (1)(B).

19 USC 2703(a)(1)

(3) As used in this subsection, the phrase "direct costs of processing operations" includes, but is not limited to--

19 USC 2703(a)(3)

(A) all actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training and the cost of engineering, supervisory, quality control, and similar personnel; and

(B) dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise.

Such phrase does not include costs which are not directly attributable to the merchandise concerned or are not costs of manufacturing the product, such as (i) profit, and (ii) general expenses of doing business which are either not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions or expenses.

(4) The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out this subsection

19 USC 2703(a)(2)

including, but not limited to, regulations providing that, in order to be eligible for duty-free treatment under this chapter, an article must be wholly the growth, product, or manufacture of a beneficiary country, or must be a new or different article of commerce which has been grown, produced, or manufactured in the beneficiary country; but no article or material of a beneficiary country shall be eligible for such treatment by virtue of having merely undergone--

(A) simple combining or packaging operations, or

(B) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

(b) Articles that may not be designated as eligible articles.—The duty-free treatment provided under this chapter shall not apply to--

19 USC 2703(b)

(1) textile and apparel articles which are subject to textile agreements;

(2) footwear not designated at the time of the effective date of this chapter as eligible articles for the purpose of the generalized system of preferences under chapter 1 of this subtitle;

(3) tuna, prepared or preserved in any manner, in airtight containers;

(4) petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the HTS;

(5) watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which HTS column 2 rates of duty apply; or

(6) articles to which reduced rates of duty apply under section 624 of this chapter.

(c) Withdrawal, suspension, or limitation of duty-free treatment.—

(1) The President may withdraw, suspend, or limit the application of duty-free treatment under this chapter to any article of any country, if, after such designation, the President determines that as a result of changed circumstances such country would be barred from designation as a beneficiary

19 USC 2702(e)

country under subsection (b) of this section.

(2)(A) The President shall publish in the Federal Register notice of the action the President proposes to take under paragraph (1) at least 30 days prior to taking such action.

(B) The United States Trade Representative shall, within the 30-day period beginning on the date on which the President publishes under subparagraph (A) notice of proposed action--

(i) accept written comments from the public regarding such proposed action,

(ii) hold a public hearing on such proposed action, and

(iii) publish in the Federal Register--

(I) notice of the time and place of such hearing prior to the hearing, and

(II) the time and place at which such written comments will be accepted.

(d) Special rules regarding suspension.—

19 USC 2703(e), (f)

(1) In the case of an action under chapter 2 of subtitle I (global safeguard actions) or under subtitle IV (regarding impairment of the national security)--

(A) The President may by proclamation suspend the duty-free treatment provided by this chapter with respect to any eligible article and may proclaim a duty rate for such article if such action is proclaimed under chapter 2 of subtitle I or under subtitle IV of this title.

(B) Any action taken under chapter 2 of subtitle I of this title that is in effect when duty-free treatment is proclaimed under this chapter shall remain in effect until modified or terminated. If any article is subject to any such action at the time duty-free treatment is proclaimed under this chapter, the President may reduce or terminate the application of such action to the importation of such article from beneficiary countries prior to the otherwise scheduled date on which such reduction or termination would occur pursuant to the criteria and procedures of chapter 3 of subtitle I of this title.

(C) The President may by proclamation withdraw the duty-free treatment provided by this chapter with respect a perishable product as provided for under chapter 4 of subtitle I of this title after receiving a recommendation from the

Secretary of Agriculture to take emergency action.

(2) In the case of duty-free treatment extended under this chapter to sugar and beef products--

(A) Such duty-free treatment shall be suspended by the President under this subsection if-

19 USC 2703(c)(2)

(i) the beneficiary country, within the 90-day period beginning on the date of its designation as such a country under section 622 of this chapter, does not submit a Stable Food Production Plan to the President for evaluation;

(ii) on the basis of his evaluation, the President determines that the Plan of a beneficiary country does not meet the criteria set forth in subparagraph (B)(ii); or

(iii) as a result of the monitoring of the operation of the Plan under subparagraph (E), the President determines that a beneficiary country is not making a good faith effort to implement its Plan, or that the measures and proposals in the Plan, although being implemented, are not achieving their purposes.

(B) For purposes of this paragraph--

19 USC 2703(c)(1)

(i) The term "sugar and beef products" means—

(I) sugars, syrups, and molasses provided for in subheadings 1701.11.00, 1701.12.00, 1701.91.20, 1701.99.00, 1702.90.30, 1806.10.40, and 2106.90.10 of the HTS, and

(II) article of beef or veal, however provided for in chapters 2 and 16 of the HTS.

(ii) The term "Plan" means a stable food production plan that consists of measures and proposals designed to ensure that the present level of food production in, and the nutritional level of the population of, a beneficiary country will not be adversely affected by changes in land use and land ownership that will result if increased production of sugar and beef products is undertaken in response to the duty-free treatment extended under this chapter to such products. A Plan must specify such facts regarding, and such proposed actions by, a beneficiary country as the President deems necessary for purposes of carrying out this paragraph, including but not limited to--

(I) the current levels of food production and nutritional health of the population;

(II) current level of production and export of sugar and beef products;

(111) expected increases in production and export of sugar and beef products as a result of the duty-free access to the United States market provided under this chapter;

(IV) measures to be taken to ensure that the expanded production of those products because of such duty-free access will not occur at the expense of stable food production; and

(V) proposals for a system to monitor the impact of such duty-free access on stable food production and land use and land ownership patterns.

(C) Before the President suspends duty-free treatment by reason of subparagraph (A)(i), (ii), or (iii) to the sugar and beef products of a beneficiary country, he must offer to enter into consultation with the beneficiary country for purposes of formulating appropriate remedial action which may be taken by that country to avoid such suspension. If the beneficiary country thereafter enters into consultation within a reasonable time and undertakes to formulate remedial action in good faith, the President shall withhold the suspension of duty-free treatment on the condition that the remedial action agreed upon be appropriately implemented by that country.

19 USC 2703(c)(3)

(D) The President shall terminate any suspension of duty-free treatment imposed under this paragraph if he determines that the beneficiary country has taken appropriate action to remedy the factors on which the suspension was based.

19 USC 2703(c)(5)

(E) The President shall monitor on a biennial basis the operation of the Plans implemented by beneficiary countries, and shall submit a written report to Congress by March 15 following the close of each biennium, that--

19 USC 2703(c)(4)

(i) specifies the extent to which each Plan, and remedial actions, if any, agreed upon under subparagraph (C), have been implemented; and

(ii) evaluates the results of such implementation.

19 USC 2703(d)

(3) For such period as there is in effect a proclamation issued by the President pursuant to the authority vested in him by section 624 of title 7 to protect a price-support program for sugar beets and sugar cane, the importation and duty-free treatment of sugars, syrups, and molasses classified under subheadings 1701.11.00, 1701.12.00, 1701.91.20, 1701.99.00, 1702.90.30, 1806.10.40, and 2106.90.10 of the HTS shall be governed in the following manner:

(A)(i) For all beneficiary countries, except those subject to clause (i) and subparagraph (B), duty-free treatment shall be provided in the same manner as it is provided pursuant to chapter 1 of this title, at the time of the effective date of this title; except that the President upon the recommendation of the Secretary of Agriculture, may suspend or adjust upward the value limitation provided for in section 613(c)(2)(A) of this subtitle (relating to the GSP competitive need limitation) on the duty-free treatment afforded to beneficiary countries under this section if he finds that such adjustment will not interfere with the price support program for sugar beets and sugar cane and is appropriate in light of market conditions.

(ii) As an alternative to clause (i), the President may at the request of a beneficiary country not subject to subparagraph (B) and upon the recommendation of the Secretary of Agriculture, elect to permit sugar, syrups, and molasses from that country to enter duty-free during a calendar year subject to quantitative limitations to be established by the President on the quantity of sugar, syrups, and molasses entered from that country.

(B) For the following countries whose exports of sugar, syrups, and molasses in 1981 were not eligible for duty-free treatment because of the operation of section 613(c)(2)(A) of this subtitle, the quantity of sugar, syrups, and molasses which may be entered in any calendar year shall be limited to no more than the quantity specified below:

Metric tons:	
Dominican Republic	780,000
Guatemala	210,000
Panama	160,000

Such sugar, syrups, and molasses shall be admitted free of duty, except as provided for in subparagraph (C).

(C) The President, upon the recommendation of the Secretary of Agriculture, may suspend or adjust upward the quantitative limitations imposed under subparagraph (A)(ii) or (B) if he determines such action will not interfere with the price support program for sugar beets and sugar cane and is appropriate in light of market conditions. The President, upon the recommendation of the Secretary of Agriculture, may suspend the duty-free treatment for all or part of the quantity of sugar, syrups, and molasses permitted to be entered by subparagraphs (A)(ii) and (B) if such action is necessary to protect the price-support program for sugar beets and sugar cane.

(D) Any quantitative limitation imposed on a beneficiary country under subparagraphs (A)(ii) and (B) shall apply only to

the extent that such limitation permits a lesser quantity of sugar, syrups, and molasses to be entered from that country than the quantity that would be permitted to be entered under any other provision of law.

(e) Special rules with regard to Puerto Rico.—

(1) Notwithstanding section 1311 of title 19, the products of a beneficiary country which are imported directly from any beneficiary country into Puerto Rico may be entered under bond for processing or use in manufacturing in Puerto Rico. No duty shall be imposed on the withdrawal from warehouse of the product of such processing or manufacturing if, at the time of such withdrawal, such product meets the requirements of subsection (a)(1)(B). 19 USC 2703(a)(4)

(2) The duty-free treatment provided under this chapter shall apply to an article (other than an article listed in subsection (b) of this section) which is the growth, product, or manufacture of the Commonwealth of Puerto Rico if-- 19 USC 2703(a)(5)

(A) the article is imported directly from the beneficiary country into the customs territory of the United States,

(B) the article was by any means advanced in value or improved in condition in a beneficiary country, and

(C) if any materials are added to the article in a beneficiary country, such materials are a product of a beneficiary country or the United States.

SEC. 624 Duty reductions for certain articles 19 USC 2703(h)

(a) In general.—Subject to subsection (b), the President shall proclaim reductions in the rates of duty on handbags, luggage, flat goods, work gloves, and leather wearing apparel that—

(1) are the product of any beneficiary country; and

(2) were not designated on August 5, 1983, as eligible articles for purposes of the generalized system of preferences under chapter 1 of this subtitle.

(b) Limitations.—

(1) The reduction required under subsection (a) in the rate of duty on any article shall--

(A) result in a rate that is equal to 80 percent of the rate of duty that applies to the article on December 31, 1991,

except that, subject to the limitations in paragraph (2), the reduction may not exceed 2.5 percent ad valorem; and

(B) be implemented in 5 equal annual stages with the first one-fifth of the aggregate reduction in the rate of duty being applied to entries, or withdrawals from warehouse for consumption, of the article on or after January 1, 1992.

(2) The reduction required under this subsection with respect to the rate of duty on any article is in addition to any reduction in the rate of duty on that article that may be proclaimed by the President as being required or appropriate to carry out any trade agreement entered into under the Uruguay Round of trade negotiations; except that if the reduction so proclaimed--

(A) is less than 1.5 percent ad valorem, the aggregate of such proclaimed reduction and the reduction under this subsection may not exceed 3.5 percent ad valorem, or

(B) is 1.5 percent ad valorem or greater, the aggregate of such proclaimed reduction and the reduction under this subsection may not exceed the proclaimed reduction plus 1 percent ad valorem.

SEC. 625 Reports by the President

19 USC 2702(f)

On or before October 1, 1993, and the close of each 3-year period thereafter, the President shall submit to the Congress a complete report regarding the operation of this chapter, including the results of a general review of beneficiary countries based on the considerations described in section 622(b) and (c) of this chapter.

SEC. 626 Commission reports on impact of this chapter

19 USC 2704

(a) In general.—The Commission shall prepare, and submit to the Congress and to the President, a report regarding the economic impact of this chapter on United States industries and consumers during--

(1) the twenty-four-month period beginning with August 5, 1983; and

(2) each calendar year occurring thereafter until duty-free treatment under this chapter is terminated under section 628(b) of this subtitle.

For purposes of this section, industries in the Commonwealth

of Puerto Rico and the insular possessions of the United States shall be considered to be United States industries.

(b) Content of reports.—

(1) Each report required under subsection (a) of this section shall include, but not be limited to, an assessment by the Commission regarding--

(A) the actual effect, during the period covered by the report, of this chapter on the United States economy generally as well as on those specific domestic industries which produce articles that are like, or directly competitive with, articles being imported into the United States from beneficiary countries; and

(B) the probable future effect which this chapter will have on the United States economy generally, as well as on such domestic industries, before the provisions of this chapter terminate.

(2) In preparing the assessments required under paragraph (1), the Commission shall, to the extent practicable--

(A) analyze the production, trade and consumption of United States products affected by this chapter, taking into consideration employment, profit levels, and use of productive facilities with respect to the domestic industries concerned, and such other economic factors in such industries as it considers relevant, including prices, wages, sales, inventories, patterns of demand, capital investment, obsolescence of equipment, and diversification of production; and

(B) describe the nature and extent of any significant change in employment, profit levels, and use of productive facilities, and such other conditions as it deems relevant in the domestic industries concerned, which it believes are attributable to this chapter.

(c) Submission dates; public comment.—

(1) Each report required under subsection (a) of this section shall be submitted to the Congress and to the President before the close of the nine- month period beginning on the day after the last day of the period covered by the report.

(2) The commission shall provide opportunity for the submission by the public, either orally or in writing, or both, of information relating to matters that will be addressed in the reports.

SEC. 627 Impact study by Secretary of Labor

19 USC 2705

The Secretary of Labor, in consultation with other appropriate Federal agencies, shall undertake a continuing review and analysis of the impact which the implementation of the provisions of this chapter have with respect to United States labor; and shall make an annual written report. to Congress on the results of such review and analysis.

SEC. 628 Effective date and termination of duty-free treatment

(a) Effective date.—This chapter shall take effect on August 5, 1983.

19 USC 2706

[(b) Termination date.--Date repealed by Act of Aug. 20, 1990.]

SECS. 629-630 IRESERVED1

CHAPTER 3: TRADE PREFERENCES FOR ANDEAN COUNTRIES

SEC. 631 Authority to grant duty-free treatment

**19 USC 3201
19 USC 3203(f)**

The President may proclaim duty-free treatment for all eligible articles from any beneficiary country in accordance with the provisions of this chapter. No proclamation issued pursuant to this chapter shall affect fees imposed pursuant to section 503 of subtitle V of this title (regarding restrictions on imports that interfere with programs administered by the Department of Agriculture).

SEC. 632 Countries eligible for designation

(a) **Beneficiary country.**—For purposes of this chapter, the term "beneficiary country" means any country listed in subsection (b) of this section with respect to which there is in effect a proclamation by the President designating such country as a beneficiary country for purposes of this chapter.

19 USC 3202(a)(1)

(b) **Countries eligible for designation.**—In designating countries as beneficiary countries under this chapter, the President shall consider only the following countries or successor political entities:

19 USC 3202(b)(1)

Bolivia
Ecuador
Colombia
Peru

(c) **Factors affecting country designation.**—In determining whether to designate any country a beneficiary country under this chapter, the President shall take into account--

19 USC 3202(d)

(1) an expression by such country of its desire to be so designated;

(2) the economic conditions in such country, the living standards of its inhabitants, and any other economic factors which he deems appropriate;

(3) the extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country;

(4) the degree to which such country follows the accepted rules of international trade provided for under the General Agreement on Tariffs and Trade, as well as applicable trade

agreements approved under section 2503(a) of title 19;

(5) the degree to which such country uses export subsidies or imposes export performance requirements or local content requirements which distort international trade;

(6) the degree to which the trade policies of such country as they relate to other beneficiary countries are contributing to the revitalization of the region;

(7) the degree to which such country is undertaking self-help measures to protect its own economic development;

(8) whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights;

(9) the extent to which such country provides under its law adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property, including patent, trademark, and copyright rights;

(10) the extent to which such country prohibits its nationals from engaging in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent;

(11) whether such country has met the narcotics cooperation certification criteria set forth in section 2291j of title 22 for eligibility for United States assistance; and

(12) the extent to which such country is prepared to cooperate with the United States in the administration of the provisions of this chapter.

(d) Countries ineligible for country designation.—The President shall not designate any country a beneficiary country under this chapter--

19 USC 3202(c)

(1) if such country is a Communist country;

(2) if such country—

(A) has nationalized, expropriated or otherwise seized ownership or control of property owned by a United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens,

(B) has taken steps to repudiate or nullify--

(i) any existing contract or agreement with, or

(ii) any patent, trademark, or other intellectual property of, a United States citizen or a corporation, partnership, or association, which is 50 percent or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property so owned, or

(C) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property, unless the President determines that--

(i) prompt, adequate, and effective compensation has been or is being made to such citizen, corporation, partnership, or association,

(ii) good-faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or such country is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or

(iii) a dispute involving such citizen, corporation, partnership, or association, over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and promptly furnishes a copy of such determination to the Senate and House of Representatives;

(3) 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, 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;

(4) if such country affords preferential treatment to the products of a developed country, other than the United States, and if such preferential treatment has, or is likely to have, a significant adverse effect on United States commerce, unless the President--

(A) *has received* assurances satisfactory to him that such preferential treatment will be eliminated or that action will be

taken to assure that there will be no such significant adverse effect, and

(B) reports those assurances to the Congress;

(5) if a government-owned entity in such country engages in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent or such country fails to work towards the provision of adequate and effective protection of intellectual property rights;

(6) unless such country is a signatory to a treaty, convention, protocol, or other agreement regarding the extradition of United States citizens; and

(7) if such country has not or is not taking steps to afford internationally recognized worker rights (as defined in section 602(4) of this subtitle) to workers in the country (including any designated zone in that country).

Paragraphs (1), (2), (3), (5), and (7) shall not prevent the designation of any country as a beneficiary country under this chapter if the President determines that such designation will be in the national economic or security interest of the United States and reports such determination to the Congress with his reasons therefor.

(e) Withdrawal or suspension of country designation.—

19 USC 3202(e)

(1) The President may withdraw or suspend the designation of any country as a beneficiary country if, after such designation, the President determines that as a result of changed circumstances such a country should be barred from designation as a beneficiary country.

(2)(A) The President shall publish in the Federal Register notice of the action the President proposes to take under paragraph (1) at least 30 days before taking such action.

(B) The United States Trade Representative shall, within the 30-day period beginning on the date on which the President publishes under subparagraph (A) notice of proposed action--

(i) accept written comments from the public regarding such proposed action,

(ii) hold a public hearing on such proposed action, and

(iii) publish in the Federal Register-

(I) notice of the time and place of such hearing prior to the hearing, and

(II) the time and place at which such written comments will be accepted.

(f) Notification to Congress of designation.—Before the President designates any country as a beneficiary country for purposes of this chapter, 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.

19 USC 3202(b)(2)

SEC. 633 Articles eligible for duty-free treatment

(a) In general.—

(1) Unless otherwise excluded from eligibility by this chapter, the duty-free treatment provided under this chapter shall apply to any article which is the growth, product, or manufacture of a beneficiary country if--

19 USC 3203(a)(1)

(A) that article is imported directly from a beneficiary country into the customs territory of the United States; and

(B) the sum of--

(i) the cost or value of the materials produced in a beneficiary country or 2 or more beneficiary countries under this chapter, or a beneficiary country under chapter 2 of this subtitle or 2 or more such countries, plus

(ii) the direct costs of processing operations performed in a beneficiary country or countries (under this chapter or chapter 2 of this subtitle), is not less than 35 percent of the appraised value of such article at the time it is entered.

For purposes of determining the percentage referred to in subparagraph (B), the term "beneficiary country" includes the Commonwealth of Puerto Rico and the United States Virgin Islands. If the cost or value of materials produced in the customs territory of the United States (other than the Commonwealth of Puerto Rico) is included with respect to an article to which this paragraph applies, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributed to such United States cost or value may be applied toward determining the percentage referred to in subparagraph (B).

(2) As used in this subsection, the phrase "direct costs of

19 USC 3203(a)(3)

processing operations" includes, but is not limited to--

(A) all actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training and the cost of engineering, supervisory, quality control, and similar personnel; and

(B) dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise.

Such phrase does not include costs which are not directly attributable to the merchandise concerned or are not costs of manufacturing the product, such as (i) profit, and (ii) general expense of doing business which are either not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, interest, and salesmen's salaries, commissions or expenses.

(3) The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out this subsection including, but not limited to, regulations providing that, in order to be eligible for duty-free treatment under this chapter, an article must be wholly the growth, product, or manufacture of a beneficiary country, or must be a new or different article of commerce which has been grown, produced, or manufactured in the beneficiary country; but no article or material of a beneficiary country shall be eligible for such treatment by virtue of having merely undergone--

19 USC 3203(a)(2)

(A) simple combining or packaging operations, or

(B) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

(b) Articles that may not be designated as eligible articles.—The duty-free treatment provided under this chapter shall not apply to--

19 USC 3203(b)

(1) textile and apparel articles which are subject to textile agreements;

(2) footwear not designated at the time of the effective date of this chapter as eligible for the purpose of the generalized system of preferences under chapter 1 of this subtitle;

(3) tuna, prepared or preserved in any manner, in airtight containers;

(4) petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the HTS;

(5) watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which HTS column 2 rates of duty apply;

(6) articles to which reduced rates of duty apply under section 634 of this chapter;

(7) sugars, syrups, and molasses classified in subheadings 1701.11.03, 1701.12.02, 1701.99.02, 1702.90.32, 1806.10.42, and 2106.90.12 of the HTS; or

(8) rum and tafia classified in subheading 2208.40.00 of the HTS.

(c) **Withdrawal, suspension, or limitation of duty-free treatment.—**

(1) The President may withdraw, suspend, or limit the application of duty-free treatment under this chapter to any article of any country, if, after such designation, the President determines that as a result of changed circumstances such a country should be bared from designation as a beneficiary country.

19 USC 3202(e)

(2)(A) The President shall publish in the Federal Register notice of the action the President proposes to take under paragraph (1) at least 30 days before taking such action.

(B) The United States Trade Representative shall, within the 30-day period beginning on the date on which the President publishes under subparagraph (A) notice of proposed action-

(i) accept written comments from the public regarding such proposed action,

(ii) hold a public hearing on such proposed action, and

(iii) publish in the Federal Register—

(I) notice of the time and place of such hearing prior to the hearing, and

(II) the time and place at which such written comments will be accepted.

(3) In the case of an action under chapter 2 of subtitle I (global safeguard actions) or under subtitle IV (regarding impairment of the national security)--

19 USC 3203(d), (e)

(A) The President may by proclamation suspend the duty-free treatment provided by this chapter with respect to any eligible article and may proclaim a duty rate for such article if such action is proclaimed under chapter 2 of subtitle I or under subtitle IV of this title.

(B) Any action taken under chapter 2 of subtitle I of this title that is in effect when duty-free treatment is proclaimed under this chapter shall remain in effect until modified or terminated. If any article is subject to any such action at the time duty-free treatment is proclaimed under this chapter, the President may reduce or terminate the application of such action to the importation of such article from beneficiary countries prior to the otherwise scheduled date on which such reduction or termination would occur pursuant to the criteria and procedures of chapter 3 of subtitle I of this title.

(C) The President may by proclamation withdraw the duty-free treatment provided by this chapter with respect a perishable product as provided for under chapter 4 of subtitle I of this title after receiving a recommendation from the Secretary of Agriculture to take emergency action.

SEC. 634 Duty reductions for certain articles

19 USC 3203(c)

(a) In general.—Subject to subsection (b), the President shall proclaim reductions in the rates of duty on handbags, luggage, flat goods, work gloves, and leather wearing apparel that—

(1) are the product of any beneficiary country; and

(2) were not designated on August 5, 1983, as eligible articles for purposes of the generalized system of preferences under chapter 1 of this subtitle.

(b) Limitations.—

(1) The reduction required under subsection (a) in the rate of duty on any article shall--

(A) result in a rate that is equal to 80 percent of the rate of duty that applies to the article on December 31, 1991, except that, subject to the limitations in paragraph (2), the reduction may not exceed 2.5 percent ad valorem; and

(B) be implemented in 5 equal annual stages with the first 1/5 of the aggregate reduction in the rate of duty being applied to entries, or withdrawals from warehouse for consumption, of the article on or after January 1, 1992.

(2) The reduction required under this subsection with respect to the rate of duty on any article is in addition to any reduction in the rate of duty on that article that may be proclaimed by the President as being required or appropriate to carry out any trade agreement entered into under the Uruguay Round of trade negotiations; except that if the reduction so proclaimed--

(A) is less than 1.5 percent ad valorem, the aggregate of such proclaimed reduction and the reduction under this subsection may not exceed 3.5 percent ad valorem, or

(B) is 1.5 percent ad valorem or greater, the aggregate of such proclaimed reduction and the reduction under this subsection may not exceed the proclaimed reduction plus 1 percent ad valorem.

SEC. 635 Reports by the President: draft legislation

(a) Triennial report.—On or before the 3rd, 6th, and 9th anniversaries of December 4, 1991, the President shall submit to the Congress a complete report regarding the operation of this chapter, including the results of a general review of beneficiary countries based on the considerations described in section 632(c) and (d) of this chapter. In reporting on the considerations described in section 632(c)(11) of this chapter, the President shall report any evidence that the crop eradication and crop substitution efforts of the beneficiary are directly related to the effects of this chapter.

19 USC 3202(f)

(b) Rules of origin legislation.—If the President, pursuant to section 223 of the Caribbean Basin Economic Recovery Expansion Act of 1990, considers that the implementation of revised rules of origin for products of beneficiary Caribbean Basin countries designated under chapter 2 of this subtitle would be appropriate, the President may include similarly revised rules of origin for products of beneficiary countries designated under this chapter in any suggested legislation transmitted to the Congress that contains such rules of origin for products of beneficiary countries under chapter 2 of this subtitle.

19 USC 3203(a)(4)

SEC. 636 Commission reports on impact of this chapter

19 USC 3204

(a) In general.—The Commission shall prepare, and submit to the Congress, a report regarding the economic impact of this chapter on United States industries and consumers, and, in conjunction with other agencies, the effectiveness of this chapter in promoting drug-related crop eradication and crop substitution efforts of the beneficiary countries, during--

(1) the 24-month period beginning with December 4, 1991; and

(2) each calendar year occurring thereafter until duty-free treatment under this chapter is terminated under section 638(b) of this chapter. For purposes of this section, industries in the Commonwealth of Puerto Rico and the insular possessions of the United States shall be considered to be United States industries.

(b) Report requirements.—

(1) Each report required under subsection (a) of this section shall include, but not be limited to, an assessment by the Commission regarding--

(A) the actual effect, during the period covered by the report, of this chapter on the United States economy generally as well as on those specific domestic industries which produce articles that are like, or directly competitive with, articles being imported into the United States from beneficiary countries;

(B) the probable future effect that this chapter will have on the United States economy generally, as well as on such domestic industries, before the provisions of this chapter terminate; and

(C) the estimated effect that this chapter has had on the drug-related crop eradication and crop substitution efforts of the beneficiary countries.

(2) In preparing the assessments required under paragraph (1), the Commission shall, to the extent practicable—

(A) analyze the production, trade and consumption of United States products affected by this chapter, taking into consideration employment, profit levels, and use of productive facilities with respect to the domestic industries concerned, and such other economic factors in such industries as it considers relevant, including prices, wages, sales, inventories, patterns of demand, capital investment, obsolescence of equipment, and diversification of production; and

(B) describe the nature and extent of any significant change in employment, profit levels, and use of productive facilities, and such other conditions as it deems relevant in the domestic industries concerned, which it believes are attributable to this chapter.

(c) Submission dates; public comment.—

(1) Each report required under subsection (a) of this section shall be submitted to the Congress before the close of the 9-month period beginning on the day after the last day of the period covered by the report.

(2) The Commission shall provide an opportunity for the submission by the public, either orally or in writing, or both, of information relating to matters that will be addressed in the reports.

SEC. 637 Impact study by Secretary of Labor

The Secretary of Labor, in consultation with other appropriate Federal agencies, shall undertake a continuing review and analysis of the impact that the implementation of the provisions of this chapter has with respect to United States labor; and shall make an annual written report to Congress on the results of such review and analysis.

19 USC 3205

SEC. 638 Effective date and termination of duty-free treatment

(a) Effective date.—This chapter shall take effect on the date of enactment.

19 USC 3206

(b) Termination of duty-free treatment.—No duty-free treatment extended to beneficiary countries under this chapter shall remain in effect 10 years after December 4, 1991.

SUBTITLE VII - ANTIDUMPING AND COUNTERVAILING DUTIES

- SEC. 701 Applicability [NEW]**
- SEC. 702 Requirements for imposition of antidumping and countervailing duties [19 U.S.C. 1303, 1671, 1673]**
- SEC. 703 General definitions [19 U.S.C. 1677(1), (2), (3), (4), (5), (8), (9), (10), (14), (15), (16), (17), (18)(A), (18)¹]**
- SEC. 704 Summary of applicable time periods in antidumping and countervailing duty investigations [NEW]**
- SEC. 705 Initiation of antidumping and countervailing duty investigations [19 U.S.C. 1671a, 1673a]**
- SEC. 706 Preliminary determinations [19 U.S.C. 1671b, 1673b]**
- SEC. 707 Final determinations [19 U.S.C. 1671d, 1673d]**
- SEC. 708 Specific Commission findings in antidumping and countervailing duty investigations [19 U.S.C. 1677(7), 1677(7)(C)(iv)(I), 1677(7)(C)(v)(10), 1677(7)(E)(ii), 1677(7)(F), 1677(7)(F)(iv), 1677(7)(F)(v), 1677(11)]**
- SEC. 709 Specific Commerce findings in antidumping and countervailing duty investigations [19 U.S.C. 1671(d), 1671(d)², 1671b(g) 1671g, 1677(5)(B), 1677(6), 1677(13), 1677(18)(B)-(E), 1677(19), 1677-1(a)-(c), 1677-2, 1677a(a)-(e), 1677b, 1677d, 1677f-1]**
- SEC. 710 Termination or suspension of investigation [19 U.S.C. 1671c, 1673c]**
- SEC. 711 Critical circumstances [19 U.S.C. 1671a(e), 1671b(e), 1671d(a)(2), 1671d(b)(4), 1671d(c)(3), 1671d(c)(4), 1673a(e), 1673b(e), 1673d(a)(3), 1673d(b)(4), 1673d(c)(3), 1673d(c)(4)]**
- SEC. 712 Downstream product monitoring [19 U.S.C. 1677i]**
- SEC. 713 Short life cycle merchandise [19 U.S.C. 1673b(b)(1)(B), (C), 1673h]**
- SEC. 714 Administrative procedures for conducting antidumping and countervailing duty investigations [19 U.S.C. 1677c, 1677e(a), 1677e(b), 1677e(c), 1677f]**
- SEC. 715 Administration of antidumping and countervailing duty orders [19 U.S.C. 1671e, 1671f, 1671h, 1673e, 1673f, 1673g, 1677(12), 1677g, 1677h, 1677j]**
- SEC. 716 Administrative review of antidumping and countervailing duty determinations [19 U.S.C. 1675, 1675a, 1676]**

- SEC. 717 Judicial review of antidumping and
 countervailing duty determinations
 [19 U.S.C. 1516a]
- SEC. 718 Third-country dumping [19 U.S.C. 1677k]

SEC. 701 Applicability

NEW

Unless otherwise specified, the provisions in this subtitle apply to both antidumping and countervailing duty proceedings.

SEC. 702 Requirements for imposition of antidumping and countervailing duties

19 USC 1671
19 USC 1673

(a) Antidumping and countervailing duty investigations for countries entitled to a Commission material injury determination

(1) If Commerce determines that--

(A) for purposes of antidumping duty investigations, 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, or

19 USC 1673(1)

(B) for purposes of countervailing duty investigations, (i) a country under the Agreement, or (ii) 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, or sold (or likely to be sold) for importation, into the United States; and

19 USC 1671(a)(1)(A)
19 USC 1671(a)(1)(B)

(2) the Commission determines that--

19 USC 1671(a)(2)
19 USC 1673(2)

(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 or by reason of sales (or the likelihood of sales) of that merchandise for importation,

then there shall be imposed upon such merchandise either an antidumping duty in an amount equal to the amount by which the foreign market value exceeds the United States price for the merchandise, a countervailing duty equal to the amount of the net subsidy, or both, in addition to any other duty imposed. For purposes of this subsection and section 707(b)(1) of this subtitle (relating to final determinations by the Commission), a reference to the sale of merchandise includes the entering into of any leasing arrangement regarding the merchandise that is equivalent to the sale of the merchandise.

(b) Countervailing duty investigations involving imports not entitled to a Commission material injury determination

(1) Levy of countervailing duties

(A) Except in the case of an article or merchandise which is the product of a country under the Agreement, 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 subsidy 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 subsidy, however the same be paid or bestowed.

19 USC 1303

(B) In the case of any imported article or merchandise which is free of duty, duties may be imposed under this section only if there are affirmative determinations by the Commission under this subtitle; except that such a determination shall not be required unless a determination of injury is required by the international obligations of the United States.

(2) Regulations prescribed by Commerce; imported articles or merchandise which are not duty free

The duty imposed under paragraph (1) of this section shall be imposed, under regulations prescribed by Commerce in accordance with this subtitle except that, in the case of any imported article or merchandise which is not free of duty--

(A) no determination by the Commission under section

706(a) (relating to preliminary determinations by the Commission), 707(b) (relating to final determinations by the Commission), or 710 (relating to termination or suspension of investigation) of this subtitle shall be required,

(B) an investigation may not be suspended under section 710(d)(2) (relating to suspension of countervailing duty investigations),

(C) no determination as to the presence of critical circumstances shall be made under section 711(b) (relating to preliminary critical circumstances determinations by Commerce), 711(c)(1) (relating to final critical circumstances determinations by Commerce), or 711(c)(2)(A) (relating to final critical circumstances determinations by the Commission) of this subtitle, and

(D) any reference to determinations by the Commission, or to the suspension of an investigation under subsection (d) of section 710 (relating to agreements to eliminate injurious effect) of this subtitle which are not permitted or required by this subsection shall be disregarded.

(3) The recodification of this subsection from the former 19 U.S.C. § 1303 to subtitle VII is not intended to create any substantive or procedural changes to the operation of former 19 U.S.C. § 1303.

NEW

(c) Definition of "country under the Agreement"

19 USC 1671(b)

For purposes of this subtitle, the term "country under the Agreement" means a country--

(1) to which the Agreement on Subsidies and Countervailing Measures applies between it and the United States, as determined under section 2503(b) of title 19,

(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.

(d) Revocation of status as a country under the Agreement **19 USC 1671(c)**

The Trade Representative may revoke the status of a foreign country as a country under the Agreement for purposes of this part if such foreign country--

(1) announces that such foreign country does not intend, or is not able, to honor the obligations it has assumed with respect to the United States or the Agreement for purposes of this part, or

(2) does not in fact honor such obligations.

SEC. 703 General definitions

For purposes of this subtitle--

(a) Agreement on Subsidies and Countervailing Measures **19 USC 1677(8)**

The term "Agreement on Subsidies and Countervailing Measures" means 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 2503(a) of title 19.

(b) Commerce **19 USC 1677(1)**

The term "Commerce" means the United States Department of Commerce.

(c) Commission **19 USC 1677(2)**

The term "Commission" means the United States International Trade Commission.

(d) Country**19 USC 1677(3)**

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.

(e) Industry**19 USC 1677(4)****(1) 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.

(2) 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.

(3) 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--

(A) the producers within such market sell all or almost all of their production of the like product in question in that market, and

(B) 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 material injury, or if the establishment of an industry is being materially retarded, by reason of the subsidized or dumped imports.

(4) Product 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) Industry producing processed agricultural products

(A) In general

Subject to subparagraph (B), in an investigation involving a processed agricultural product produced from any raw agricultural product, the producers or growers of the raw agricultural product may be considered part of the industry producing the processed product if--

(i) the processed agricultural product is produced from the raw agricultural product through a single continuous line of production; and

(ii) there is a substantial coincidence of economic interest between the producers or growers of the raw agricultural product and the processors of the processed agricultural product based upon relevant economic factors, which may, in the discretion of the Commission, include price, added market value, or other economic interrelationships (regardless of whether such coincidence of economic interest is based upon any legal relationship).

(B) Processing

For purposes of this subparagraph, the processed agricultural product shall be considered to be processed from a raw agricultural product through a single continuous line of production if--

(i) the raw agricultural product is substantially or completely devoted to the production of the processed agricultural product; and

(ii) the processed agricultural product is produced substantially or completely from the raw product.

(C) Relevant economic factors

For purposes of subparagraph (A)(ii), in addition to such other factors it considers relevant to the question of coincidence of economic interest, the Commission shall--

(i) if price is taken into account, consider the degree of correlation between the price of the raw agricultural product and the price of the processed agricultural product; and

(ii) if added market value is taken into account, consider whether the value of the raw agricultural product constitutes a significant percentage of the value of the processed agricultural product.

(D) Raw agricultural product

For purposes of this subparagraph, the term "raw agricultural product" means any farm or fishery product.

(E) Termination of this subparagraph

This subparagraph shall cease to have effect if the Trade Representative notifies Commerce and the Commission that the application of this subparagraph is inconsistent with the international obligations of the United States.

(f) Interested party

19 USC 1677(9)

The term "interested party" means--

(1) a foreign manufacturer, producer, or exporter, or the United States importer, of merchandise which is the subject of an investigation under this subtitle 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 wholesale in the United States of a like product,

(5) a trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States,

(6) an association, a majority of whose members is composed of interested parties described in paragraph (3), (4), or (5) with respect to a like product; and

(7) in any investigation under this subtitle involving an industry engaged in producing a processed agricultural product, as defined in subsection (e)(5), a coalition or trade association which is representative of either-

(A) processors,

(B) processors and producers, or

(C) processors and growers,

but this subparagraph shall cease to have effect if the Trade Representative notifies Commerce and the Commission that the application of this subparagraph is inconsistent with the international obligations of the United States.

(g) Like product

19 USC 1677(10)

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 subtitle.

(h) Nonmarket economy country

19 USC 1677(18)

The term "nonmarket economy country" means any foreign country that Commerce determines does not operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise.

(i) Ordinary course of trade

19 USC 1677(15)

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.

(j) Sold or, in the absence of sales, offered for sale

19 USC 1677(14)

The term "sold or, in the absence of sales, offered for sale" means sold or, in the absence of sales, offered--

(1) to all purchasers in commercial quantities, or

(2) in the ordinary course of trade to one or more selected purchasers in commercial quantities 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.

(k) Subsidy

19 USC 1677(5)

The term "subsidy" includes, but is not limited to, the following:

(A) Any export subsidy described in Annex A to the Agreement on Subsidies and Countervailing Measures (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 loss sustained by a specific industry.

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

(1) Such or similar merchandise

19 USC 1677(16)

The term "such or similar merchandise" means merchandise in the first of the following categories in respect of which an antidumping duty determination under this subtitle can be satisfactorily made:

(1) 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.

(2) Merchandise--

(A) produced in the same country and by the same person as the merchandise which is the subject of the investigation,

(B) like that merchandise in component material or materials and in the purposes for which used, and

(C) approximately equal in commercial value to that merchandise.

(3) Merchandise--

(A) 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,

(B) like that merchandise in the purposes for which used, and

(C) which Commerce determines may reasonably be compared with that merchandise.

(m) United States-Canada Agreement

19 USC 1677(18)'

The term "United States-Canada Agreement" means the United States-Canada Free-Trade Agreement.

(n) Usual commercial quantities

19 USC 1677(17)

The term "usual commercial 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 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.

SEC. 704 Summary of applicable time periods in antidumping and countervailing duty investigations

NEW

(a) Initiation of investigations

Commerce shall determine whether to initiate an investigation within 20 days after a petition is filed, as provided in section 705(c).

(b) Preliminary determinations**(1) Preliminary determination by Commission**

The Commission shall make its preliminary determination within 45 days after a petition is filed, as provided in section 706(a).

(2) Preliminary determinations by Commerce**(A) Antidumping duty determinations**

Commerce shall make its preliminary determination within 160 days after a petition is filed, as provided in section 706(b)(1), except if certain short life cycle merchandise is involved this time period shall be reduced to--

(i) 120 days, if manufacturers that are second offenders account for a significant proportion of the merchandise under investigation, as provided in section 713(a)(1), or

(ii) 100 days, if manufacturers that are multiple offenders account for a significant proportion of the merchandise under investigation, as provided in section 713(a)(2).

(B) Countervailing duty determinations

Commerce shall make its preliminary determination within 85 days after a petition is filed, as provided in section 706(b)(2)(A), except if upstream subsidization is involved Commerce shall make its preliminary determination within 250 days after a petition is filed, as provided in section 709(c)(3)(E)(i). A preliminary finding of upstream subsidization also affects the time period for Commerce's final determination, as provided in section 709(c)(3)(E)(ii).

(C) Preliminary determination under waiver of verification

If a petitioner waives verification, Commerce shall make its preliminary determination within 75 days after the initiation of an antidumping duty investigation or 55 days after the initiation of a countervailing duty investigation, as provided in section 706(b)(3).

(D) Extraordinarily complicated cases

In an extraordinarily complicated case, Commerce shall make its preliminary determination no later than the 210th day after an antidumping duty petition is filed, or no later than the

150th day after a countervailing duty petition is filed, as provided in section 706(c)(1)(C) and (D) (or 310 days in cases involving upstream subsidization, as provided in section 709(c)(3)(E)(i).

(c) Final determinations

(1) Final determination by Commerce

(A) Antidumping duty investigations

Commerce shall make its final determination within 75 days after the date of its preliminary determination, as provided in section 707(a)(1)(A), except that this time period may be extended to 135 days when certain exporters or the petitioner make a written request for postponement, as provided in section 707(a)(1)(B).

(B) Countervailing duty investigations

Commerce shall make its final determination within 75 days after the date of its preliminary determination, except that this time period may be extended pursuant to an exception concerning a simultaneous antidumping duty investigation involving imports of the same class or kind of merchandise from the same or other countries, as provided in section 707(a)(2). In addition, a preliminary finding of upstream subsidization has the following effects on the time period for Commerce's final countervailing determination:

(i) in cases in which the preliminary determination was negative, the time period for Commerce's final determination shall be extended to 165 or 225 days as appropriate, as provided in section 709(c)(3)(E)(ii), or

(ii) in cases in which the preliminary determination was affirmative, the determination concerning upstream subsidization need not be made until the conclusion of the first annual review of any eventual countervailing duty order, or will be made in the investigation and the time period for Commerce's final determination shall be extended to 165 or 225 days as appropriate, as provided in section 709(c)(3)(E)(ii).

(2) Final determination by Commission

(A) Following an affirmative preliminary determination by Commerce

The Commission shall make its final determination before the later of--

(i) the 120th day after Commerce's affirmative preliminary determination, as provided in section 707(b)(2)(A),
Or

(ii) the 45th day after Commerce's affirmative final determination, as provided in section 707(b)(2)(B).

(B) Following a negative preliminary determination by Commerce

When Commerce's preliminary determination is negative, but its final determination is affirmative, the Commission shall make its final determination within 75 days after the date of Commerce's affirmative final determination, as provided in section 707(b)(3).

(d) Publication of antidumping and countervailing duty orders

Within 7 days after being notified by the Commission of an affirmative antidumping or countervailing duty determination, Commerce shall publish an order, as provided in section 715(a)(1)(A) and (B).

SEC. 705 Initiation of antidumping and countervailing duty investigations

(a) Initiation by Commerce

19 USC 1671a(a)
19 USC 1673a(1)

An antidumping duty investigation, a countervailing duty investigation, or both, shall be commenced whenever Commerce 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 702(a)(1) of this subtitle exist, or, in the initiation of an antidumping duty investigation, when an affirmative determination has been made under the persistent dumping provisions, as provided in section 715(h) of this subtitle.

(b) Initiation by petition

19 USC 1671a(b)
19 USC 1673a(b)

(1) Petition requirements

An antidumping duty proceeding, a countervailing duty proceeding, or both, shall be commenced whenever an interested party described in paragraph (3), (4), (5), (6), or (7) of section 703(f) of this subtitle files a petition with Commerce, on behalf of an industry, which alleges the elements necessary for the imposition of the duty imposed by section 702(a)(1) of this subtitle, 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 Commerce 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 Commerce.

(3) Countervailing duty petition based upon a derogation of an international undertaking on official export credits

19 USC 1671a(b)(3)

If the sole basis of a countervailing duty petition filed under subsection (b)(1) of this section is the derogation of an international undertaking on official export credits, Commerce shall immediately notify the Secretary of the Treasury who shall, in consultation with Commerce, within twenty days determine the existence and estimated value of the derogation, if any, and shall publish such determination in the Federal Register.

(c) Petition determination

19 USC 1671a(c)
19 USC 1673a(c)

Within 20 days after the date on which a petition is filed under subsection (b) of this section, Commerce shall--

(1) determine whether the petition alleges the elements necessary for the imposition of a duty under section 702(a)(1) of this subtitle 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/or 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

19 USC 1671a(d)
19 USC 1673a(d)

Commerce shall--

(1) notify the Commission immediately of any determination it makes under subsection (a) or (c) of this section, 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 Commerce 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 Commerce.

SEC. 706 Preliminary determinations

19 USC 1671b
19 USC 1673b

(a) Determination by Commission of reasonable indication of injury

Except in the case of a petition dismissed by Commerce under section 705(c)(3) of this subtitle, the Commission, within 45 days after the date on which a petition is filed under section 705(b) (relating to initiation of investigation by petition) of this subtitle or on which it receives notice from Commerce of an investigation commenced under section 705(a) (relating to initiation of investigation by Commerce) of this subtitle, 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 Commerce. If that determination is negative, the investigation shall be terminated.

(b) Preliminary determination by Commerce

(1) Period of antidumping duty investigation

19 USC 1673b(b)(1)

Except as provided in section 713(a) (relating to short life cycle merchandise) of this subtitle, within 160 days after the date on which a petition is filed under section 705(b) (relating to initiation of investigation by petition) of this subtitle, or an investigation is commenced under section 705(a) (relating to initiation of investigation by Commerce) of this subtitle (unless short life cycle merchandise is involved, as provided in section 713 of this subtitle), but not before an affirmative determination by the Commission under subsection

(a) of this section, Commerce 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 Commerce 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) Period of countervailing duty investigation

19 USC 1671b(b)(1)

(A) Within 85 days after the date on which a petition is filed under section 705(b) (relating to initiation of investigation by petition) of this subtitle, or an investigation is commenced under section 705(a) (relating to initiation of investigation by Commerce) of this subtitle (unless upstream subsidization is alleged, as provided in section 709(c)(3)(E) of this subtitle), but not before an affirmative determination by the Commission under subsection (a) of this section, Commerce 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 Commerce under this subsection is affirmative, the determination shall include an estimate of the net subsidy.

(B) Notwithstanding subsection (b)(2)(A) of this section, when the petition is one subject to section 705(b)(3) (relating to countervailing duty petition based upon a derogation of an international undertaking on export credits) of this subtitle, Commerce shall, taking into account the nature of the subsidy concerned, make the determination required by subsection (b)(2) of this section on an expedited basis and within 85 days after the date on which the petition is filed under section 705(b) (relating to initiation of investigation by petition) of this title unless the provisions of subsection (c) of this section apply.

19 USC 1671 b(b)(2)

(3) Preliminary determination under waiver of verification

Within 75 days after the initiation of an antidumping investigation or 55 days after the initiation of a countervailing duty investigation, Commerce shall cause an official designated for such purpose to review the information concerning the case received during the first 60 days of the antidumping duty investigation or the first 50 days of the countervailing duty 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

19 USC 1671b(b)(3)
19 USC 1673b(b)(2)

such disclosure, all available nonconfidential information and all other information which is disclosed pursuant to section 714(b) (relating to access to information) of this subtitle. 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 paragraph (3), (4), (5), (6), or (7) of section 703(0 of this subtitle to whom such disclosure was made may furnish to Commerce 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 paragraph (3), (4), (5), (6), or (7) of section 703(0 of this subtitle 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 antidumping duty investigation or on an expedited basis in a countervailing duty investigation on the basis of the record established during the first 60 days after the antidumping duty investigation was commenced or during the first 50 days after the countervailing duty investigation was commenced.

(c) Extension of period in extraordinarily complicated cases

19 USC 1671b(c)
19 USC 1673b(c)

(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) of this section, or

(B) Commerce 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 (a) the transactions to be investigated or adjustments to be considered in an antidumping duty investigation, or (b) the alleged subsidy practices in a countervailing duty investigation;

(1) the novelty of the issues presented;

(III) for purposes of a countervailing duty investigation, 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 Commerce may postpone making the preliminary determination under subsection (b) of this section until--

(C) for purposes of an antidumping duty investigation, not later than the 210th day after the date on which a petition is filed under section 705(b) (relating to initiation of investigation by petition) of this subtitle, or an investigation is commenced under section 705(a) (relating to initiation of investigation by Commerce) of this subtitle. No extension of a determination date may be made under this paragraph for any investigation in which a determination date provided for in section 713(a) (relating to short life cycle merchandise) of this subtitle applies unless the petitioner submits written notice to Commerce of its consent to the extension;

19 USC 1673b(c)(1)

(D) for purposes of a countervailing duty investigation, not later than the 150th day after the date on which a petition is filed under section 705(b) of this subtitle, or an investigation is commenced under section 705(a) of this subtitle.

19 USC 1671b(c)(1)

(2) Notice of postponement

Commerce 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) or (b)(2) of this section, 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.

19 USC 1671b(c)(2)

19 USC 1673b(c)(2)

(d) Effect of determination by Commerce

If the preliminary determination of Commerce under subsection (b) of this section is affirmative, Commerce--

19 USC 1671b(d)

19 USC 1673b(d)

(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 in an antidumping duty investigation, or to the estimated amount of the net subsidy in a countervailing duty investigation, 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 Commerce 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 Commerce.

(e) Notice of determinations

19 USC 1671b(f)
19 USC 1673b(f)

Whenever the Commission or Commerce makes a determination under this section or section 711(b) (relating to preliminary critical circumstances determinations), 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. 707 Fmal determinations

19 USC 1671d
19 USC 1673d

(a) Final determination by Commerce

(1) Antidumping duty investigations

19 USC 1673d(a)

(A) General Rule

Within 75 days after the date of its preliminary determination under section 706(b) of this subtitle, Commerce 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.

(B) Extension of period for determination

Commerce may postpone making the final determination under subparagraph (A) until not later than the 135th day after the date on which it published notice of its preliminary determination under section 706(b) of this subtitle if a request in writing for such postponement is made by--

(i) exporters who account for a significant proportion of

exports of the merchandise which is the subject of the investigation, in a proceeding in which the preliminary determination by Commerce under section 706(b) of this subtitle was affirmative, or

(ii) the petitioner, in a proceeding in which the preliminary determination by Commerce under section 706(b) of this subtitle was negative.

(2) Countervailing duty determinations

19 USC 1671d(a)

Within 75 days after the date of the preliminary determination under section 706(b) of this subtitle, Commerce shall make a final determination of whether or not a subsidy is being provided with respect to the merchandise; except that when a countervailing duty investigation is initiated simultaneously with an antidumping investigation, which involves imports of the same class or kind of merchandise from the same or other countries, Commerce, if requested by the petitioner, shall extend the date of the final determination under this paragraph to the date of the final determination of Commerce in such antidumping investigation.

(b) Final determination by Commission

19 USC 1671d(b)

19 USC 1673d(b)

(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, or sales (or the likelihood of sales) for importation, of the merchandise with respect to which Commerce has made an affirmative determination under subsections (a)(1)(A) and (a)(2) of this section.

(2) Period for injury determination following affirmative preliminary determination by Commerce

If the preliminary determination by Commerce under section 706(b) of this subtitle 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 Commerce makes its affirmative preliminary determination under section 706(b) of this subtitle, or

(B) the 45th day after the day on which Commerce makes its affirmative final determination under section (a) of this section.

(3) Period for injury determination following negative preliminary determination by Commerce

If the preliminary determination by Commerce under section 706(b) of this subtitle is negative, and its final determination under subsection (a) of this section 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.

(c) Effect of final determinations

**19 USC 1671d(c)
19 USC 1673d(c)**

(1) Effect of affirmative determination by Commerce

If the determination of Commerce under subsection (a) of this section or section 711(c)(1) (relating to final critical circumstances determinations) is affirmative, then--

(A) Commerce 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 Commerce 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 Commerce, and

(B) in cases where the preliminary determination by Commerce under section 706(b) of this subtitle was negative, Commerce shall order under paragraphs (1) and (2) of section 706(d) of this subtitle 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 Commerce and the Commission under subsections (a)(1)(A), (a)(2), and (b)(2) of this section are affirmative, then Commerce shall issue an antidumping duty order, a countervailing duty order, or both, under section 715(a)(1) of this subtitle. If either of such determinations is negative, the investigation shall be terminated upon the publication of notice of that negative determination and

Commerce shall--

(A) terminate the suspension of liquidation under section 706(d)(1) of this subtitle, and

(B) release any bond or other security and refund any cash deposit required under section 706(d)(2) of this subtitle.

(d) Publication of notice of determinations

19 USC 1671d(d)
19 USC 1673d(d)

Whenever Commerce or the Commission makes a determination under this section or section 711(c) (relating to final critical circumstances determinations), 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.

(e) Correction of ministerial errors

19 USC 1671d(e)
19 USC 1673d(e)

Commerce shall establish procedures for the correction of ministerial errors in final determinations within a reasonable time after the determinations are issued under this section. Such procedures shall ensure opportunity for interested parties to present their views regarding any such errors. As used in this subsection, the term "ministerial error" includes errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which Commerce considers ministerial.

SEC. 708 Specific Commission findings in antidumping and countervailing duty investigations

(a) Material injury

19 USC 1677(7)

(1) In general

The term "material injury" means harm which is not inconsequential, immaterial, or unimportant.

(2) Volume and consequent impact

In making determinations under sections 706(a) (relating to preliminary determinations by the Commission) and 707(b) (relating to final determinations by the Commission) of this subtitle, the Commission, in each case--

(A) shall consider--

(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, but only in the context of production operations within the United States; and

(B) may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports.

In the notification required under section 707(d) (relating to publication of final determinations) of this subtitle, as the case may be, the Commission shall explain its analysis of each factor considered under subparagraph (A) and identify each factor considered under subparagraph (B) and explain in full its relevance to the determination.

(3) Evaluation of relevant factors

For purposes of paragraph (2)--

(A) 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.

(B) Price

In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether--

(i) there has been significant price underselling 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.

(C) Impact on affected domestic industry

In examining the impact required to be considered under paragraph (2)(A)(iii) of this section, the Commission shall evaluate all relevant economic factors which have a bearing on the state of the industry in the United States, 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,

(iii) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, and

(iv) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.

The Commission shall evaluate all relevant economic factors described in this clause within the context of the business cycle and conditions of competition that are distinctive to the affected industry.

(4) Special rules for agricultural products

(A) 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.

(B) In the case of agricultural products, the Commission shall consider any increased burden on government income or price support programs.

19 USC 1677(7)(E)(ii)

(5) Standard for determination

The presence or absence of any factor which the Commission is required to evaluate under paragraph (3) or (4) shall not necessarily give decisive guidance with respect to the determination by the Commission of material injury.

19 USC 1677(7)(F)

(b) Threat of material injury

(1) In general

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the merchandise, the Commission shall

consider, among other relevant economic factors--

(A) If a subsidy is involved, such information as may be presented to it by Commerce as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement on Subsidies and Countervailing Measures) provided by a foreign country and the effects likely to be caused by the subsidy,

(B) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States,

(C) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,

(D) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,

(E) any substantial increase in inventories of the merchandise in the United States,

(F) the presence of underutilized capacity for producing the merchandise in the exporting country,

(G) any other demonstrable adverse trends that indicate the probability that the importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury,

(H) the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 702 of this subtitle or to final orders under section 715(a) of this subtitle, are also used to produce the merchandise under investigation,

(I) in any investigation under this subtitle which involves imports of both a raw agricultural product (within the meaning of section 703(e)(5)(D)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 707(b)(1) of this subtitle with respect to either the raw agricultural product or the processed agricultural product (but not both), and

(J) the actual and potential negative effects on the

existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.

(2) Basis for determination

Any determination by the Commission under this subtitle that an industry in the United States is threatened with material injury shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition.

(3) Effect of dumping in third-country markets

(A) In general

In antidumping duty investigations under this subtitle, the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other GATT member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry. In the course of its investigation, the Commission shall request information from the foreign manufacturer, exporter, or United States importer concerning this issue.

(B) GATT member market

For purposes of this clause, the term "GATT member market" means the market of any country which is a signatory to The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (relating to antidumping measures).

(C) European Communities

For purposes of this clause, the European Communities shall be treated as a foreign country.

(c) Cumulation

(1) Material injury findings

For purposes of subsections (a)(3)(A) and (B) of this section and subject to paragraph (3), the Commission shall cumulatively assess the volume and effect of imports from two or more countries of like products subject to investigation if such imports compete with each other and with like products of the domestic industry in the United States market.

19 USC 1677(7)(C)(iv)(I)

(2) Threat of material injury findings**19 USC 1677(7)(F)(iv)**

To the extent practicable and subject to paragraph (3), for purposes of subsections (b)(1)(C) and (D) the Commission may cumulatively assess the volume and price effects of imports from two or more countries if such imports--

(A) compete with each other, and with like products of the domestic industry, in the United States market, and

(B) are subject to any investigation under section 702 of this subtitle.

(3) CBI exception**19 USC 1677(7)(C)
(iv)(11)**

Solely for the purposes of determining material injury, or threat thereof, by reason of imports which are products of a country designated as a beneficiary country under chapter 2 of subtitle VI of this title (trade preferences for Caribbean Basin countries), the volume and effect of imports from such country may only be cumulatively assessed with imports of like products from one or more other countries designated as beneficiary countries.

(4) Treatment of negligible imports**19 USC 1677(7)(C)(v)**

The Commission is not required to apply subsection (c)(1), (2), or (3) in any case in which the Commission determines that imports of the merchandise subject to investigation are negligible and have no discernable adverse impact on the domestic industry. For purposes of making such determination, the Commission shall evaluate all relevant economic factors regarding the imports, including, but not limited to, whether--

(A) the volume and market share of the imports are negligible,

(B) sales transactions involving the imports are isolated and sporadic, and

(C) the domestic market for the like products is price sensitive by reason of the nature of the product, so that a small quantity of imports can result in price suppression or depression.

For purposes of this clause, the Commission may treat as negligible and having no discernable adverse impact on the domestic industry imports that are the product of any country that is a party to a free trade area agreement with the United

States which entered into force and effect before January 1, 1987, if the Commission determines that the domestic industry is not being materially injured by reason of such imports.

(d) Affirmative determinations by divided Commission

19 USC 1677(11)

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--

(1) material injury to an industry in the United States,

(2) threat of material injury to such an industry, or

(3) 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.

SEC. 709 Specific Commerce findings in antidumping and countervailing duty investigations

(a) General rules for antidumping and countervailing duty determinations

(1) Nonmarket economy country

(A) Factors to be considered in determining whether a nonmarket economy (as defined in section 703(h)), exists

19 USC 1677(18)(B)

In making a determination of whether a nonmarket economy exists, Commerce shall take into account--

(i) the extent to which the currency of the foreign country is convertible into the currency of other countries;

(ii) the extent to which wage rates in the foreign country are determined by free bargaining between labor and management,

(iii) the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country,

(iv) the extent of government ownership or control of the means of production,

(v) the extent of government control over the allocation of resources and over the price and output decisions of enterprises, and

(vi) such other factors as Commerce considers appropriate.

(B) Determination in effect

19 USC 1677(18)(C)

(i) Any determination that a foreign country is a nonmarket economy country shall remain in effect until revoked by Commerce.

(ii) Commerce may make a determination that a nonmarket economy exists with respect to any foreign country at any time.

(iii) Determinations not in issue

19 USC 1677(18)(D)

Notwithstanding any other provision of law, any determination made by Commerce that a nonmarket economy exists shall not be subject to judicial review in any investigation conducted under the antidumping duty provisions of this subtitle.

(iv) Collection of information

19 USC 1677(18)(E)

Upon request by Commerce, the Commissioner of Customs shall provide Commerce a copy of all public and proprietary information submitted to, or obtained by, the Commissioner of Customs that Commerce considers relevant to proceedings involving merchandise from nonmarket economy countries. Commerce shall protect proprietary information obtained under this section from public disclosure in accordance with section 714(b) (relating to access to information) of this subtitle.

(2) Equivalency of leases to sales

19 USC 1677(19)

In determining whether a lease is equivalent to a sale for purposes of this subtitle, Commerce shall consider--

(A) the terms of the lease,

(B) commercial practice within the industry,

(C) the circumstances of the transaction,

(D) whether the product subject to the lease is integrated into the operations of the lessee or importer,

(E) whether in practice there is a likelihood that the lease will be continued or renewed for a significant period of time, and

(F) other relevant factors, including whether the lease transaction would permit avoidance of antidumping or countervailing duties.

(b) Antidumping duty determinations

(1) United states price

19 USC 1677a(a)

For purposes of this subtitle, the term "United States price" means the purchase price, or the exporter's sales price, of the merchandise, whichever is appropriate.

(A) Purchase price

19 USC 1677a(b)

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 a reseller or the manufacturer or producer of the merchandise for exportation to the United States. Appropriate adjustments for costs and expenses under subparagraph (D) of this paragraph 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.

(B) Exporter's sales price

19 USC 1677a(c)

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 subparagraphs (D) and (E) of this subsection.

(C) Exporter

19 USC 1677(13)

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--

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

(ii) 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;

(iii) 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

(iv) 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.

(D) Adjustments to purchase price and exporter's sales price

19 USC 1677a(d)

The purchase price and the exporter's sales price shall be adjusted by being--

(i) increased by--

(I) 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,

(II) 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;

(III) 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

(IV) the amount of any countervailing duty imposed on the merchandise under this subtitle to offset an export subsidy, and

(ii) reduced by--

(I) except as provided in clause (i)(IV), 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

(II) 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 subsection (c)(2)(C) of this section.

(E) Additional adjustments to exporter's sales price

19 USC 1677a(e)

For purposes of this section, the exporter's sales price shall also be adjusted by being reduced by the amount, if any, of--

(i) commissions for selling in the United States the particular merchandise under consideration,

(ii) expenses generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise, and

(iii) 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.

(2) Foreign market value

19 USC 1677b

(A) Determination; fictitious market; sales agencies

For purposes of this subtitle--

(i) In general

The foreign market value of imported merchandise shall be the price, at the time such merchandise is first sold within the United States by the person for whom (or for whose account) the merchandise is imported to any other person who is not described in subparagraph (E)(iii) of this subsection with respect to such person--

(I) 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 commercial quantities and in the ordinary course of trade for home consumption, or

(II) if not sold or offered for sale for home consumption, or if Commerce 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 subtitle 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.

(ii) Use of constructed value

If Commerce determines that the foreign market value of imported merchandise cannot be determined under clause (i)(I), then, notwithstanding clause (i)(II), the foreign market value of the merchandise may be the constructed value of that merchandise, as determined under subparagraph (E) of this subsection.

(iii) 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 subsection (b)(1)(C) of this section, 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.

(iv) Other adjustments

In determining foreign market value, if it is established to the satisfaction of Commerce 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--

(I) the fact that the commercial 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 commercial 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);

(II) other differences in circumstances of sale; or

(III) the fact that merchandise described in paragraph (2) or (3) of section 703(1) (relating to the definition of "such or similar merchandise") of this subtitle is used in determining foreign market value,

then due allowance shall be made therefor.

(v) Fictitious markets

The occurrence of different movements in the prices at which different forms of any merchandise subject to an antidumping duty order issued under this subtitle are sold (or, in the absence of sales, offered for sale) after the issuance of such order in the principal markets of the foreign country from which the merchandise is exported may be considered by Commerce as evidence of the establishment of a fictitious market for the merchandise if the movement in such prices appears to reduce the amount by which the foreign market value of the merchandise exceeds the United States price of the merchandise.

(B) Sales at less than cost of production

Whenever Commerce 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, it shall determine whether, in fact, such sales were made at less than the cost of producing the merchandise. If Commerce determines that sales made at less than cost of production--

(i) have been made over an extended period of time and in substantial quantities, and

(ii) 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 subparagraph (A) of this subsection, Commerce shall employ the constructed value of the merchandise to determine its foreign market value.

(C) Nonmarket economy countries

(i) In general

If--

(I) the merchandise under investigation is exported from a nonmarket economy country, and

(U) Commerce finds that available information does not permit the foreign market value of the merchandise to be determined under subparagraph (A) of this subsection,

Commerce shall determine the foreign market value of the merchandise on the basis of the value of the factors of production utilized in producing the merchandise and to which shall be added an amount for general expenses and profit plus the cost of containers, coverings, and other expenses, as required by subparagraph (E) of this subsection. Except as provided in clause (ii), the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by Commerce.

(ii) Exception

If Commerce finds that the available information is inadequate for purposes of determining the foreign market value of merchandise under clause (i), Commerce shall determine the foreign market value on the basis of the price at which merchandise that is--

(I) comparable to the merchandise under investigation, and

(II) produced in one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country,

is sold in other countries, including the United States.

(iii) Factors of production

For purposes of clause (i), the factors of production utilized in producing merchandise include, but are not limited to--

- (I) hours of labor required,
 - (II) quantities of raw materials employed,
 - (III) amounts of energy and other utilities consumed,
- and
- (IV) representative capital cost, including depreciation.

(iv) Valuation of factors of production

Commerce, in valuing factors of production under clause (i), shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are--

- (I) at a level of economic development comparable to that of the nonmarket economy country, and
- (II) significant producers of comparable merchandise.

(D) Special Wile for certain multinational corporations

Whenever, in the course of an investigation under this subtitle, Commerce determines that--

(i) 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;

(ii) 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

(iii) 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. Commerce 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 purposes of this subsection, in determining foreign market value of such or similar merchandise produced in a country outside of the country of exportation, Commerce shall determine its price at the time of exportation from the country of exportation and shall make any adjustments required by clause (i) of this subsection 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

(i) Determination

For the purposes of this subtitle, the constructed value of imported merchandise shall be the sum of--

(I) 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;

(I3) 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 commercial quantities and in the ordinary course of trade, except that--

a. the amount for general expenses shall not be less than 10 percent of the cost as defined in subclause a, and

b. the amount for profit shall not be less than 8 percent of the sum of such general expenses and cost and

(III) 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.

(ii) 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 clause (iv) 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 clause (iv) of this subsection.

(iii) Special rule

If, regarding any transaction between persons specified in any one of the subparagraphs of clause (iv) involving the production by one of such persons of a major input to the merchandise under consideration, Commerce has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the costs of production of such input, then Commerce may determine the value of the major input on the best evidence available regarding such costs of production, if such costs are greater than the amount that would be determined for such input under clause (ii).

(iv) Related parties

The persons referred to in clauses (ii) and (iii) of this subsection are:

(I) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(II) Any officer or director of an organization and such organization.

(III) Partners.

(IV) Employer and employee.

(V) 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.

(VI) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(F) Exportation from an intermediate country

If--

(i) a reseller purchases the merchandise from the manufacturer or producer of the merchandise,

(ii) the manufacturer or producer of the merchandise does not know (at the time of the sale to such reseller) the country to which such reseller intends to export the merchandise,

(iii) the merchandise is exported by, or on behalf of, such reseller to a country other than the United States,

(iv) the merchandise enters the commerce of such country but is not substantially transformed in such country, and

(v) the merchandise is subsequently exported to the United States,

such country shall be treated, for purposes of this section, as the country from which the merchandise was exported.

(3) Sampling and averaging

19 USC 1677f-I

(A) In general

For the purpose of determining United States price or foreign market value under subsection (b)(1) and (2) of this section, and for purposes of carrying out annual reviews under section 716(a) of this subtitle, Commerce may--

(i) 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, and

(ii) decline to take into account adjustments which are insignificant in relation to the price or value of the merchandise.

(B) Selection of samples and averages

The authority to select appropriate samples and averages shall rest exclusively with Commerce; but such samples and averages shall be representative of the transactions under investigation.

(c) Countervailing duty determinations**19 USC 1677(5)(B)****(1) In general**

In determining the existence of a subsidy (as defined in section 703(k) of this subtitle), Commerce, in each investigation, shall determine whether the subsidy in law or in fact is provided to a specific enterprise or industry, or group of enterprises or industries. Nominal general availability, under the terms of the law, regulation, program, or rule establishing a subsidy, of the benefits thereunder is not a basis for determining that the subsidy is not, or has not been, in fact provided to a specific enterprise or industry, or group thereof.

(2) Net subsidy**19 USC 1677(6)**

For the purpose of determining the net subsidy, Commerce 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.

(3) Upstream subsidies**(A) investigation of****19 USC 1671(d)**

Whenever Commerce has reasonable grounds to believe Or suspect that an upstream subsidy, as defined in subparagraph (B) of this subsection, is being paid or bestowed, Commerce shall investigate whether an upstream subsidy has in fact been paid or bestowed, and if so, shall include the amount of the upstream subsidy as provided in subparagraph (D) of this subsection.

(B) definition**19 USC 1677-1(a)**

The term "upstream subsidy" means any subsidy described in section 703(k)(B) of this subtitle by the government of a country that--

(i) is paid or bestowed by that government with respect to a product (hereafter referred to as an "input product") that is used in the manufacture or production in that country of merchandise which is the subject of a countervailing duty proceeding;

(ii) in the judgment of Commerce bestows a competitive benefit on the merchandise; and

(iii) has a significant effect on the cost of manufacturing or producing the merchandise.

In applying this subsection, an association of two or more foreign countries, political subdivisions, dependent territories, or possessions of foreign countries organized into a customs union outside the United States shall be treated as being one country if the subsidy is provided by the customs union.

(C) Determination of competitive benefit

19 USC 1677-1(b)

(i) In general

Except as provided in clause (ii), Commerce shall decide that a competitive benefit has been bestowed- when the price for the input product referred to in subparagraph (3)(i) of this subsection for such use is lower than the price that the manufacturer or producer of merchandise which is the subject of a countervailing duty proceeding would otherwise pay for the product in obtaining it from another seller in an arms-length transaction.

(ii) Adjustments

If Commerce has determined in a previous proceeding that a subsidy is paid or bestowed on the input product that is used for comparison under clause (i), Commerce may (A) where appropriate, adjust the price that the manufacturer or producer of merchandise which is the subject of such proceeding would otherwise pay for the product to reflect the effects of the subsidy, or (B) select in lieu of that price a price from another source.

(D) Inclusion of amount of subsidy

19 USC 1677-1(c)

If Commerce decides, during the course of a countervailing duty proceeding that an upstream subsidy is being or has been paid or bestowed regarding the merchandise under investigation, Commerce shall include in the amount of any countervailing duty imposed on the merchandise an amount equal to the amount of the competitive benefit referred to in subparagraph (B) , except that in no event shall the amount be greater than the amount of subsidization determined with respect to the upstream product.

(E) Time period of preliminary countervailing duty investigation where upstream subsidization involved

19 USC 1671b(g)

(i) In general

Whenever Commerce concludes prior to a preliminary determination under section 706(b) of this subtitle, that there is a reasonable basis to believe or suspect that an upstream subsidy is being bestowed, the time period within which a preliminary determination must be made shall be extended to 250 days after the filing of a petition under section 705(b) (relating to initiation of investigation by petition) of this subtitle or commencement of an investigation under section 705(a) (relating to initiation of investigation by Commerce) of this subtitle (310 days in cases declared extraordinarily complicated under section 706(c) of this subtitle), if Commerce concludes that such additional time is necessary to make the required determination concerning upstream subsidization.

(ii) Exceptions

Whenever Commerce concludes, after a preliminary determination under section 706(b) of this subtitle, that there is a reasonable basis to believe or suspect that an upstream subsidy is being bestowed--

(I) in cases in which the preliminary determination was negative, the time period within which a final determination must be made shall be extended to 165 or 225 days as appropriate, under section 707(a)(2) of this subtitle, or

(II) in cases in which the preliminary determination is affirmative, the determination concerning upstream subsidization--

a. need not be made until the conclusion of the first annual review under section 716 of this subtitle of any eventual countervailing duty order, or, at the option of the petitioner, or

b. will be made in the investigation and the time period within which a final determination must be made shall be extended to 165 or 225 days, as appropriate, under section 707(a)(2) of this subtitle, except that the suspension of liquidation ordered in the preliminary determination shall terminate at the end of 120 days from the date of publication of that determination and not be resumed unless and until the publication of a countervailing duty order under section 715(a)(1)(B) of this subtitle.

There may *be* an extension of time for the making of a final determination under this subsection only if Commerce determines that such additional time is necessary to make the

required determination concerning upstream subsidization.

(4) Calculation of subsidies on certain processed agricultural products

19 USC 1677-2

In the case of an agricultural product processed from a raw agricultural product in which--

(A) the demand for the prior stage product is substantially dependent on the demand for the latter stage product, and

(B) the processing operation adds only limited value to the raw commodity,

subsidies found to be provided to either producers or processors of the product shall be deemed to be provided with respect to the manufacture, production, or exportation of the processed product.

(5) Subsidy practices discovered during a proceeding

19 USC 1677d

If, in the course of a proceeding under this subtitle, Commerce discovers a practice which appears to be a subsidy, but was not included in the matters alleged in a countervailing duty petition, then Commerce--

(A) shall include the practice in the proceeding if it appears to be a subsidy with respect to the merchandise which is the subject of the proceeding, or

(B) shall transfer the information concerning the practice (other than confidential information) to the library maintained under section 714(b)(1)(A) of this subtitle, if the practice appears to be a subsidy with respect to any other merchandise.

(6) Treatment of international consortia

19 USC 1671(d)²

For purposes of countervailing duty investigations, if the members (or other participating entities) of an international consortium that is engaged in the production of a class or kind of merchandise subject to a countervailing duty investigation receive subsidies from their respective home countries, to assist, permit, or otherwise enable their participation in that consortium through production or manufacturing operations in their respective home countries, then Commerce shall cumulate all such subsidies, as well as subsidies provided directly to the international consortium, in determining any countervailing duty upon such merchandise.

(7) Effect of derogation of Export-Import Bank financing

19 USC 1671g

Nothing in this title shall be interpreted as superseding the provisions of section 635a-3 of title 12 (relating to Export-Import Bank financing), except that in the event of an

assessment of duty based on a derogation under section 715(a) of this subtitle or action under section 706(d)(2) (relating to posting of cash deposit, bond or other security if preliminary determination by Commerce is affirmative) of this subtitle, the Secretary of the Treasury shall not authorize the Bank to provide guarantees, insurance and credits to competing United States sellers pursuant to section 635a-3 of title 12.

SEC. 710 Termination or suspension of investigation

(a) Termination of investigation upon withdrawal of petition

**19 USC 1671c
19 USC 1673c**

(1) In general

Except as provided in paragraphs (2) and (3), an antidumping or countervailing duty investigation may be terminated by either Commerce or the Commission,- after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner or by Commerce if the investigation was initiated under section 705(a) (relating to the initiation of investigation by Commerce) of this subtitle.

(2) Special rules for quantitative restriction agreements

(A) In general

Subject to subparagraphs (B) and (C), Commerce may not terminate an antidumping or countervailing duty investigation under paragraph (1) by accepting an understanding or other kind of agreement (with the government of the country in which the subsidy practice is alleged to occur in the case of a countervailing duty investigation) to limit the volume of imports into the United States of the merchandise that is subject to the investigation unless Commerce is satisfied that termination on the basis of that agreement is in the public interest.

(B) Public interest factors

In making a decision under subparagraph (A) regarding the public interest, Commerce shall take into account--

(i) whether, based upon the relative impact on consumer prices and the availability of supplies of the merchandise, the agreement would have a greater adverse impact on United States consumers than the imposition of antidumping, countervailing duties, or both;

(ii) the relative impact on the international economic interests of the United States; and

(iii) the relative impact on the competitiveness of the domestic industry producing the like merchandise, including any such impact on employment and investment in that industry.

(C) Prior consultations

Before making a decision under subparagraph (A) regarding the public interest, Commerce shall, to the extent practicable, consult with--

(i) potentially affected consuming industries; and

(ii) potentially affected producers and workers in the domestic industry producing the like merchandise, including producers and workers not party to the investigation.

(3) Limitation on termination by Commission

The Commission may not terminate an investigation under paragraph (1) before a preliminary determination is made by Commerce under section 706(b) of this subtitle.

(b) Agreements to eliminate completely sales at less than fair value or to cease exports of merchandise in antidumping duty investigations

19 USC 1673c(b)

Commerce may suspend an antidumping duty 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 to eliminate or offset completely a subsidy or to cease exports of subsidized merchandise in countervailing duty investigations

19 USC 1671c(b)

Commerce may suspend a countervailing duty 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.

(d) Agreements eliminating injurious effect

19 USC 1673c(c)

(1) Antidumping duty investigations

If Commerce determines that extraordinary circumstances are present in a case, it may suspend an antidumping 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) Countervailing duty investigations

19 USC 1671c(c)

(A) General Rule

If Commerce determines that extraordinary circumstances are present in a case it may suspend a countervailing duty investigation upon the acceptance of an agreement from a government described in subsection (c) of this section, or from exporters described in subsection (c) of this section, 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.

(B) 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, Commerce may not accept an agreement under this subsection unless--

(i) the suppression or undercutting of price levels of domestic products by imports of that merchandise will be prevented, and

(ii) at least 85 percent of the net subsidy will be offset.

(C) Quantitative restrictions agreements

Commerce 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.

(3) Definitions

(A) Extraordinary circumstances

**19 USC 1671c(c)(4)
19 USC 1673c(c)(2)**

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) (I) for purposes of antidumping duty investigations, there are a large number of transactions to be investigated or adjustments to be considered, or (II) for purposes of countervailing duty investigations, there are a large number of alleged subsidy practices and the practices are complex;

(ii) the issues raised are novel; or

(iii)(1) for purposes of antidumping duty investigations, the number of firms involved is large, or (II) for purposes of countervailing duty investigations, the number of exporters involved is large.

(e) Additional rules and conditions

**19 USC 1671c(d)
19 USC 1673c(d)**

(1) Public interest; monitoring

Commerce shall not accept for purposes of a countervailing duty investigation, and may not accept for

purposes of an antidumping duty investigation, an agreement under subsection (b), (c), or (d) of this section 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) Special rules for countervailing duty investigations

19 USC 1671c(d)(1)

(A) In applying paragraph (1)(A) with respect to any quantitative restriction agreement under subsection (d) of this section, Commerce shall take into account, in addition to such other factors as are considered necessary or appropriate, the factors set forth in subsection (a)(2)(B)(i), (ii), and (iii) of this section as they apply to the proposed suspension and agreement, after consulting with the appropriate consuming industries, producers, and workers referred to in subsection (a)(2)(C)(i) and (ii) of this section.

(B) Exports of merchandise to United States not to increase during interim period

Commerce may not accept any agreement under subsection (c) of this section 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 Commerce.

(C) Regulations governing entry or withdrawals

In order to carry out an agreement concluded under subsection (c) or (d) of this section, Commerce is authorized to prescribe regulations governing the entry, or withdrawal from warehouse, for consumption of merchandise covered by such agreement.

(f) Suspension of investigation procedure

19 USC 1671c(e)
19 USC 1673c(e)

Before an investigation may be suspended under subsection (b), (c), or (d) of this section Commerce 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 (including any action required of foreign governments in countervailing duty investigations), and of how the agreement will meet the requirements of subsections (b) or (c) and (e), or (d) and (e) of this section, and

(3) permit all interested parties described in section 703(f) of this subtitle to submit comments and information for the record before the date on which notice of suspension of the investigation is published under subsection (g)(1)(A) of this section.

(g) Effects of suspension of investigation

**19 USC 1671c(f)
19 USC 1673c(f)**

(1) In general

If Commerce determines to suspend an investigation upon acceptance of an agreement described in subsection (b), (c), or (d) of this section, then--

(A) it shall suspend the investigation, publish notice of suspension of the investigation, and issue an affirmative preliminary determination under section 706(b) of this subtitle 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 and/or net subsidy

If the agreement accepted by Commerce is an agreement described in subsection (b) or (c) of this section, 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 706(d)(1) of this subtitle,

(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) Commerce shall refund any cash deposit and release any bond or other security deposited under section 706(d)(2)

of this subtitle.

(B) Other agreements

If the agreement accepted by Commerce is an agreement described in subsection (d) of this section, then the liquidation of entries of the merchandise which is the subject of the investigation shall be suspended under section 706(d)(1) of this subtitle, 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 (i)(3) of this section, but the security required under section 706(d)(2) of this subtitle may be adjusted to reflect the effect of the agreement.

(3) Where investigation is continued

If, pursuant to subsection (h) of this section; Commerce and the Commission continue an investigation in which an agreement has been accepted under subsection (b), (c), or (d) of this section, then--

(A) if the final determination by Commerce or the Commission under such section 707 of this subtitle is negative, the agreement shall have no force or effect and the investigation shall be terminated, or

(B) if the final determinations by Commerce and the Commission under such section are affirmative, the agreement shall remain in force, but Commerce shall not issue an antidumping or 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) or (c) and (e), or (d) and (e) of this section, and

(iii) the parties to the agreement carry out their obligations under the agreement in accordance with its terms.

(h) Investigation to be continued upon request

If Commerce, 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 interested party described in paragraph (3), (4), (5), (6), or (7) of section 703(f) of this subtitle which is a party to the investigation, or

19 USC 1671c(g)

19 USC 1673c(g)

(2) for purposes of an antidumping duty investigation, 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

(3) for purposes of a countervailing duty investigation, the government of the country in which the subsidy practice is alleged to occur,

then Commerce and the Commission shall continue the investigation.

(i) Review of suspension

19 USC 1671c(h)
19 USC 1673c(h)

(1) In general

Within 20 days after the suspension of an investigation under subsection (d) of this section, an interested party which is a party to the investigation and which is described in paragraph (3), (4), (5), (6), or (7) of section 703(f) of this subtitle may, by petition filed with the Commission and with notice to Commerce, 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 706(b) of this subtitle 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 affirmative determination by the Commission is published. If the determination of the Commission under paragraph (2) is affirmative, then Commerce shall--

(A) terminate the suspension of liquidation under section 706(d)(1) of this subtitle, and

(B) release any bond or other security, and refund any cash deposit, required under section 706(d)(2) of this subtitle.

(j) Violation of agreement

19 USC 1671c(i)

19 USC 1673c(i)

(1) In general

If Commerce determines that an agreement accepted under subsection (b), (c), or (d) of this section is being, or has been, violated, or no longer meets the requirements of such subsection (other than the requirement, under subsection (d)(1) or (d)(2)(A) of this section, of elimination of injury) and section 706(d)(1) (relating to the suspension of liquidation) of this subtitle, then, on the date of publication of its determination, it shall--

(A) suspend liquidation under section 706(d)(1) of this subtitle 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) or (c) and (e), or (d) and (e) of this section, 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 706(b) of this subtitle were made on the date of its determination under this paragraph,

(C) if the investigation was completed under subsection (h) of this section, issue an antidumping or countervailing duty order under section 715(a)(1) of this subtitle effective with respect to entries of merchandise the liquidation of which was suspended,

(D) if it considers the violation to be intentional, notify the Commissioner of Customs who shall take appropriate action under paragraph (2), and

(E) 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 Commerce under subsection (b), (c), or (d) of this section 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 1592(a) of title 19.

(k) Determination not to take agreement into account

19 USC 1671c(j)
19 USC 1673c(j)

In making a final determination under section 707 of this subtitle, or in conducting a review under section 716 of this subtitle, in a case in which Commerce has terminated a suspension of investigation under subsection (j)(1) of this section, or continued an investigation under subsection (h) of this section, the Commission and Commerce shall consider all of the merchandise which is the subject of the investigation, without regard to the effect of any agreement under subsection (b), (c), or (d) of this section.

(1) Termination of investigations initiated by Commerce

19 USC 1671c(k)
19 USC 1673c(k)

Commerce may terminate any investigation initiated by Commerce under section 705(a) of this subtitle after providing notice of such termination to all parties to the investigation.

(m) Antidumping duty investigations; special rule for nonmarket economy countries

19 USC 1673c(1)

(1) In general

Commerce may suspend an antidumping investigation upon acceptance of an agreement with a nonmarket economy country to restrict the volume of imports into the United States of the merchandise under investigation only if Commerce determines that--

(A) such agreement satisfies the requirements of subsection (e) of this section, and

(B) will prevent the suppression or undercutting of price levels of domestic products by imports of the merchandise under investigation.

(2) Failure of agreements

If Commerce determines that an agreement accepted

under this subsection no longer prevents the suppression or undercutting of domestic prices of merchandise manufactured in the United States, the provisions of subsection (j) of this section shall apply.

SEC. 711 Critical circumstances

(a) Collection of Information

19 USC 1671a(e)
19 USC 1673a(e)

If, at any time after the initiation of an investigation under this part, Commerce finds a reasonable basis to suspect that--

(1) for purposes of antidumping duty investigations,

(A) 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

19 USC 1673a(e)(1)
19 USC 1673a(e)(2)

(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,

(2) for purposes of countervailing duty investigations, that the alleged subsidy is inconsistent with the Agreement on Subsidies and Countervailing Measures, Commerce may request the Commissioner of Customs to compile information on an expedited basis regarding entries of the class or kind of merchandise that is the subject of the investigation. Upon receiving such request, the Commissioner of Customs shall collect information regarding the volume and value of entries of the class or kind of merchandise that is the subject of the investigation and shall transmit such information to Commerce at such times as Commerce shall direct (at least once every 30 days), until a final determination is made under section 707(a) of this subtitle, the investigation is terminated, or Commerce withdraws the request.

19 USC 1671a(e)

(b) Preliminary Determinations

19 USC 1671b(e)
19 USC 1673b(e)

(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 Commerce under section 707(a) of this subtitle, then Commerce shall promptly (at any time after the initiation of the antidumping or countervailing duty investigation) 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) For purposes of an antidumping duty investigation,

(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 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

19 USC 1673b(e)(1)(A)

(ii) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

19 USC 1673b(e)(1)(B)

Commerce shall be treated as having made an affirmative determination under clause (i)(1) in any investigation to which section 713(a) (relating to short life cycle merchandise) of this subtitle is applied.

(B) For purposes of a countervailing duty investigation,

(i) the alleged subsidy is inconsistent with the Agreement on Subsidies and Countervailing Measures, and

19 USC 1671b(e)(1)(A)

(ii) there have *been* massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

19 USC 1671b(e)(1)(B)

(2) Suspension of liquidation

19 USC 1671b(e)(2)

19 USC 1673b(e)(2)

If the determination of Commerce under paragraph (1) is affirmative, then any suspension of liquidation ordered under section 706(d)(1) of this subtitle 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.

(c) Final determinations

(1) By Commerce

19 USC 1671d(a)(2)

19 USC 1673d(a)(3)

If the final determination of Commerce under section 707 is affirmative, then that determination, in any investigation in which the presence of critical circumstances has been alleged under subsection (b) of this section, shall also contain a finding as to whether--

(A) For purposes of an antidumping duty investigation,

19 USC 1673d(a)(3)

(i) (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

(ii) there have been massive imports of the merchandise which is the subject of the investigation over a relatively short period.

Such findings may be affirmative even though the preliminary determination under subsection (b)(1) of this section was negative.

(B) For purposes of a countervailing duty investigation,

19 USC 1671d(a)(2)

(i) the subsidy is inconsistent with the Agreement on Subsidies and Countervailing Measures, and

(ii) there have been massive imports of the class or kind of merchandise involved over a relatively short period. Such findings may be affirmative even though the preliminary determination under subsection (b)(1) of this section was negative.

(2) By the Commission

19 USC 1671d(b)(4)

19 USC 1673d(b)(4)

(A) Retroactive application

(i) In general

If the finding of Commerce under subsection (c)(1) of this section is affirmative, then the final determination of the Commission shall include a finding as to whether retroactive imposition of an antidumping or countervailing duty on the merchandise appears necessary to prevent recurrence of material injury that was caused by massive imports of the merchandise over a relatively short period of time and will be difficult to repair.

(ii) Prevention of recurrence

For purposes of making its finding under clause (i), the Commission shall make an evaluation as to whether the effectiveness of the antidumping or countervailing duty order would be materially impaired if such imposition did not occur.

(iii) Evaluation of effectiveness

In making the evaluation under clause (ii), the Commission shall consider, among other factors it considers relevant--

(I) the condition of the domestic industry,

(II) whether massive imports of the merchandise over a relatively short period of time can be accounted for by efforts to avoid the potential imposition of antidumping and/or countervailing duties.

(III) whether foreign economic conditions led to the massive imports of the merchandise, and

(IV) whether the impact of the massive imports of the merchandise is likely to continue for some period after issuance of the antidumping or countervailing duty order under this subtitle.

(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 Commerce has made an affirmative determination under section 707(a) of this subtitle would have been found but for any suspension of liquidation of entries of that merchandise.

(d) Effect of final determinations

**19 USC 1671d(c)(3)
19 USC 1673d(c)(3)**

(1) Effect of negative determinations under subsections (c)(1) and (c)(2)(A) of this section

If the determination of Commerce or the Commission under subsections (c)(1) and (c)(2)(A) of this section, respectively, is negative, then Commerce shall--

(A) terminate any retroactive suspension of liquidation required under paragraph (2) of this subsection or subsection (b)(2) of this section, and

(B) release any bond or other security, and refund any cash deposit required, under section 706(d)(2) of this subtitle with respect to entries of the merchandise the liquidation of which was suspended retroactively under subsection (b)(2) of this subtitle.

(2) Effect of affirmative determination under subsection (c)(1)

**19 USC 1671d(c)(4)
19 USC 1673d(c)(4)**

If the determination of Commerce under subsection (c)(1) of this section is affirmative, then Commerce shall--

(A) in cases where the preliminary determinations by Commerce under section 706(b) of this subtitle and subsection (b)(1) of this section were both affirmative, continue the retroactive suspension of liquidation and the posting of a cash deposit, bond, or other security previously ordered under subsection (b)(2) of this section;

(B) in cases where the preliminary determination by Commerce under section 706(b) of this subtitle was affirmative, but the preliminary determination under subsection (b)(1) of this section was negative, modify any suspension of liquidation and security requirement previously ordered under section 706(d) of this subtitle 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; or

(C) in cases where the preliminary determination by Commerce under section 706(b) of this subtitle was negative, shall apply any suspension of liquidation and security requirement ordered under paragraph (1)(B) of this section 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 is first ordered.

19 USC 1677i

SEC. 712 Downstream product monitoring

(a) Petition requesting monitoring

(1) In general

A domestic producer of an article that is like a component part or a downstream product may petition Commerce to designate a downstream product for monitoring under subsection (b) of this section. The petition shall specify--

(A) the downstream product,

(B) the component product incorporated into such downstream product, and

(C) the reasons for suspecting that the imposition of antidumping or countervailing duties has resulted in a diversion of exports of the component part into increased production and

exportation to the United States of such downstream product.

(2) Determination regarding petition

Within 14 days after receiving a petition submitted under paragraph (1), Commerce shall determine--

(A) whether there is a reasonable likelihood that imports into the United States of the downstream product will increase as an indirect result of any diversion with respect to the component part, and

(B) whether--

(i) the component part is already subject to monitoring to aid in the enforcement of a bilateral arrangement (within the meaning of section 804 of the Trade and Tariff Act of 1984),

(ii) merchandise related to the component part and manufactured in the same foreign country in which the component part is manufactured has been the subject of a significant number of investigations suspended under section 710 of this subtitle or countervailing or antidumping duty orders issued under this subtitle, or

(iii) merchandise manufactured or exported by the manufacturer or exporter of the component part that is similar in description and use to the component part has been the subject of at least 2 investigations suspended under section 710 of this subtitle or countervailing or antidumping duty orders issued under this subtitle.

(3) Factors to take into account

In making a determination under paragraph (2)(A), Commerce may, if appropriate, take into account such factors as--

(A) the value of the component part in relation to the value of the downstream product,

(B) the extent to which the component part has been substantially transformed as a result of its incorporation into the downstream product, and

(C) the relationship between the producers of component parts and producers of downstream products.

(4) Publication of determination

Commerce shall publish in the Federal Register notice

of each determination made under paragraph (2) and, if the determination made under paragraph (2)(A) and a determination made under any clause of paragraph (2)(B) are affirmative, shall transmit a copy of such determinations and the petition to the Commission.

(5) Determinations not subject to judicial review

Notwithstanding any other provision of law, any determination made by Commerce under paragraph (2) shall not be subject to judicial review.

(b) Monitoring by the Commission

(1) In general

If the determination made under subsection (a)(2)(A) of this section and a determination made under any clause of subsection (a)(2)(B) of this section with respect to a petition are affirmative, the Commission shall immediately commence monitoring of trade in the downstream product that is the subject of the determination made under subsection (a)(2)(A) of this section. If the Commission finds that imports of a downstream product being monitored increased during any calendar quarter by 5 percent or more over the preceding quarter, the Commission shall analyze that increase in the context of overall economic conditions in the product sector.

(2) Reports

The Commission shall make quarterly reports to Commerce regarding the monitoring and analyses conducted under paragraph (1). The Commission shall make the reports available to the public.

(c) Action on basis of monitoring reports

Commerce shall review the information in the reports submitted by the Commission under subsection (b)(2) of this section and shall--

(A) consider the information in determining whether to initiate an investigation under section 705(a) of this subtitle regarding any downstream product, and

(B) request the Commission to cease monitoring any downstream product if the information indicates that imports into the United States are not increasing and there is no reasonable likelihood of diversion with respect to component parts.

(d) Definitions

For purposes of this section--

(1) The term "component part" means any imported article that--

(A) during the 5-year period ending on the date on which the petition is filed under subsection (a), has been subject to--

(i) a countervailing or antidumping duty order issued under this subtitle that requires the deposit of estimated countervailing or antidumping duties imposed at a rate of at least 15 percent ad valorem, or

(ii) an agreement entered into under section 710 (relating to termination or suspension of investigation) of this subtitle after a preliminary affirmative determination under section 706(b) of this subtitle was made by Commerce which included a determination that the estimated net subsidy was at least 15 percent ad valorem or that the estimated average amount by which the foreign market value exceeded the United States price was at least 15 percent ad valorem, and

(B) because of its inherent characteristics, is routinely used as a major part, component, assembly, subassembly, or material in a downstream product.

(2) The term "downstream product" means any manufactured article--

(A) which is imported into the United States, and

(B) into which is incorporated any component part.

SEC. 713 Short life cycle merchandise**(a) Time periods****19 USC 1673b(b)(1)(B)**

If a petition filed under section 705(b) (relating to initiation of investigation by petition) of this subtitle, or an investigation commenced under section 705(a) (relating to initiation of investigation by Commerce) of this subtitle, concerns short life cycle merchandise that is included in a product category established under subsection (b)(1) of this section, section 706(b)(1) (relating to the time period of antidumping duty investigations) of this subtitle shall be applied--

(1) by substituting "120 days" for "160 days" if manufacturers that are second offenders account for a significant proportion of the merchandise under investigation, and

(2) by substituting "100 days" for "160 days" if manufacturers that are multiple offenders account for a significant proportion of the merchandise under investigation.

(b) Establishment of product categories for short life cycle merchandise

19 USC 1673h

(1) Establishment of product categories

(A) Petitions

(i) In general

An eligible domestic entity may file a petition with the Commission requesting that a product category be established with respect to short life cycle merchandise at any time after the merchandise becomes the subject of 2 or more affirmative dumping determinations.

(ii) Contents

A petition filed under clause (i) shall--

(I) identify the short life cycle merchandise that is the subject of the affirmative dumping determinations,

(II) specify the short life cycle merchandise that the petitioner seeks to have included in the same product category as the merchandise that is subject to the affirmative dumping determinations,

(III) specify any short life cycle merchandise the petitioner particularly seeks to have excluded from the product category,

(IV) provide reasons for the inclusions and exclusions specified under subclauses (II) and (III), and

(V) identify such merchandise in terms of the designations used in the Harmonized Tariff Schedule of the United States.

(B) Determinations on sufficiency of petition

Upon receiving a petition under subparagraph (A), the Commission shall--

(i) request Commerce to confirm promptly the affirmative determinations on which the petition is based, and

(ii) upon receipt of such confirmation, determine whether the merchandise covered by the confirmed affirmative determinations is short life cycle merchandise and whether the petitioner is an eligible domestic entity.

(C) Notice; hearings

If the determinations under subparagraph (B)(ii) are affirmative, the Commission shall--

(i) publish notice in the Federal Register that the petition has been received, and

(ii) provide opportunity for the presentation of views regarding the establishment of the requested product category, including a public hearing if requested by any interested person.

(D) Determinations

(i) In general

By no later than the day that is 90 days after the date on which a petition is filed under subparagraph (A), the Commission shall determine the scope of the product category into which the short life cycle merchandise that is the subject of the affirmative dumping determinations identified in such petition shall be classified for purposes of this section.

(ii) Modifications not requested by petition

(I) In general

The Commission may, on its own initiative, make a determination modifying the scope of any product category established under clause (i) at any time.

(II) Notice and hearing

Determinations may be made under subclause (I) only after the Commission has--

a. published in the Federal Register notice of the proposed modification, and

b. provided interested parties an opportunity for a hearing, and a period for the submission of written comments, on the classification of merchandise into the product categories

to be affected by such determination.

(iii) Basis of determinations

In making determinations under clause (i) or (ii), the Commission shall ensure that each product category consists of similar short life cycle merchandise which is produced by similar processes under similar circumstances and has similar uses.

(c) Definitions

19 USC 1673h(b)(2)

(1) Affirmative dumping determination

The term "affirmative dumping determination" means--

(A) any affirmative final determination made by Commerce under section 707(a) of this subtitle during the 8-year period preceding the filing of the petition under this section that results in the issuance of an antidumping duty order under section 715(a) of this subtitle which requires the deposit of estimated antidumping duties at a rate of not less than 15 percent ad valorem, or

(B) any affirmative preliminary determination that--

(i) is made by Commerce under section 706(b) of this subtitle during the 8-year period preceding the filing of the petition under this section in the course of an investigation for which no final determination is made under section 707 of this subtitle by reason of a suspension of the investigation under section 710 of this subtitle, and

(ii) includes a determination that the estimated average amount by which the foreign market value of the merchandise exceeds the United States price of the merchandise is not less than 15 percent ad valorem.

(2) Eligible domestic entity

19 USC 1673h(b)(1)

The term "eligible domestic entity" means a manufacturer or producer in the United States, or a certified union or recognized union or group of workers which is representative of an industry in the United States, that manufactures or produces short life cycle merchandise that is--

(A) like or directly competitive with other merchandise that is the subject of 2 or more affirmative dumping determinations, or

(B) is similar enough to such other merchandise as to be

considered for inclusion with such merchandise in a product monitoring category established under this section.

(3) Offenders

19 USC 1673b(b)(1)(C)

(A) The term "second offender" means a manufacturer that is specified in 2 affirmative dumping determinations (within the meaning of paragraph (1) of this subsection) as the manufacturer of short life cycle merchandise that is

(i) specified in both such determinations, and

(ii) within the scope of the product category referred to in subsection (a).

(B) The term "multiple offender" means a manufacturer that is specified in 3 or more affirmative dumping determinations (within the meaning of paragraph (1) of this subsection) as the manufacturer of short life cycle merchandise that is--

(i) specified in each of such determinations, and

(ii) within the scope of the product category referred to in subsection (a).

(4) Short life cycle merchandise

19 USC 1673h(b)(4)

The term "short life cycle merchandise" means any product that the Commission determines is likely to become outmoded within 4 years, by reason of technological advances, after the product is commercially available. For purposes of this paragraph, the term "outmoded" refers to a kind of style that is no longer state-of-the-art.

(5) Subject of affirmative dumping determination

19 USC 1673h(b)(3)

(A) In general

Short life cycle merchandise of a manufacturer shall be treated as being the subject of an affirmative dumping determination only if Commerce--

(i) makes a separate determination of the amount by which the foreign market value of such merchandise of the manufacturer exceeds the United States price of such merchandise of the manufacturer, and

(II) specifically identifies the manufacturer by name with such amount in the affirmative dumping determination or in an antidumping duty order issued as a result of the

affirmative dumping determination.

(B) Exclusion

Short life cycle merchandise of a manufacturer shall not be treated as being the subject of an affirmative dumping determination if--

(i) such merchandise of the manufacturer is part of a group of merchandise to which Commerce assigns (in lieu of making separate determinations described in subparagraph (A)(i) of this paragraph) an amount determined to be the amount by which the foreign market value of the merchandise in such group exceeds the United States price of the merchandise in such group, and

(ii) the merchandise and the manufacturer are not specified by name in the affirmative dumping determination or in any antidumping duty order issued as a result of such affirmative dumping determination.

(d) Transitional rules

19 USC 1673h(c)

(A) For purposes of this section all affirmative dumping determinations described in subsection (c)(1)(A) of this section that were made after December 31, 1980, and before August 23, 1988, and all affirmative dumping determinations described in subsection (c)(1)(B) of this section that were made after December 31, 1984, and before August 23, 1988, with respect to each category of short life cycle merchandise of the same manufacturer shall be treated as one affirmative dumping determination with respect to that category for that manufacturer which was made on the date on which the latest of such determinations was made.

(B) No affirmative dumping determination that-

(i) is described in subsection (c)(1)(A) of this section and was made before January 1, 1981, or

(ii) is described in subsection (c)(1)(B) of this section and was made before January 1, 1985,

may be taken into account under this section.

**SEC. 714 Administrative procedures for conducting
antidumping and countervailing investigations**

(a) Investigation hearings

19 USC 1677c

(1) In general

Except as provided in subparagraph (B), Commerce and the 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 707 of this subtitle.

(2) Exception

If antidumping and countervailing duty investigations are initiated under this subtitle regarding the same merchandise from the same country within 6 months of each other (but before a final determination is made in either investigation), the holding of a hearing by the Commission in the course of one of the investigations shall be treated as compliance with subparagraph (A) for both investigations, unless the Commission considers that special circumstances require that a hearing be held in the course of each of the investigations. During any investigation regarding which the holding of a hearing is waived under this paragraph, the Commission shall allow any party to submit such additional written comment as it considers relevant.

(3) Procedures

Any hearing required or permitted under this subtitle 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, or to section 702 of such title.

(b) Access to information and service

19 USC 1677f

(1) Information generally made available

(A) 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.

(B) Progress of investigation reports

Commerce and the Commission shall, from time to time

upon request, inform the parties to an investigation of the progress of that investigation.

(C) Ex parte meetings

Commerce and the Commission shall maintain a record of any ex parte meeting between--

(i) interested parties or other persons providing factual information in connection with a proceeding, and

(ii) the person charged with making the determination, or any person charged with making a final recommendation to that person, in connection with that proceeding,

if information relating to that proceeding was presented or discussed at such meeting. The record of such an 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.

(D) Summaries; nonproprietary submissions

Commerce and the Commission may disclose--

(i) any proprietary 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

(ii) any information submitted in connection with a proceeding which is not designated as proprietary by the person submitting it.

(2) Proprietary information

(A) Proprietary status maintained

Except as provided in paragraphs (1)(D)(i) and (3) of this subsection, information submitted to Commerce or the Commission which is designated as proprietary by the person submitting it shall not be disclosed to any person (other than an officer or employee of Commerce or the Commission who is directly concerned with carrying out the investigation in connection with which the information is submitted, or an officer or employee of the United States Customs Service who is directly involved in conducting an investigation regarding fraud under this subtitle) without the consent of the person submitting it. Commerce and the Commission shall require that information for which proprietary treatment is requested be accompanied by--

(i) either--

(I) a nonproprietary summary in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence, or

(II) a statement that the information is not susceptible to summary accompanied by a statement of the reasons in support of the contention, and

(ii) either--

(I) a statement which permits Commerce or the Commission to release under administrative protective order, in accordance with paragraph (3) of this subsection, the information submitted in confidence, or

(II) a statement to Commerce or the Commission that the business propriety information is of a type that should not be released under administrative protective order.

(B) Unwarranted Designation

If Commerce 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 proprietary 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 Commerce or the Commission that the designation is warranted, or withdraws the designation, Commerce or the Commission, as the case may be, shall return it to the party submitting it.

(3) Limited disclosure of certain proprietary information under protective order

(A) Disclosure by Commerce or Commission

(i) In general

Upon receipt of an application (before or after receipt of the information requested) which describes in general terms the information requested and sets forth the reasons for the request, Commerce or the Commission shall make all business proprietary information presented to, or obtained by it, during a proceeding (except privileged information, classified information, and specific information of a type for which there is a clear and compelling need to withhold from disclosure) available to interested parties who are parties to the proceeding under a protective order described in clause (ii), regardless of

when the information is submitted during a proceeding. Customer names obtained during any investigation which requires a determination under section 707(b) (relating to final determination by the Commission) of this subtitle may not be disclosed by Commerce under protective order until either an order is published under section 715(a)(1) of this section as a result of the investigation or the investigation is suspended or terminated. The Commission may delay disclosure of customer names under protective order during any such investigation until a reasonable time prior to any hearing provided under section 714(a) of this subtitle.

(ii) Protective order

The protective order under which information is made available shall contain such requirements as Commerce or the Commission may determine by regulation to be appropriate. Commerce and the Commission shall provide by regulation for such sanctions as Commerce and the Commission determine to be appropriate, including disbarment from practice before the agency.

(iii) Time limitation on determinations

Commerce or the Commission, as the case may be, shall determine whether to make information available under this paragraph--

(I) not later than 14 days (7 days if the submission pertains to a proceeding under section 706(a) (relating to preliminary determination by the Commission) of this subtitle) after the date on which the information is submitted, or

OD if--

a. the person that submitted the information raises objection to its release or

b. the information is unusually voluminous or complex,

not later than 30 days (10 days if the submission pertains to a proceeding under section 706(a) (relating to preliminary determination by the Commission) of this subtitle) after the date on which the information is submitted.

(iv) Availability after determination

If the determination under clause (iii) is affirmative, then--

(I) the business proprietary information submitted to Commerce or the Commission on or before the date of the determination shall be made available, subject to the terms and conditions of the protective order, on such date; and

(II) the business proprietary information submitted to Commerce or the Commission after the date of the determination shall *be* served as required by paragraph (4) of this subsection.

(v) Failure to disclose

If a person submitting information to Commerce refuses to disclose business proprietary information which Commerce determines should be released under a protective order described in clause (ii), Commerce shall return the information, and any nonconfidential summary thereof, to the person submitting the information and summary and shall not consider either.

(B) Disclosure under court order

If Commerce denies a request for information under subparagraph (A), then application may be made to the United States Court of International Trade for an order directing Commerce 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 Commerce 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--

(i) Commerce or the Commission has denied access to the information under paragraph (2)(A) of this subsection,

(ii) 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

(iii) 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.

(4) Service

Any party submitting written information, including business proprietary information, to Commerce or the Commission during a proceeding shall, at the same time, serve the information upon all interested parties who are parties to the proceeding, if the information is covered by a protective order. Commerce or the Commission shall not accept any such information that is not accompanied by a certificate of service and a copy of the protective order version of the document containing the information. Business proprietary information shall only be served upon interested parties who are parties to the proceeding that are subject to protective order; however, a nonconfidential summary thereof shall be served upon all other interested parties who are parties to the proceeding.

(5) Timely Submissions

Information shall be submitted to Commerce or the Commission during the course of a proceeding on a timely basis and shall be subject to comment by other parties within such reasonable time as Commerce or the Commission shall provide. If information is submitted without an adequate opportunity for other parties to comment thereon, Commerce or the Commission may return the information to the party submitting it and not consider it.

(6) Information relating to violations of protective orders and sanctions**19 USC 1677f(g)**

Commerce and the Commission may withhold from disclosure any correspondence, private letters of reprimand, settlement agreements, and documents and files compiled in relation to investigations and actions involving a violation or possible violation of a protective order issued under paragraph (3) or (4) of this subsection, and such information shall be treated as information described in section 552(b)(3) of title 5.

(c) Certification of submissions**19 USC 1677e(a)**

Any person providing factual information to Commerce or the Commission in connection with a proceeding under this subtitle on behalf of the petitioner or any other interested party shall certify that such information is accurate and complete to the best of that person's knowledge.

(d) Determinations to be made on best information available**19 USC 1677e(c)**

In making their determinations under this subtitle, Commerce 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.

(e) Verification

19 USC 1677e(b)

Commerce shall verify all information relied upon in making--

- (1) a final determination in an investigation,**
- (2) a revocation under section 716(a)(3) of this subtitle, and**
- (3) a review and determination under section 716(a)(1) of this subtitle, if--**

(A) verification is timely requested by an interested party as defined in section 703(0(3), (4), (5), (6), or (7) of this subtitle, and

(B) no verification was made under this paragraph during the 2 immediately preceding reviews and determinations under that section of the same order, finding, or notice, except that this clause shall not apply if good cause for verification is shown.

In publishing notice of any action referred to in paragraph (1), (2), or (3), Commerce shall report the methods and procedures used to verify such information. If Commerce is unable to verify the accuracy of the information submitted, it shall use the best information available to it as the basis for its action, which may include, in actions referred to in paragraph (1), the information submitted in support of the petition.

SEC. 715 Administration of antidumping and countervailing duty orders

(a) Assessment of duty upon final affirmative determinations by Commerce and the Commission

**19 USC 1671e
19 USC 1673e**

(1) Publication of antidumping and countervailing duty orders

(A) Antidumping duty investigations

Within 7 days after being notified by the Commission of a final affirmative determination under section 707(b) of this subtitle, Commerce shall publish an antidumping duty order which--

19 USC 1673e(a)

(i) 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 Commerce receives satisfactory information upon which the assessment may be based, but in no event later than--

(I) 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, or

(II) 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,

(ii) includes a description of the class or kind of merchandise to which it applies, in such detail as Commerce deems necessary, and

(iii) 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) Countervailing duty investigations

Within 7 days after being notified by the Commission of a final affirmative determination under section 707(b) of this subtitle, Commerce shall publish a countervailing duty order which--

19 USC 1671e(a)

(i) 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 Commerce 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,

(ii) shall presumptively apply to all merchandise of such class or kind exported from the country investigated, except that if--

(I) Commerce determines there is a significant difference between companies receiving subsidy benefits, or

(II) a State-owned enterprise is involved,

the order may provide for differing countervailing duties,

(iii) includes a description of the class or kind of merchandise to which it applies, in such detail as Commerce deems necessary, and

(iv) 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.

(2) Imposition of duties

19 USC 1671e(b)
19 USC 1673e(b)

(A) General rule

If the Commission, in its final determination under section 707(b) of this subtitle, finds material injury or threat of material injury which, but for the suspension of liquidation under section 706(d)(1) of this subtitle, would have led to a finding of material injury, then entries of the merchandise subject to the antidumping or countervailing duty order, the liquidation of which has been suspended under section 706(d)(1) of this subtitle, shall be subject to the imposition of antidumping duties, countervailing duties, or both, under section 702 of this subtitle.

(B) Special rule

If the Commission, in its final determination under section 707(b) of this subtitle, finds threat of material injury, other than threat of material injury described in subparagraph (A), or material retardation of the establishment of an industry in the United States, then merchandise subject to an antidumping or 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 707(b) of this subtitle shall be subject to the imposition of antidumping duties, countervailing duties, or both, under section 702(a) of this subtitle, and Commerce shall release any bond or other security, and refund any cash deposit made, to secure the payment of antidumping or countervailing duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption before that date.

(3) Antidumping duties; security in lieu of estimated duty pending early determination of duty

19 USC 1673e(c)

(A) Conditions for waiver of deposit of estimated duties

Commerce may permit, for not more than 90 days after

the date of publication of an order under subsection (a)(1)(A) of this section, the posting of a bond or other security in lieu of the deposit of estimated antidumping duties required under subsection (a)(1)(A)(iii) of this section if--

(i) the investigation has not been designated as 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

(DI) the number of firms whose activities must be investigated,

(ii) the final determination in the investigation has not been postponed under section 707(a)(1)(B)(i) of this subtitle;

(iii) on the basis of information presented to Commerce by any manufacturer, producer, or exporter in such form and within such time as Commerce may require, is satisfied that a determination will be made, within 90 days after the date of publication of an order under subsection (a)(1)(A) of this subsection, of 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--

(I) an affirmative preliminary determination by Commerce under section 706(a) of this subtitle, or

(II) if its determination under section 706(b) of this subtitle was negative, an affirmative final determination by Commerce under section 707(a)(1) of this subtitle

and before the date of publication of the affirmative final determination by the Commission under section 707(b)(1) of this subtitle;

(iv) the party described in clause (iii) provides credible evidence that the amount by which the foreign market value of the merchandise exceeds the United States price of the merchandise is significantly less than the amount of such excess specified in the antidumping duty order published under subsection (a)(1)(A) of this section; and

(v) the data concerning the foreign market value and the United States price apply to sales in the usual commercial quantities and in the ordinary course of trade and the number

of such sales are sufficient to form an adequate basis for comparison.

(B) Notice; hearing

If Commerce permits the posting of a bond or other security in lieu of the deposit of estimated antidumping duties under subparagraph (A), it shall--

(i) publish notice of its action in the Federal Register and

(ii) upon the request of any interested party, hold a hearing in accordance with section 714(a) of this subtitle before determining the foreign market value and the United States price of the merchandise.

(C) Determinations to be basis of antidumping duty

Commerce 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 on future entries of merchandise of manufacturers, producers, or exporters described in subparagraph (A) to which the order issued under subsection (a)(1)(A) of this section applies.

(D) Provision of business proprietary information; written comments

Before determining whether to permit the posting of bond or other security under subparagraph (A) in lieu of the deposit of estimated antidumping duties, Commerce shall--

(i) make all business proprietary information supplied to Commerce under subparagraph (A) available under a protective order in accordance with section 714(b)(3) of this subtitle to all interested parties described in paragraph (3), (4), (5), (6), or (7) of section 703(f) of this subtitle, and

(ii) afford all interested parties an opportunity to file written comments on whether the posting of bond or other security under subparagraph (A) in lieu of the deposit of estimated antidumping duties should be permitted.

(b) Treatment of difference between deposit of estimated antidumping or countervailing duty and final assessed duty under antidumping or countervailing duty orders

**19 USC 1671f
19 USC 1673f**

(1) Deposit of estimated antidumping or countervailing duty under section 706(d)(2) of this subtitle

If the amount of a cash deposit (or the amount of any bond or other security in countervailing duty investigations) required as security for an estimated antidumping or countervailing duty under section 706(d)(2) of this subtitle is different from the amount of the antidumping or countervailing duty determined under an antidumping or countervailing duty order issued under subsection (a) of this section, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption before notice of the final affirmative determination of the Commission under section 707(b) of this subtitle, is published shall be--

(A) disregarded to the extent that the cash deposit, bond, or other security is lower than the duty under the order, or

(B) refunded or released (in countervailing duty investigations), to the extent that the cash deposit, bond, or other security is higher than the duty under the order.

(2) Deposit of estimated antidumping or countervailing duty under subsection (a)(1)(A)(iii) and (a)(1)(13)(iii) of this section

If the amount of an estimated antidumping or countervailing duty deposited under subsection (a)(1)(A)(iii) or (a)(1)(B)(iii) of this section is different from the amount of the antidumping or countervailing duty determined under an antidumping or countervailing duty order issued under subsection (a) of this subtitle, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption after notice of the affirmative final determination of the Commission under section 707(b) of this subtitle is published shall be--

(A) collected, to the extent that the deposit under subsection (a)(1)(A)(iii) or (a)(1)(B)(iii) of this section is lower than the duty determined under the order, or

(B) refunded, to the extent that the deposit under subsection (a)(1)(A)(iii) or (a)(1)(B)(iii) of this section is higher than the duty determined under the order,

together with interest (for purposes of antidumping duty investigations) as provided by subsection (g) of this section.

(c) Conditional payment of antidumping or countervailing duties

**19 USC 1671h
19 USC 1673g**

(1) In general

For all entries, or withdrawals from warehouse, for consumption of merchandise subject to an antidumping duty order, a countervailing duty order, or both, 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 requirement of paragraph (2) of this subsection and deposits with the appropriate customs officer an estimated antidumping duty, countervailing duty, or both, in an amount determined by Commerce.

(2) Importer requirements

In order to meet the requirements of this subsection, a person shall--

(A) furnish, or arrange to have furnished, to the appropriate customs officer such information as Commerce 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 Commerce deems necessary for ascertaining any antidumping duty, countervailing duty, or both, to be imposed under this subtitle,

(B) maintain and furnish to the customs officer such records concerning such merchandise as Commerce, by regulation, requires,

(C) pay, or agree to pay on demand, to the customs officer the amount of antidumping duty, countervailing duty, or both imposed under this subtitle on that merchandise; and

(I) for purposes of antidumping duty proceedings, 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.

19 USC 1673g(b)(3)

(d) Prevention of circumvention of antidumping and countervailing duty orders

19 USC 1677j

(1) Merchandise completed or assembled in the United States

(A) In general

If--

(i) merchandise sold in the United States is of the same class or kind as any other merchandise that is the subject of--

(I) an antidumping or countervailing duty order issued under subsection (a) of this section, or

(II) a finding issued under the Antidumping Act, 1921,

(ii) such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such order or finding applies, and

(iii) the difference between the value of such merchandise sold in the United States and the value of the imported parts and components referred to in clause (ii) is small,

Commerce, after taking into account any advice provided by the Commission under paragraph (5) of this subsection, may include within the scope of such order or finding the imported parts or components referred to in clause (ii) that are used in the completion or assembly of the merchandise in the United States at any time such order or finding is in effect:

(B) Factors to consider

In determining whether to include parts or components in a countervailing or antidumping duty order or finding under subparagraph (A), Commerce shall take into account such factors as--

(i) the pattern of trade,

(ii) whether the manufacturer or exporter of the parts or components is related to the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country with respect to which the order or finding described in subparagraph (A) applies, and

(iii) whether imports into the United States of the parts or components produced in such foreign country have increased after the issuance of such order or finding.

(2) Merchandise completed or assembled in other foreign countries

(A) In general

If--

(i) merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of--

(I) an antidumping or countervailing duty order issued under subsection (a) of this section, or

(II) a finding issued under the Antidumping Act, 1921,

(ii) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which--

(I) is subject to such order or finding, or

(II) is produced in the foreign country with respect to which such order or finding applies,

(iii) the difference between the value of such imported merchandise and the value of the merchandise described in clause (ii) is small, and

(iv) Commerce determines that action is appropriate under this paragraph to prevent evasion of such order or finding,

Commerce, after taking into account any advice provided by the Commission under this subsection, may include such imported merchandise within the scope of such order or finding at any time such order or finding is in effect.

(B) Factors to consider

In determining whether to include merchandise assembled or completed in a foreign country in a countervailing or antidumping duty order or finding under subparagraph (A), Commerce shall take into account such factors as--

(i) the pattern of trade,

(ii) whether the manufacturer or exporter of the merchandise described in subparagraph (A)(ii) is related to the person who uses the merchandise described in subparagraph (A)(ii) to assemble or complete in the foreign country the merchandise that is subsequently imported into the United States, and

(iii) whether imports into the foreign country of the merchandise described in subparagraph (A)(ii) have increased after the issuance of such order or finding.

(3) Minor alterations of merchandise

(A) In general

The class or kind of merchandise subject to--

(i) an investigation under this subtitle, or

(ii) an antidumping or countervailing duty order issued under subsection (a) of this section, or

(iii) a finding issued under the Antidumping Act, 1921, shall include articles altered in form or appearance in minor respects (including raw agricultural products that have undergone minor processing), whether or not included in the same tariff classification.

(B) Exception

Subparagraph (A) shall not apply with respect to altered merchandise if Commerce determines that it would be unnecessary to consider the altered merchandise within the scope of the investigation, order, or finding.

(4) Later developed merchandise

(A) In general

For purposes of determining whether merchandise developed after an investigation is initiated under this subtitle (hereafter in this paragraph referred to as the "later-developed merchandise") is within the scope of an outstanding antidumping or countervailing duty order issued under this subtitle as a result of such investigation, Commerce shall consider whether-

(i) the later-developed merchandise has the same general physical characteristics as the merchandise with respect to which the order was originally issued (hereafter in this paragraph referred to as the "earlier product"),

(ii) the expectations of the ultimate purchasers of the later-developed merchandise are the same as for the earlier product,

(iii) the ultimate use of the earlier product and the later-developed merchandise are the same,

(iv) the later-developed merchandise is sold through the same channels of trade as the earlier product, and

(v) the later-developed merchandise is advertised and displayed in a manner similar to the earlier product.

Commerce shall take into account any advice provided by the Commission under paragraph (5) of this subsection before making a determination under this subparagraph.

(B) Exclusion from orders

Commerce may not exclude a later-developed

merchandise from a countervailing or antidumping duty order merely because the merchandise--

(i) is classified under a tariff classification other than that identified in the petition or Commerce's prior notices during the proceeding, or

(ii) permits the purchaser to perform additional functions, unless such additional functions constitute the primary use of the merchandise and the cost of the additional functions constitute more than a significant proportion of the total cost of production of the merchandise.

(5) Commission advice

(A) Notification to Commission of proposed action

Before making a determination--

(i) under paragraph (1) of this subsection with respect to merchandise completed or assembled in the United States (other than minor completion or assembly),

(ii) under paragraph (2) of this subsection with respect to merchandise completed or assembled in other foreign countries,
Or

(iii) under paragraph (4) of this subsection with respect to any later-developed merchandise which incorporates a significant technological advance or significant alteration of an earlier product,

with respect to an antidumping or countervailing duty order or finding as to which the Commission has made an affirmative injury determination, Commerce shall notify the Commission of the proposed inclusion of such merchandise in such countervailing or antidumping order or finding.

Notwithstanding any other provision of law, a decision by Commerce regarding whether any merchandise is within a category for which notice is required under this paragraph is not subject to judicial review.

(B) Request for consultation

After receiving notice under subparagraph (A), the Commission may request consultations with Commerce regarding the inclusion. Upon the request of the Commission, Commerce shall consult with the Commission and any such consultation shall be completed within 15 days after the date of the request.

(C) Commission advice

If the Commission believes, after consultation under subparagraph (B), that a significant injury issue is presented by the proposed inclusion, the Commission may provide written advice to Commerce as to whether the inclusion would be inconsistent with the affirmative determination of the Commission on which the order or finding is based. If the Commission decides to provide such written advice, it shall promptly notify Commerce of its intention to do so, and must provide such advice within 60 days after the date of notification under subparagraph (A). For purposes of formulating its advice with respect to merchandise completed or assembled in the United States from parts or components produced in a foreign country, the Commission shall consider whether the inclusion of such parts or components taken as a whole would be inconsistent with its prior affirmative determination.

(e) Attribution of merchandise to country of manufacture or production

19 USC 1677(12)

For purposes of countervailing duty investigations under this subtitle, 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.

(f) Interest on certain overpayments and underpayments

19 USC 1677g

(1) 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--

(A) the date of publication of a countervailing or antidumping duty order under this subtitle or,

(B) the date of a finding under the Antidumping Act, 1921.

(2) Rate

The rate of interest payable under paragraph (1) of this subsection for any period of time is the rate of interest established under section 6621 of the title 26 for such period.

(g) Drawback treatment

19 USC 1677h

For purposes of any law relating to the drawback of customs duties, countervailing duties and antidumping duties imposed by this subtitle shall not be treated as being regular customs duties.

(h) Cases involving persistent dumping

19 USC 1673a(a)(2)

(1) Monitoring.--Commerce may establish a monitoring program with respect to imports of a class or kind of merchandise from any additional supplier country for a period of not to exceed one year if--

(A) more than one antidumping order is in effect with respect to that class or kind of merchandise;

(B) in the judgment of Commerce there is reason to believe or suspect an extraordinary pattern of persistent injurious dumping from one or more additional supplier countries; and

(C) in the judgment of Commerce this extraordinary pattern is causing a serious commercial problem for the domestic industry.

(2) If during the period of monitoring referred to in paragraph (1), Commerce determines that there is sufficient information to commence a formal investigation under this subsection regarding an additional supplier country, Commerce shall immediately commence such an investigation.

(3) Additional supplier country--For purposes of this paragraph, the term "additional supplier country" means a country regarding which no antidumping investigation is currently pending, and no antidumping duty order is currently in effect, with respect to imports of the class or kind of merchandise covered by paragraph (1).

(4) Expeditious action.--Commerce and the Commission, to the extent practicable, shall expedite proceedings under this part undertaken as a result of a formal investigation commenced under paragraph (2).

(i) Application to governmental importations

19 USC 1677(20)

(1) In general

Except as otherwise provided by this paragraph, merchandise imported by or for the use of, a department or agency of the United States Government (including merchandise provided for under chapter 98 of the Harmonized Tariff Schedule of the United States) is subject to the imposition of

countervailing duties or antidumping duties under this subtitle.

(2) Exceptions

Merchandise imported by, or for the use of, the Department of Defense shall not be subject to the imposition of countervailing or antidumping duties under this subtitle if--

(A) the merchandise is acquired by, or for use of, such Department--

(i) from a country with which such Department had a Memorandum of Understanding which was in effect on January 1, 1988, and has continued to have a comparable agreement (including renewals) or superseding agreements, and

(ii) in accordance with terms of the Memorandum of Understanding in effect at the time of importation, or

(B) the merchandise has no substantial nonmilitary use.

SEC. 716 Administrative review of antidumping and countervailing duty determinations

(a) Administrative review of determinations

19 USC 1675

(1) Periodic review of amount of duty

(A) 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 subtitle or under an antidumping duty order under this subtitle or a finding under the Antidumping Act, 1921, or a notice of the suspension of an investigation, Commerce if a request for such a review has been received and after publication of notice of such review in the Federal Register, shall--

(i) review and determine the amount of any net subsidy,

(ii) review, and determine (in accordance with subparagraph (B)), the amount of any antidumping duty, and

(iii) 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.

(B) Determination of antidumping duties

For the purpose of subparagraph (A)(ii), Commerce shall determine--

(i) 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

(ii) the amount, if any, by which the foreign market value of each such entry exceeds the United States price of the entry.

Commerce, 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.

(2) Reviews upon information or request

(A) In general

Whenever Commerce or the Commission receives information concerning, or a request for the review of, an agreement accepted under section 710 (relating to termination or suspension of investigation) of this subtitle (other than a quantitative restriction agreement described in section 710(a)(2) or (d)(2)(C)) or an affirmative determination made under section 710(i)(2) (relating to Commission review of suspension), 707(a) (relating to final Commerce determination), or 707(b) (relating to final Commission injury determination) or subsection (c)(1)(A) or (B) of this section, 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 under section 710(i)(2) of this subtitle, the Commission shall consider whether, in the light of changed circumstances, an agreement accepted under section 710(d) of this subtitle continues to eliminate completely the injurious effects of imports of the merchandise. During an investigation by the Commission, the party seeking revocation of an antidumping or countervailing duty order shall have the burden of persuasion with respect to whether there are changed circumstances sufficient to warrant revocation of the

antidumping or countervailing duty order.

(B) Limitation on period for review

In the absence of good cause shown--

(i) the Commission may not review a determination under section 707(b) (relating to Commission final injury determination) of this subtitle, and

(ii) Commerce may not review a determination under section 707(a) of this subtitle, or the suspension of an investigation suspended under section 710 of this subtitle

less than 24 months after the date of publication of notice of that determination or suspension.

(3) Revocation of countervailing duty order or antidumping duty order

Commerce 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. Commerce shall not revoke, in whole or in part, a countervailing duty order or terminate a suspended investigation on the basis of any export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the subsidy received. 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 Commerce.

(4) Hearings

Whenever Commerce or the Commission conducts a review under this section it shall, upon the request of any interested party, hold a hearing in accordance with paragraph 714(a)(2) of this subtitle in connection with that review.

(5) Determination that basis for suspension no longer exists

If the determination of the Commission under the last sentence of paragraph (2)(A) of this subsection is negative, the agreement shall be treated as not accepted, beginning on the date of the publication of the Commission's determination, and Commerce and the Commission shall proceed, under section 710(j) (relating to violation of suspension agreement) of this subtitle, 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.

(6) Correction of ministerial errors

Commerce shall establish procedures for the correction of ministerial errors in final determinations within a reasonable time after the determinations are issued under this section. Such procedures shall ensure opportunity for interested parties to present their views regarding any such errors. As used in this subsection, the term "ministerial error" includes errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which Commerce considers ministerial.

(b) Required consultations regarding quantitative restriction agreements

19 USC 1676

(1) Agreements in response to subsidies

Within 90 days after Commerce accepts a quantitative restriction agreement under section 710(a)(2) or (d)(2)(C) of this subtitle, the President shall enter into consultations with the government that is party to the agreement for purposes of--

(A) eliminating the subsidy completely, or

(B) reducing the net subsidy to a level that eliminates completely the injurious effect of exports to the United States of the merchandise.

(2) Modification of agreements on basis of consultations

At the direction of the President, Commerce shall modify a quantitative restriction agreement as a result of consultations entered into under paragraph (1) of this subsection.

(3) Special rule regarding agreements under section 710(d)(2)(C) (relating to quantitative restriction agreements in countervailing duty investigations)

This chapter shall cease to apply to a quantitative restriction agreement described in section 710(d)(2)(C) of this subtitle at such time as that agreement ceases to have force and effect under section 710(g) (relating to effects of suspension of investigation) of this subtitle or violation is found under section 710(j) (relating to violation of suspension agreement) of this subtitle.

(c) Required determinations

19 USC 1676a

(1) In general

Before the expiration date, if any, of a quantitative restriction agreement arising out of a countervailing duty investigation accepted under section 710(a)(2) or (d)(2)(C) of this subtitle (if suspension of the related investigation is still in effect)--

(A) Commerce shall, at the direction of the President, initiate a proceeding to determine whether any subsidy is being provided with respect to the merchandise subject to the agreement and, if being so provided, the net subsidy; and

(B) if Commerce initiates a proceeding under subparagraph (A), the Commission shall determine whether imports of the merchandise of the kind subject to the agreement will, upon termination of the agreement, materially injure, or threaten with material injury, an industry in the United States or materially retard the establishment of such an industry.

(2) Determinations

The determinations required to be made by Commerce and the Commission under paragraph (1) of this subsection shall be made under such procedures as Commerce and the Commission, respectively, shall by regulation prescribe, and shall be treated as final determinations made under section 707 of this subtitle for purposes of judicial review under section 717 of this subtitle. If the determinations by each are affirmative, Commerce shall--

(A) issue a countervailing duty order under section 715(a) of this subtitle effective with respect to merchandise entered on and after the date on which the agreement terminates; and

(B) order the suspension of liquidation of all entries of merchandise subject to the order which are entered, or withdrawn from warehouse for consumption, on or after the date of publication of the order in the Federal Register.

(3) Hearings

The determination proceedings required to be prescribed under paragraph (2) of this subsection shall provide that Commerce and the Commission must, upon the request of any interested party, hold a hearing in accordance with section 714(a) of this subtitle on the issues involved.

SEC. 717 Judicial and bi-national panel review of antidumping and countervailing duty proceedings

19 USC 1516a

(a) Review of determination

(1) Review of certain determinations

Within thirty days after the date of publication in the Federal Register of--

(A) a determination by Commerce, under section 705(c) of this subtitle, not to initiate an investigation,

(B) a determination by the Commission, under section 716(a)(2) of this subtitle, not to review a determination based upon changed circumstances, or

(C) a negative determination by the Commission, under section 706(a) of this subtitle, as to whether there is reasonable indication of material injury, threat of material injury, or material retardation,

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 Court of International Trade 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--

(i) 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), or

(ii) the date of mailing of a determination described in clause (vi) 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 Court of International Trade 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 Commerce and by the Commission under section 707 of this subtitle, including any negative part of such a determination (other than a part referred to in clause (ii)).

(ii) A final negative determination by Commerce or the Commission under section 707 of this subtitle, including, at the option of the appellant, any part of a final affirmative determination which specifically excludes any company or product.

(iii) A final determination, other than a determination reviewable under paragraph (1), by Commerce or the Commission under section 716 (relating to administrative review of determinations) of this subtitle.

(iv) A determination by Commerce, under section 710 of this subtitle, to suspend an antidumping duty or a countervailing duty investigation, including any final determination resulting from a continued investigation which changes the size of the dumping margin or net subsidy calculated, or the reasoning underlying such calculations, at the time the suspension agreement was concluded.

(v) An injurious effect determination by the Commission under section 710(i) (relating to Commission review of suspension of investigation) of this subtitle.

(vi) A determination by Commerce as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing finding of dumping or antidumping or countervailing duty order.

(3) Exception

Notwithstanding the limitation imposed by paragraph (2)(A)(i)(T1) of this subsection, a final affirmative determination by Commerce under section 707(a) of this subtitle may be contested by commencing an action, in accordance with the provisions of paragraph (2)(A), within thirty days after the date

of publication in the Federal Register of a final negative determination by the Commission under section 707(b) of this subtitle.

(4) Procedures and fees

The procedures and fees set forth in chapter 169 of title 28 apply to an action under this section.

(5) Time limits in cases involving Canadian merchandise

Notwithstanding any other provision of this subsection, in the case of a determination to which the provisions of subsection (f) of this section apply, an action under this subsection may not be commenced, and the time limits for commencing an action under this subsection shall not begin to run, until the 31st day after--

(A) the date of publication in the Federal Register of notice of any determination described in paragraph (1)(B) or any determination described in clause (i), (ii), or (iii) of paragraph (2)(B),

(B) the date on which the Government of Canada receives notice of a determination described in clause (vi) of paragraph (2)(B), or

(C) the date as of which--

(i) a binational panel has dismissed the binational panel review for lack of jurisdiction, and

(ii) any interested party seeking review under paragraph (1), (2), or (3) has provided timely notice under subsection (f)(3)(B) of this section,

except that if a request for an extraordinary challenge committee has been made with respect to the decision to dismiss, the date under this subparagraph shall not be earlier than the date on which such committee determines that such panel acted properly when it dismissed for lack of jurisdiction.

(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) of this section, 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) of this section, 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) a copy of all information presented to or obtained by the Secretary, Commerce, 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 714(b)(1)(C) of this subtitle; 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.

(3) Effect of decisions by United States-Canada binational panels

In making a decision in any action brought under subsection (a) of this section, a court of the United States is not bound by, but may take into consideration, a final decision of a binational panel or extraordinary challenge committee convened pursuant to article 1904 of the Agreement.

(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, Commerce, or the Commission contested under subsection (a) of this section shall be liquidated in accordance with the

determination of the Secretary, Commerce, 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 Commerce of a notice of a decision of the United States Court of International Trade, or of the United States Court of Appeals for the Federal Circuit, 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) of this section by the Secretary, Commerce, or the Commission, the United States Court of International Trade may enjoin the liquidation of some or all entries of merchandise covered by a determination of the Secretary, Commerce, 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.

(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, Commerce, or the Commission, the matter shall be remanded to the Secretary, Commerce, 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 this subtitle shall have the right to appear and be heard as a party in interest before the United States Court of International Trade. The party filing the action shall notify all interested parties of the filing of an action under this section, in the form, manner, style, and within the time prescribed by rules of the court.

(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 Court of International Trade or of the United States Court of Appeals for the Federal Circuit--

(1) entries of merchandise of the character covered by the published determination of the Secretary, Commerce, 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 Commerce of a notice of the court

decision, and

(2) entries, the liquidation of which was enjoined under subsection (c)(2) of this section,

shall be liquidated in accordance with the final court 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) Review of countervailing duty and antidumping duty determinations involving Canadian merchandise

19 USC 1516a(g)

(1) Definition of determination

For purposes of this subsection, the term "determination" means a determination described in--

(A) paragraph (1)(B) of subsection (a), or

(B) clause (i), (iii), or (vi) of paragraph (2)(B) of subsection (a) of this section,

if made in connection with a proceeding regarding a class or kind of Canadian merchandise, as determined by Commerce.

(2) Exclusive review of determination by binational panels

If binational panel review of a determination is requested pursuant to article 1904 of the U.S.-Canada Agreement, then, except as provided in paragraphs (3) and (4)--

(A) the determination is not reviewable under subsection (a) of this section, and

(B) no court of the United States has power or jurisdiction to review the determination on any question of law or fact by an action in the nature of mandamus or otherwise.

(3) Exception to exclusive binational panel review

(A) In general

A determination is reviewable under subsection (a) of this section if the determination sought to be reviewed is--

(i) a determination as to which neither the United States nor Canada requested review by a binational panel pursuant to article 1904 of the U.S. -Canada Agreement,

(ii) a revised determination issued as a direct result of judicial review, commenced pursuant to subsection (a), if neither the United States nor Canada requested review of the original determination,

(iii) a determination issued as a direct result of judicial review that was commenced pursuant to subsection (a) of this section prior to the entry into force of the U.S.-Canada Agreement, or

(iv) a determination which a binational panel has determined under paragraph (2)(A) is not reviewable by the binational panel.

(B) Special rule

A determination described in subparagraph (A)(i) or (iv) is reviewable under subsection (a) of this section only if the party seeking to commence review has provided timely notice of its intent to commence such review to the United States Secretary, the Canadian Secretary, all interested parties who were parties to the proceeding in connection with which the matter arises, and Commerce or the Commission, as appropriate. Such notice is provided timely if the notice is delivered by no later than the date that is 20 days after the date described in subparagraph (A) or (B) of subsection (a)(5) of this section that is applicable to such determination. Such notice shall contain such information, and be in such form, manner, and style, as Commerce, in consultation with the Commission, shall prescribe by regulations.

(4) Exception to exclusive binational panel review for constitutional issues

(A) Constitutionality of binational panel review system

An action for declaratory judgment or injunctive relief, or both, regarding a determination on the grounds that any provision of, or amendment made by, the United States-Canada Free-Trade Implementation Agreement Act of 1988 implementing the binational panel dispute settlement system under chapter 19 of the U.S. -Canada Agreement violates the Constitution may be brought in the United States Court of Appeals for the District of Columbia Circuit. Any action brought under this subparagraph shall be heard and determined by a 3-judge court in accordance with section 2284 of title 28.

(B) Other constitutional review

Review is available under subsection (a) of this section with respect to a determination solely concerning a

constitutional issue (other than an issue to which subparagraph (A) applies) arising under any law of the United States as enacted or applied. An action for review under this subparagraph shall be assigned to a 3-judge panel of the United States Court of International Trade.

(C) Commencement of review

Notwithstanding the time limits in subsection (a) of this section, within 30 days after the date of publication in the Federal Register of notice that binational panel review has been completed, an interested party who is a party to the proceeding in connection with which the matter arises may commence an action under subparagraph (A) or (B) by filing an action in accordance with the rules of the court.

(D) Transfer of actions to appropriate court

Whenever an action is filed in a court under subparagraph (A) or (B) and that court finds that the action should have been filed in the other court, the court in which the action was filed shall transfer the action to the other court and the action shall proceed as if it had been filed in the court to which it is transferred on the date upon which it was actually filed in the court from which it is transferred.

(E) Frivolous claims

Frivolous claims brought under subparagraph (A) or (B) are subject to dismissal and sanctions as provided under section 1927 of title 28 and the Federal Rules of Civil Procedure.

(F) Security

(1) Subparagraph (A) actions

The security requirements of rule 65(c) of the Federal Rules of Civil Procedure apply with respect to actions commenced under subparagraph (A).

(ii) Subparagraph (B) actions

No claim shall be heard, and no temporary restraining order or temporary or permanent injunction shall be issued, under an action commenced under subparagraph (B), unless the party seeking review first files an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense parties affected for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction. If a court upholds the constitutionality of the determination in question in such action, the court shall award

to a prevailing party fees and expenses, in addition to any costs incurred by that party, unless the court finds that the position of the other party was substantially justified or that special circumstances make an award unjust.

(G) Panel record

The record of proceedings before the binational panel shall not be considered part of the record for review pursuant to subparagraph (A) or (B).

(H) Appeal to Supreme Court of court orders issued in subparagraph (A) actions

Notwithstanding any other provision of law, any final judgment of the United States Court of Appeals for the District of Columbia Circuit which is issued pursuant to an action brought under subparagraph (A) shall be reviewable by appeal directly to the Supreme Court of the United States. Any such appeal shall be taken by a notice of appeal filed within 10 days after such order is entered; and the jurisdictional statement shall be filed within 30 days after such order is entered. No stay of an order issued pursuant to an action brought under subparagraph (A) may be issued by a single Justice of the Supreme Court.

(5) Liquidation of entries

(A) Application

In the case of a determination for which binational panel review is requested pursuant to article 1904 of the U.S.-Canada Agreement, the rules provided in this paragraph shall apply, notwithstanding the provisions of subsection (c) of this section.

(B) General rule

In the case of a determination for which binational panel review is requested pursuant to article 1904 of the U.S.-Canada Agreement, entries of merchandise covered by such determination shall be liquidated in accordance with the determination of Commerce 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 Commerce of notice of a final decision of a binational panel, or of an extraordinary challenge committee, not in harmony with that determination. Such notice of a decision shall be published within 10 days of the date of the issuance of the panel or committee decision.

(C) Suspension of liquidation

(i) In general

Notwithstanding the provisions of subparagraph (B), in the case of a determination described in clause (iii) or (vi) or subsection (a)(2)(B) of this section for which binational panel review is requested pursuant to article 1904 of the U.S.-Canada Agreement, Commerce, upon request of an interested party who was a party to the proceeding in connection with which the matter arises and who is a participant in the binational panel review, shall order the continued suspension of liquidation of those entries of merchandise covered by the determination that are involved in the review pending the final disposition of the review.

(ii) Notice

At the same time as the interested party makes its request to Commerce under clause (i), that party shall serve a copy of its request on the United States Secretary, the Canadian Secretary, and all interested parties who were parties to the proceeding in connection with which the matter arises.

(iii) Application of suspension

If the interested party requesting continued suspension of liquidation under clause (i) is a foreign manufacturer, producer, or exporter, or a United States importer, the continued suspension of liquidation shall apply only to entries of merchandise manufactured, produced, exported, or imported by that particular manufacturer, producer, exporter, or importer. If the interested party requesting the continued suspension of liquidation under clause (i) is an interested party described in paragraph (3), (4), (5), (6), or (7) of section 703(f) of this subtitle, the continued suspension of liquidation shall apply only to entries which could be affected by a decision of the binational panel convened under chapter 19 of the U.S.-Canada Agreement.

(iv) Judicial review

Any action taken by Commerce or the United States Customs Service under this subparagraph shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such action on any question of law or fact by an action in the nature of mandamus or otherwise.

(6) Injunctive relief

Except for cases under paragraph (4)(B), in the case of a determination for which binational panel review is

requested pursuant to article 1904 of the U.S.-Canada Agreement, the provisions of subsection (c)(2) of this section shall not apply.

(7) Implementation of international obligations under article 1904

(A) In general

If a determination is referred to a binational panel or extraordinary challenge committee under the U.S.-Canada Agreement and the panel or committee makes a decision remanding the determination to Commerce or the Commission, Commerce or the Commission shall, within the period specified by the panel or committee, take action not inconsistent with the decision of the panel or committee. Any action taken by Commerce or the Commission under this paragraph shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such action on any question of law or fact by an action in the nature of mandamus or otherwise.

(B) Application if subparagraph (A) held unconstitutional

In the event that the provisions of subparagraph (A) are held unconstitutional under the provisions of subparagraphs (A) and (II) of paragraph (4), the provisions of this subparagraph shall take effect. In such event, the President is authorized on behalf of the United States to accept, as a whole, the decision of a binational panel or extraordinary challenge committee remanding the determination to Commerce or the Commission within the period specified by the panel or committee. Upon acceptance by the President of such a decision, Commerce or the Commission shall, within the period specified by the panel or committee, take action not inconsistent with such decision. Any action taken by the President, Commerce, or the Commission under this subparagraph shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such action on any question of law or fact by an action in the nature of mandamus or otherwise.

(8) Requests for binational panel review

(A) Interested party requests for binational panel review

An interested party who was a party to the proceeding in which a determination is made may request binational panel review of such determination by filing a request with the United States Secretary by no later than the date that is 30 days after the date described in subparagraph (A) or (B) of

subsection (a)(5) of this section that is applicable to such determination. Receipt of such request by the United States Secretary shall be deemed to be a request for binational panel review within the meaning of article 1904(4) of the U.S.-Canada Agreement. Such request shall contain such information and be in such form, manner, and style as Commerce, in consultation with the Commission, shall prescribe by regulations.

(B) Service of request for binational panel review

(i) Service by interested party

If a request for binational panel review of a determination is filed under subparagraph (A), the party making the request shall serve a copy, by mail or personal service, on any other interested party who was a party to the proceeding in connection with which the matter arises, and on Commerce or the Commission, as appropriate.

(ii) Service by United States Secretary

If an interested party to the proceeding requests binational panel review of a determination by filing a request with the Canadian Secretary, the United States Secretary shall serve a copy of the request by mail on any other interested party who was a party to the proceeding in connection with which the matter arises, and on Commerce or the Commission, as appropriate.

(C) Limitation on request for binational panel review

Absent a request by an interested party under subparagraph (A), the United States may not request binational panel review under article 1904 of the U.S.-Canada Agreement of a determination.

(9) Representation in panel proceedings

In the case of binational panel proceedings convened under chapter 19 of the U.S.-Canada Agreement, Commerce and the Commission shall be represented by attorneys who are employees of Commerce or the Commission, respectively. Interested parties who were parties to the proceeding in connection with which the matter arises shall have the right to appear and be represented by counsel before the binational panel.

(10) Notification of class or kind rulings

In the case of a determination which is described in

paragraph (2)(B)(vi) of subsection (a) of this section and which is subject to the provisions of paragraph (2), Commerce, upon request, shall inform any interested person of the date on which the Government of Canada received notice of the determination under article 1904(4) of the U.S.-Canada Agreement.

(11) Disclosure of proprietary information under protective orders issued pursuant to the United States-Canada Agreement

19 USC 1677f(f)

(A) Issuance of protective orders

(i) In general

If binational panel review of a determination under this subchapter is requested pursuant to article 1904 of the United States-Canada Agreement, or an extraordinary challenge committee is convened under Annex 1904.13 of the United States-Canada Agreement, Commerce or the Commission, as appropriate, may make available to authorized persons, under a protective order described in subparagraph (B), a copy of all proprietary material in the administrative record made during the proceeding in question. If Commerce or the Commission claims a privilege as to a document or portion of a document in the administrative record of the proceeding in question and a binational panel finds that in camera inspection or limited disclosure of that document or portion thereof is required by United States law, Commerce or the Commission, as appropriate, may restrict access to such document or portion thereof to the authorized persons identified by the panel as requiring access and may require such persons to obtain access under a protective order described in subparagraph (B).

(ii) Authorized persons

For purposes of this subsection, the term "authorized persons" means--

(I) the members of, and the appropriate staff of, the binational panel or the extraordinary challenge committee, as the case may be, and the Secretariat,

(II) counsel for parties to such panel or committee proceeding, and employees, and persons under the direction and control, of such counsel,

(III) any officer or employee of the United States Government designated by Commerce or the Commission, as appropriate, to whom disclosure is necessary in order to make recommendations to the Trade Representative regarding the convening of extraordinary challenge committees under Chapter 19 of the U.S.-Canada Agreement, and

(IV) any officer or employee of the Government of Canada designated by an authorized agency of Canada to whom disclosure is necessary in order to make decisions regarding the convening of extraordinary challenge committees under Chapter 19 of the U.S.-Canada Agreement.

(iii) Review

A decision concerning the disclosure or nondisclosure of material under protective order by Commerce or the Commission shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such decision on any question of law or fact by an action in the nature of mandamus or otherwise.

(B) Contents of protective order

Each protective order issued under this subsection shall be in such form and contain such requirements as Commerce or the Commission may determine by regulation to be appropriate. Commerce and the Commission shall ensure that regulations issued pursuant to this paragraph shall be designed to provide an opportunity for participation in the binational panel proceeding equivalent to that available for judicial review of determinations by Commerce or the Commission that are not subject to review by a binational panel.

(C) Prohibited acts

It is unlawful for any person to violate, to induce the violation of, or knowingly to receive information the receipt of which constitutes a violation of, any provision of a protective order issued under this subsection or to violate, to induce the violation of, or knowingly to receive information the receipt of which constitutes a violation of, any provision of an undertaking entered into with an authorized agency of Canada to protect proprietary material during binational panel review pursuant to article 1904 of the United States-Canada Agreement.

(D) Sanctions for violation of protective orders

Any person who is found by Commerce or the Commission, as appropriate, after notice and an opportunity for a hearing in accordance with section 554 of title 5 to have committed an act prohibited by subparagraph (C) shall be liable to the United States for a civil penalty and shall be subject to such other administrative sanctions, including, but not limited to, debarment from practice before Commerce or the Commission, as Commerce or the Commission determines to be appropriate. The amount of the civil penalty shall not

exceed \$100,000 for each violation. Each day of a continuing violation shall constitute a separate violation. The amount of such civil penalty and other sanctions shall be assessed by Commerce or the Commission by written notice, except that assessment shall be made by Commerce for violation, inducement of a violation or receipt of information with reason to know that such information was disclosed in violation, of an undertaking entered into by any person with an authorized agency of Canada.

(E) Review of sanctions

Any person against whom sanctions are imposed under subparagraph (D) may obtain review of such sanctions by filing a notice of appeal in the United States Court of International Trade within 30 days from the date of the order imposing the sanction and by simultaneously sending a copy of such notice by certified mail to Commerce or the Commission, -as appropriate. Commerce or the Commission shall promptly file in such court a certified copy of the record upon which such violation was found or such sanction imposed, as provided in section 2112 of title 28. The findings and order of Commerce or the Commission shall be set aside by the court only if the court finds that such findings and order are not supported by substantial evidence, as provided in section 706(2) of title 5.

(F) Enforcement of sanctions

If any person fails to pay an assessment of a civil penalty or to comply with other administrative sanctions after the order imposing such sanctions becomes a final and unappealable order, or after the United States Court of International Trade has entered final judgment in favor of Commerce or the Commission, an action may be filed in such court to enforce the sanctions. In such action, the validity and appropriateness of the final order imposing the sanctions shall not be subject to review.

(G) Testimony and production of papers

(i) Authority to obtain information

For the purpose of conducting any hearing and carrying out other functions and duties under this subsection, Commerce and the Commission, or their duly authorized agents--

(I) shall have access to and the right to copy any pertinent document, paper, or record in the possession of any individual, partnership, corporation, association, organization, or other entity,

(II) may summon witnesses, take testimony, and administer oaths,

(III) and may require any individual or entity to produce pertinent documents, books, or records.

Any member of the Commission, and any person so designated by Commerce, may sign subpoenas, and members and agents of Commerce and the Commission, when authorized by Commerce or the Commission, as appropriate, may administer oaths and affirmations, examine witnesses, take testimony, and receive evidence.

(ii) Witnesses and evidence

The attendance of witnesses who are authorized to be summoned, and the production of documentary evidence authorized to be ordered, under clause (i) may be required from any place in the United States at any designated place of hearing. In the case of disobedience to a subpoena issued under clause (i), an action may be filed in any district or territorial court of the United States to require the attendance and testimony of witnesses and the production of documentary evidence. Such court, within the jurisdiction of which such inquiry is carried on, may, in case of contumacy or refusal to obey a subpoena issued to any individual, partnership, corporation, association, organization or other entity, issue any order requiring such individual or entity to appear before Commerce or the Commission, or to produce documentary evidence if so ordered or to give evidence concerning the matter in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof.

(iii) Mandamus

Any court referred to in clause (i) shall have jurisdiction to issue writs of mandamus commanding compliance with the provisions of this subsection or any order of Commerce or the Commission made in pursuance thereof.

(iv) Depositions

For purposes of carrying out any functions or duties under this subsection, Commerce or the Commission may order testimony to be taken by deposition. Such deposition may be taken before any person designated by Commerce or Commission that has the power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under the direction of such person, and shall then be subscribed by the deponent. Any individual, partnership, corporation, association, organization, or other

entity may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before Commerce or Commission, as provided in this paragraph.

(v) *Fees and mileage of witnesses*

Witnesses summoned before Commerce or the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(g) **Definitions**

For purposes of this section--

(1) **Secretfry**

19 USC 1516a(f)(4)

The term "Secretary" means the Secretary of the Treasury.

(2) **United States Secretary**

19 USC 1516a(f)(6)

The term "United States Secretary" means the secretary provided for in paragraph 4 of article 1909 of the U.S.-Canada Agreement.

(3) **Canadian Secretary**

19 USC 1516a(f)(7)

The term "Canadian Secretary" means the secretary provided for in paragraph 5 of article 1909 of the U.S.-Canada Agreement.

SEC. 718 Third-country dunning

19 USC 1677k

(a) **Definitions**

For purposes of this section:

(1) The term "Agreement on Antidumping Measures" means the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (relating to antidumping measures).

(2) The term "Agreement country" means a foreign country that has accepted the Agreement on Antidumping Measures.

(b) **Petition by domestic industry**

(1) A domestic industry that produces a product that is like

or directly competitive with merchandise produced by a foreign country (whether or not an Agreement country) may, if it has reason to believe that--

(A) such merchandise is being dumped in an Agreement country; and

(B) such domestic industry is being materially injured, or threatened with material injury, by reason of such dumping;

submit a petition to the Trade Representative that alleges the elements referred to in subparagraphs (A) and (B) and requests the Trade Representative to take action under subsection (c) of this section on behalf of the domestic industry.

(2) A petition submitted under paragraph (1) shall contain such detailed information as the Trade Representative may require in support of the allegations in the petition. -

(c) Application for antidumping action on behalf of the domestic industry

(1) If the Trade Representative, on the basis of the information contained in a petition submitted under subsection (b), determines that there is a reasonable basis for the allegations in the petition, the Trade Representative shall submit to the appropriate authority of the Agreement country where the alleged dumping is occurring an application pursuant to Article 12 of the Agreement on Antidumping Measures which requests that appropriate antidumping action under the law of that country be taken, on behalf of the United States, with respect to imports into that country of the merchandise concerned.

(2) At the request of the Trade Representative, the appropriate officers of the Department of Commerce and the United States International Trade Commission shall assist the Trade Representative in preparing the application under paragraph (1).

(d) Consultation after submission of application

After submitting an application under subsection (c)(1) of this section, the Trade Representative shall seek consultations with the appropriate authority of the Agreement on Antidumping Measures country regarding the request for antidumping action.

(e) Action upon refusal of agreement country to act

If the appropriate authority of an Agreement country refuses to undertake antidumping measures in response to a request made therefor by the Trade Representative under subsection (c) of this section, the United States Trade Representative shall promptly consult with the domestic industry on whether action under any other law of the United States is appropriate.

- 1. Because there are two sections 1677(18) in the U.S. Code, the Code has designated the first as "1677(18)," relating to non-market economy country, and the second as "1677(18)'," relating to the U.S.-Canada Agreement.**
- 2. Because there are two sections 1671(d) in the U.S. Code, the Code has designated one of them "1671(d)," relating to upstream subsidies, and the other as "1671(d)¹," relating to treatment of international consortia.**

**SUBTITLE VIII RETALIATORY
RELIEF FOR CERTAIN DISCRIMINATORY
FOREIGN PRACTICES**

- SEC. 801** Applicability [NEW]
SEC. 802 Importation or sale of articles
 at less than market value or
 wholesale price [15 U.S.C. 71, 72]
SEC. 803 Agreements involving restrictions
 in favor of imported goods
 [15 U.S.C. 73, 74]
SEC. 804 Retaliation against country prohibiting
 importations [15 U.S.C. 75]
SEC. 805 Retaliation against restriction of
 importations in time of war
 [15 U.S.C. 76]
SEC. 806 Discrimination against neutral
 Americans in time of war [15 U.S.C. 77]

SEC. 801 Applicability

NEW

Applicability. This subtitle provides relief for certain intentional methods of unfair price competition and for sanctions with respect to certain other discriminatory practices, wherever they might occur, affecting U.S. citizens or businesses.

SEC. 802 Importation or sale of articles at less than market value or wholesale price

15 USC 72

(a) It shall be unlawful for any person importing or assisting in importing any articles from any foreign country into the United States, commonly and systematically to import, sell or cause to be imported or sold such articles within the United States at a price substantially less than the actual market value or wholesale price of such articles, at the time of exportation to the United States, in the principal markets of the country of their production, or of other foreign countries to which they are commonly exported after adding to such market value or wholesale price, freight, duty, and other charges and expenses necessarily incident to the importation and sale thereof in the United States: Provided, that such act or acts be done with the intent of destroying or injuring an industry in the United States, or of preventing the establishment of an industry in the United States, or of restraining or monopolizing any

part of trade and commerce in such articles in the United States.

(b) Any person who violates or combines or conspires with any other person to violate this section is guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding \$5,000, or imprisonment not exceeding one year, or both, in the discretion of the court.

(c) Any person injured in his business or property by reason of any violation of, or combination or conspiracy to violate, this section, may sue therefor in the district court of the United States for the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages sustained, and the cost of the suit, including a reasonable attorney's fee.

(d) When used in this subtitle the term "person*" includes partnerships, corporations, and associations.

15 USC 71

(e) The foregoing provisions shall not be construed to deprive the proper State courts of jurisdiction in actions for damages thereunder.

SEC. 803 Agreements involving restrictions in fever of imported goods

(a) If any article produced in a foreign country is imported into the United States under any agreement, understanding, or condition that the importer thereof or any other person in the United States shall not use, purchase, or deal in, or shall be restricted in his using, purchasing, or dealing in, the articles of any other person, there shall be levied, collected, and paid thereon, in addition to the duty otherwise imposed by law, a special duty equal to double the amount of such duty: Provided, that the above shall not be interpreted to prevent the establishing in this country on the part of a foreign producer of an exclusive agency for the sale in the United States of the products of said foreign producer or merchant, nor to prevent such exclusive agent from agreeing not to use, purchase, or deal in the article of any other person, but this proviso shall not be construed to exempt from the provisions of this section any article imported by such exclusive agent if such agent is required by the foreign producer or if it is agreed between such agent and such foreign producer that

15 USC 73

any agreement, understanding or condition set out in this section shall be imposed by such agent upon the sale or other disposition of such article to any person in the United States.

(b) The Secretary of the Treasury shall make such rules and regulations as are necessary for the carrying out of the provisions of section 803(a) of this subtitle.

15 USC 74

SEC. 804 Retaliation against country prohibiting importations

15 USC 75

(a) Whenever any country or dependency shall prohibit the importation of any article the product of the soil or industry of the United States and not injurious to health or morals, the President shall have power to prohibit, during the period such prohibition is in force, the importation into the United States of similar articles, or in case the United States does not import similar articles from that country, then other articles, the products of such country or dependency.

(b) The Secretary of the Treasury, with the approval of the President, shall make such rules and regulations as are necessary for the execution of the provisions of this section.

SEC. 805 Retaliation against restriction of importations in time of war

15 USC 76

Whenever, during the existence of a war in which the United States is not engaged, the President shall be satisfied that there is reasonable ground to believe that under the laws, regulations, or practices of any country or dependency contrary to the law and practice of nations, the importation into their own or any other country or dependency of any article the product of the soil or industry of the United States and not injurious to health or morals is prevented or restricted the President is authorized and empowered to prohibit or restrict *during the* period such prohibition or restriction is in force, the importation into the United States of similar or other articles, products of such country or dependency as in his opinion the public interest may require; and in such case he shall make proclamation stating the article or articles which are prohibited from importation into the United States; and any person or persons who shall import, or attempt or conspire to

import, or be concerned in importing, such article or articles, into the United States contrary to the prohibition in such proclamation, shall be liable to a fine of not less than \$2,000 nor more than \$50,000, or to imprisonment not to exceed two years, or both, in the discretion of the court. The President may change, modify, revoke, or renew such proclamation in his discretion.

SEC. 806 Discrimination against neutral Americans in time of war

15 USC 77

(a) Whenever, during the existence of a war in which the United States is not engaged, the President shall be satisfied that there is reasonable ground to believe--

- (1) that any vessel, American or foreign, is, on account of the laws, regulations, or practices of a belligerent Government, making or giving any undue or unreasonable preference or advantage in any respect whatsoever to any particular person, company, firm, or corporation, or any particular description of traffic in the United States or its possessions or to any citizens of the United States residing in neutral countries abroad, or is subjecting any particular person, company, firm, or corporation or any particular description of traffic in the United States or its possessions, or any citizens of the United States residing in neutral countries abroad to any undue or unreasonable prejudice, disadvantage, injury, or discrimination in regard to accepting, receiving, transporting, or delivering, or refusing to accept, receive, transfer, or deliver any cargo, freight, or passengers, or in any other respect whatsoever, he is authorized and empowered to direct the detention of such vessels by withholding clearance or by formal notice forbidding departure, and to revoke, modify, or renew any such direction.

(2) that under the laws, regulations, or practices of any belligerent country or Government, American ships or American citizens are not accorded any of the facilities of commerce which the vessels or citizens of that belligerent country enjoy in the United States or its possessions, or are not accorded by such belligerent equal privileges or facilities of trade with vessels or citizens of any nationality other than that of such belligerent, the President is

authorized and empowered to withhold clearance from one or more vessels of such belligerent country until such belligerent shall restore to such American vessels and American citizens reciprocal liberty of commerce and equal facilities of trade; or the President may direct that similar privileges and facilities, if any, enjoyed by vessels or citizens of such belligerent in the United States or its possessions be refused to vessels or citizens of such belligerent; and in such case he shall make proclamation of his direction, stating the facilities and privileges which shall be refused, and the belligerent to whose vessels or citizens they are to be refused, and thereafter the furnishing of such prohibited privileges and facilities to any vessel or citizen of the belligerent named in such proclamation shall be unlawful; and he may change, modify, revoke, or renew such proclamation; and any person or persons who shall furnish or attempt or conspire to furnish or be concerned in furnishing or in the concealment of furnishing facilities or privileges to ships or persons contrary to the prohibition in such proclamation shall be liable to a fine of not less than \$2,000 nor more than \$50,000 or to imprisonment not to exceed two years, or both, in the discretion of the court.

(b) In case any vessel which is detained by virtue of sections 801 to 806 of this subtitle shall depart or attempt to depart from the jurisdiction of the United States without clearance or other lawful authority, the owner or master or person or persons having charge or command of such vessel shall be severally liable to a fine of not less than \$2,000 nor more than \$10,000, or to imprisonment not to exceed two years, or both, and in addition such vessel shall be forfeited to the United States.

(c) The President of the United States is authorized and empowered to employ such part of the land or naval forces of the United States as shall be necessary to carry out the purposes of sections 801 to 806 of this subtitle.

**SUBTITLE IX—UNFAIR PRACTICES IN
IMPORT TRADE**

SEC. 901 Applicability [NEW]

**SEC. 902 Obtaining relief from unfair practices
[19 U.S.C. 1337]**

- (a) Unlawful activities; covered industries; definitions [19 U.S.C. 1337(a)]
- (b) Investigation of violations by Commission; time limits [19 U.S.C. 1337(b)]
- (c) Determinations [19 U.S.C. 1337(c) the first three sentences]
- (d) Sanctions for abuse of discovery and abuse of process [19 U.S.C. 1337(h)]
- (e) Final relief [19 U.S.C. 1337(d), (f)(1), and (8)]
- (f) Preliminary Relief; Applicable Procedures [19 U.S.C. 1337(e), and (f)(1)]
- (g) Judicial Review [19 U.S.C. 1337(c) the last two sentences]
- (h) Forfeiture; Civil Penalties [19 U.S.C. 1337(i) and (0)(2)]
- (i) Referral to President [19 U.S.C. 1337(j)]
- (j) Period of effectiveness; termination of violation or modification or rescission of exclusion or order [19 U.S.C. 1337(k)]
- (k) Importations by or for the United States [19 U.S.C. 1337(1)]
- (l) Definition of United States [19 U.S.C. 1337(m)]
- (m) Disclosure of confidential information [19 U.S.C. 1337(n)]

**SEC. 903 Performance of Commission functions
[19 U.S.C. 2482]**

SEC. 901 Applicability

This section provides relief for infringement of U.S. intellectual property rights and other kinds of unfair acts or unfair methods of competition in the United States import trade.

NEW

SEC. 902 Obtaining relief from unfair practices

(a) Unlawful activities; covered industries; definitions.

19 USC 1337(a)

(1) Subject to paragraph (2), the following actions by the owner, importer, or consignee of imported articles are unlawful and, when found by the Commission to exist, shall be dealt with, in addition to any other provision of law, as provided in this section:

(A) Unfair methods of competition and unfair acts in the importation of articles (other than articles provided in subparagraph (B)) into the United States, or in the sale of such articles, the threat or effect of which is-

(i) to destroy or substantially injure an industry in the United States;

(ii) to prevent the establishment of such an industry; or

(iii) to restrain or monopolize trade and commerce in the United States.

(B) The importation into the United States, the sale for importation, or the sale within the United States after importation of-

(i) articles that infringe a valid and enforceable United States patent, United States copyright registered under title 17 of the United States Code, or United States trademark registered under chapter 22 of title 15 of the United States Code;

(ii) articles that are made, produced, processed, or mined under or by means of a process covered by the claims of valid and enforceable United States patent; or

(iii) a semiconductor chip product, in a manner that constitutes infringement of a mask work registered under chapter 9 of title 17 of the United States Code.

(2) Subparagraph (B) of paragraph (1) applies only if an industry in the United States, relating to the articles protected by the patent, copyright, trademark, or mask work concerned, exists or is in the process of being established.

(3) For purposes of paragraph (2), an industry in the United States shall be considered to exist if there is in the United States, with respect to the articles protected by the patent, copyright, trademark or mask work concerned--

(A) significant investment in plant and equipment;

(B) significant employment of labor or capital;
or

(C) substantial investment in its exploitation, including engineering, research and development, or licensing.

(4) For the purposes of this section, the phrase "owner, importer, or consignee" includes any agent of the owner, importer, or consignee.

(b) Investigation of violations by Commission; time limits.

19 USC 1337(b)

(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 and Human Services, 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 a matter, in whole or in part, may come within the purview of subtitle VII of this title, it shall promptly notify the Secretary of Commerce so that such action may be taken as is otherwise authorized by that subtitle. If the Commission has reason to believe the matter before it (A) is based solely on alleged acts and effects which are within the purview of subtitle VII, or (B) relates to an alleged copyright infringement with respect to which action is prohibited by section 1008 of title 17 of the United States Code, the Commission 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 subtitle VII of this title, and in part on alleged acts and effects which may, independently from or in conjunction with those within the purview of such subtitle, 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 of Commerce with respect to a matter under this paragraph, the Commission may suspend its investigation during the time the matter is before the Secretary for final decision. For the 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 subtitle VII of this title with respect to the matter within that subtitle of which the Commission has notified the Secretary shall be conclusive upon the Commission with respect to the issue of less-than-fair-value sales or subsidization and the matters necessary for such decision.

(c) Determinations.

The Commission shall determine, with respect to each investigation conducted by it under this section, whether there is a violation of this section, except that the Commission may, by issuing a consent order or on the basis of a settlement agreement, terminate any such investigation, in whole or in part, without making such a determination. Each determination under subsection (e)(1) or (0)(1) of this section shall be made on the

**19 USC 1337(c)
(the first three sentences)**

record after notice and opportunity for a hearing in conformity with the provisions of subchapter II, chapter 5 of title 5 of the United States Code (concerning administrative procedure). All legal and equitable defenses may be presented in all cases.

(d) Sanctions for abuse of discovery and abuse of process.

19 USC 1337(h)

The Commission may by rule prescribe sanctions for abuse of discovery and abuse of process to the extent authorized by Rule 11 and Rule 37 of the Federal Rules of Civil Procedure.

(e) Final relief.

(1) If the Commission determines, as a result of an investigation under this section, that there is violation of this section--

(A) The Commission shall direct that the articles concerned, imported by any person violating the provision of this section, be excluded from entry into the United States, except as provided in paragraph (3) of this subsection. The Commission shall notify the Secretary of the Treasury of its action under this paragraph directing such exclusion from entry, and upon receipt of such notice, the Secretary shall, through the proper officers, refuse such entry.

19 USC 1337(d)

(B) In addition to, or in lieu of, taking action under subparagraph (A) above, the Commission may issue and cause to be served on any person violating this section an order directing such person to cease and desist from engaging in the unfair methods or acts involved, except as provided in paragraph (3) of this subsection. 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 subparagraph (A) above.

19 USC 1337(f)(1)

(2) Relief may be ordered in a case in which one or more respondents default, as provided in subparagraphs (A) and (B) below:

19 USC 1337(g)

(A) If--

(i) a complaint is filed against a person under this section;

(ii) the complaint and a notice of investigation are served on the person;

(iii) the person fails to respond to the complaint and notice or otherwise fails to appear to answer the complaint and notice;

(iv) the person fails to show good cause why the person should not be found in default; and

(v) the complainant seeks relief limited solely to that person;

the Commission shall presume the facts alleged in the complaint to be true and shall, upon request, issue an exclusion from entry or a cease and desist order, or both, limited to that person, except as provided in paragraph (3) of this subsection.

(B) In addition to the authority of the Commission to issue a general exclusion from entry of articles when a respondent appears to contest an investigation concerning a violation of the provisions of this section, a general exclusion from entry of articles, regardless of the source or importer of the articles, may be issued if--

(i) no person appears to contest an investigation concerning a violation of the provisions of this section, and

(ii) such a violation is established by substantial, reliable, and probative evidence.

The Commission shall notify the Secretary of the Treasury of its action under this paragraph directing such exclusion from entry, and upon receipt of such notice, the Secretary shall, through the proper officers, refuse such entry.

(3) The Commission is authorized to issue an order under paragraph (1) or paragraph (2)(A) of this subsection 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, the Commission finds that the order should not be issued.

19 USC 1337(d)
19 USC 1337(f)(1)
19 USC 1337(g)(1)

(f) Preliminary Relief; Applicable Procedures

(1) If, during the course of an investigation under this section, the Commission determines that there is reason to believe that there is a violation of this section--

(A) The Commission may direct that the articles concerned, imported by any person with respect to whom there is reason to believe that such person is violating this section, be excluded from entry into the United States, except as provided in subparagraph (C) below. The Commission shall notify the Secretary of the Treasury of its action under this subparagraph directing such exclusion from entry, and upon receipt of such notice, the Secretary shall, through the proper officers, refuse such entry, except that such articles shall be entitled to entry under bond determined by the Commission and prescribed by the Secretary.

19 USC 1337(e)(1)

(B) In addition to, or in lieu of taking action under subparagraph (A) above, the Commission may issue and cause to be served on any person believed to be violating this section, an order directing such person to cease and desist from engaging in the unfair methods or acts involved, except as provided in subparagraph (C) below. 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 subparagraph (A) of this paragraph as the *case* may be.

19 USC 1337(0)(1)

(C) The Commission is authorized to issue an order under subparagraph (A) or (B) 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, the Commission finds that the order should not be issued.

**19 USC 1337(e)(1)
19 USC 1337(0)(1)**

(2) A complainant may petition the Commission or the issuance of an order under paragraph (1)(A) of this subsection. The Commission shall make a determination with regard to such petition by no later than the 90th day after the date on which the Commission's notice of investigation is published in the Federal Register. The Commission may extend the 90-day period for an additional 60 days in a case

19 USC 1337(c)(2)

it designates as a more complicated case. The Commission may require the complainant to post a bond as a prerequisite to the issuance of an order under this subsection.

(3) The Commission may grant preliminary relief under this subsection to the same extent as preliminary injunctions may be granted under the Federal Rules of Civil Procedure.

19 USC 1337(e)(3)

(g) Judicial Review.

Any person adversely affected by a final determination of the Commission under subsection (e) or (f) may appeal such determination, within 60 days after the determination becomes final, to the United States Court of Appeals for the Federal Circuit for review in accordance with chapter 7 of title 5 of the United States Code. Notwithstanding the foregoing provisions of this subsection, Commission determinations under subsections (e) and (f) with respect to its findings on 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, the amount and nature of bond, or the appropriate remedy shall be reviewable in accordance with section 706 of title 5 of the United States Code (which defines the scope of judicial review of actions by administrative agencies).

19 USC 1337(c)
(the last two sentences)

(h) Forfeiture; Civil Penalties.

(1) In addition to taking action under subsection (e)(1)(A), the Commission may issue an order providing that any article imported in violation of the provisions of this section be seized and forfeited to the United States if--

19 USC 1337(i)

(A) the owner, importer, or consignee of the article previously attempted to import the article into the United States;

(B) the article was previously denied entry into the United States by reason of an order issued under subsection (e)(1)(A); and

(C) upon such previous denial of entry, the Secretary of the Treasury provided the owner, importer, or consignee of the article written notice of-

(i) such order, and

(ii) the seizure and forfeiture that would result from any further attempt to import the article into the United States.

(2) The Commission shall notify the Secretary of the Treasury of any order issued under paragraph (1) of this subsection and, upon receipt so such notice, the Secretary of the Treasury shall enforce such order in accordance with the provisions of this section.

(3) Upon the attempted entry of articles subject to an order issued under paragraph (1) of this subsection, the Secretary of the Treasury shall immediately notify all ports of entry of the attempted importation and shall identify the persons notified under paragraph (1) of this subsection.

(4) The Secretary of the Treasury shall provide--

(A) the written notice described in paragraph (1)(C) to the owner, importer, or consignee of any article that is denied entry into the United States by reason of an order issued under subsection (e)(1)(A); and

(B) a copy of such written notice to the Commission.

(5) Any person who violates an order issued by the Commission under subsection (e)(1)(B) or (f)(1)(13) of this section 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 \$100,000 or twice 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.

19 USC 1337(f)(2)

(i) Referral to President.

19 USC 1337(j)

(1) If the Commission determines that there is a violation of this section, or that, for purposes of subsection (f)(1)(A) or (B), there is reason to believe that there is such a violation it shall—

(A) publish such determination in the Federal Register, and

(B) transmit to the President a copy of such determination and the action taken under subsection (e), (f), or (h) with respect thereto, together with the record upon which such determination is based.

(2) If, before the close of the 60-day period beginning on the day after the day on which he receives a copy of such determination, the President, for policy reasons, disapproves such determination and notifies the Commission of his disapproval, then, effective on the date of such notice, such determination and the action taken under subsection (e), (f), or (h) with respect thereto shall have no force or effect.

(3) Subject to the provisions of paragraph (2), such determination shall, except for purposes of subsection (g), be effective upon publication thereof in the Federal Register, and the action taken under subsection (e), (f), or (h) with respect thereto shall be effective as provided in such subsections, except that articles directed to be excluded from entry under subsection (e)(1)(A) or subject to a cease and desist order under subsection (e)(1)(13) shall be entitled to entry under bond determined by the Commission and prescribed by the Secretary until such determination becomes final.

(4) If the President does not disapprove such determination within such 60-day period, or if he notifies the Commission before the close of such period that he approves such determination, then, for purposes of paragraph (3) and subsection (g) such determination shall become final on the day after the close of such period or the day on which the President notifies the Commission of his approval, as the case may be.

(j) Period of effectiveness; termination of violation or modification or rescission of exclusion or order.

19 USC 1337(k)

(1) Except as provided in subsections (e), (f), and (i), any exclusion from entry or order under this section shall continue in effect until the Commission finds, and in the case of exclusion from entry notifies the Secretary of the Treasury, that the conditions which led to such exclusion from entry or order no longer exist.

(2) If any person who has previously been found by the Commission to be in violation of this section petitions the Commission for a determination that the petitioner is no longer in violation of this section or for a modification or rescission of an exclusion from entry or order under subsection (e), (f), or (h)--

(A) the burden of proof in any proceeding before the Commission regarding such petition shall be on the petitioner; and

(B) relief may be granted by the Commission with respect to such petition--

(i) on the basis of new evidence or evidence that could not have been presented at the prior proceeding, or

(ii) on grounds which would permit relief from a judgement or order under the Federal Rules of Civil Procedure.

(k) Importations by or for the United States.

19 USC 1337(1)

Any exclusion from entry or order under subsection (e), (f), or (h) in cases based on a proceeding involving a patent, copyright, or mask work under subsection (a)(1), shall not apply to any articles imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government. Whenever any article would have been excluded from entry or would not have been entered pursuant to the provisions of such subsections but for the operation of this subsection, an owner of the patent, copyright, or mask work adversely affected shall be entitled to reasonable and entire compensation in an action before the United States Claims Court pursuant to the procedures of section 1498 of title 28 of the United States Code.

(1) Definition of United States.**19 USC 1337(m)**

For purposes of this section and section 338 of title 19 of the United States Code (concerning discrimination by foreign countries against commerce of the United States), the term "United States" means the customs territory of the United States as defined in general note 2 of the Harmonized Tariff Schedule of the United States.

(m) Disclosure of confidential information.**19 USC 1337(n)**

(1) Information submitted to the Commission or exchanged among the parties in connection with proceedings under this section which is properly designated as confidential pursuant to Commission rules may not be disclosed (except under a protective order issued under regulations of the Commission which authorizes limited disclosure of such information) to any person (other than a person described in paragraph (2)) without the consent of the person submitting it.

(2) Notwithstanding the prohibition contained in paragraph (1), information referred to in that paragraph may be disclosed to--

(A) an officer or employee of the Commission who is directly concerned with carrying out the investigation in connection with which the information is submitted,

(B) an officer or employee of the United States Government who is directly involved in the review under subsection (i), or

(C) an officer or employee of the United States Customs Service who is directly involved in administering an exclusion from entry under this section resulting from the investigation in connection with which the information is submitted.

SEC. 903 Performance of Commission functions**19 USC 2482**

In connection with the performance of its functions under section 902 of this subtitle, the United States International Trade Commission may exercise the authority granted under section 2482 of title 19 of the United States Code (r.z., authority to conduct preliminary investigations, to determine the

scope and manner of proceedings before the Commission, to consolidate such proceedings, and to exercise authority granted to the Commission under any other Act).

SUBTITLE X—ENFORCEMENT OF UNITED STATES RIGHTS UNDER TRADE AGREEMENTS. RESPONSE TO CERTAIN EMELGEIRADEMACEICF&AIDQUIER MAZOSES

- SEC. 1001** Applicability [New]
- SEC. 1002** Estimates of bathers to market access
[19 U.S.C. 2241]
- SEC. 1003** Actions by United States Trade Representative [19 U.S.C. 2411(a)-(c)]
- SEC. 1004** Definitions and special rules for sections 1003, 1005-1008, 1010-1013, 1014(t), and 1015 [19 U.S.C. 2411(d)]
- SEC. 1005** Initiation of investigations
[19 U.S.C. 2412(a), (b)(1), and (c)]
- SEC. 1006** Consultation upon initiation of investigation [19 U.S.C. 2413]
- SEC. 1007** Determinations by the Trade Representative [19 U.S.C. 2414]
- SEC. 1008** Implementation of actions
[19 U.S.C. 2415]
- SEC. 1009** Foreign export requirements; consultations and negotiations for reduction and elimination; restrictions on and exclusion from entry of products or services; savings provision; compensation authority applicable [19 U.S.C.2114d]
- SEC. 1010** Monitoring of foreign compliance
[19 U.S.C. 2416]
- SEC. 1011** Modification and termination of actions
[19 U.S.C. 2417]
- SEC. 1012** Request for information
[19 U.S.C. 2418]
- SEC. 1013** Administration [19 U.S.C. 2419]
- SEC. 1014** Identification of countries that deny adequate protection, or market access, for intellectual property rights
[19 U.S.C. 2242 and 2412(b)(2)]
- SEC. 1015** Identification of trade liberalization priorities [19 U.S.C. 2420]
- SEC. 1016** Definitions for sections 1017-1025
[19 U.S.C. 3102]
- SEC. 1017** Investigation of foreign telecommunications trade barriers
[19 U.S.C. 3103]
- SEC. 1018** Negotiations in response to investigation
[19 U.S.C. 3104]
- SEC. 1019** Actions to be taken if no agreement obtained [19 U.S.C. 3105]

- SEC. 1020** Review of telecommunications trade agreement implementation by trade representative [19 U.S.C. 3106]
- SEC. 1021** Compensation authority [19 U.S.C. 3107]
- SEC. 1022** Consultations [19 U.S.C. 3108]
- SEC. 1023** Submission of data; action to ensure compliance [19 U.S.C. 3109]
- SEC. 1024** Study on telecommunications competitiveness in the United States [19 U.S.C. 3110]
- SEC. 1025** International obligations [19 U.S.C. 3111]
- SEC. 1026** Monitoring and enforcement [19 U.S.C. 2515(d)-(k)]
- SEC. 1027.** Investigation by the Trade Representative concerning contractors and suppliers from foreign countries which deny fair and equitable market opportunities for United States products and services for construction projects [41 USCA § 10b--Historical and Statutory Notes, Pub.L. 101-514, Title V, § 511, Nov. 5, 1990, 104 Stat. 2098; and Pub.L. 101-516, Title III, § 340, Nov. 5, 1990, 104 Stat. 2187.]

SEC. 1001 Applicability

NEW

This subtitle provides authority to enforce United States rights under international trade agreements and to respond to unjustifiable, unreasonable, or discriminatory foreign trade practices that burden or restrict United States commerce. It also provides authority for other related purposes.

SEC. 1002 Estimates of barriers to market access

19 USC 2241

(a) National trade estimates.

(1) In general.

For calendar year 1988, and for each succeeding calendar year, the United States Trade Representative, through the interagency trade organization established pursuant to section 1872(a) of title 19 of the United States Code (to assist the President and carry out special trade policy

functions) and with the assistance of the interagency advisory committee established under section 2171(d)(2) of title 19 (to provide advice from the private sector on international trade matters), shall--

(A) identify and analyze acts, policies, or practices of each foreign country which constitute significant barriers to, or distortions of--

(i) United States exports of goods or services (including agricultural commodities; and property protected by trademarks, patents, and copyrights exported or licensed by United States persons), and

(ii) foreign direct investment by United States persons, especially if such investment has implications for trade in goods or services;

(B) make an estimate of the trade-distorting impact on United States commerce of any act, policy, or practice identified under subparagraph (A); and

(C) make an estimate, if feasible, of--

(i) the value of additional goods and services of the United States, and

(ii) the value of additional foreign direct investment by United States persons,

that would have been exported to, or invested in, each foreign country during such calendar year if each of such acts, policies, and practices of such country did not exist.

(2) Certain factors taken into account in snaking analysis and estimate.

In making any analysis or estimate under paragraph (1), the Trade Representative shall take into account--

(A) the relative impact of the act, policy, or practice on United States commerce;

(B) the availability of information to document prices, market shares, and other matters necessary to demonstrate the effects of the act, policy, or practice;

(C) the extent to which such act, policy, or practice is subject to international agreements to which the United States is a party;

(D) any advice given through appropriate advisory committees established pursuant to section 2155 of title 19 (to provide advice concerning U.S. trade negotiating objectives, operation of the trade agreements program, and general policy objectives); and

(E) the actual increase in--

(i) the value of goods and services of the United States exported to, and

(ii) the value of foreign direct investment made in,

the foreign country during the calendar year for which the estimate under paragraph (1)(C) is made.

(3) Annual revisions and updates.

The Trade Representative shall annually revise and update the analysis and estimate under paragraph (1).

(b) Submission of report.

(1) On or before April 30, 1989, and on or before March 31 of each succeeding calendar year, the Trade Representative shall submit a report on the analysis and estimates made under subsection (a) for the calendar year preceding such calendar year (which shall be known as the "National Trade Estimate") to the President, the Committee on Finance of the Senate, and appropriate committees of the House of Representatives.

(2) Reports to include information with respect to action being taken—The Trade Representative shall include in each report submitted under paragraph (1) information with respect to any action taken (or the reasons for no action taken) to eliminate any act, policy, or practice identified under subsection (a), including, but not limited to--

(A) any action under section 1003 of this subtitle (to enforce United States rights under international trade agreementt or to respond to

unjustifiable, unreasonable, or discriminatory foreign trade practices that burden or restrict United States commerce); and

(B) negotiations or consultations with foreign governments.

(3) Consultation with Congress on trade policy priorities.

The Trade Representative shall keep the committees described in paragraph (1) currently informed with respect to trade policy priorities for the purposes of expanding market opportunities.

(c) Assistance of other agencies.

" (1) Furnishing of information.

The head of each department or agency of the executive branch of the Government, including any independent agency, is authorized and directed to furnish to the Trade Representative or to the appropriate agency, upon request, such data, reports, and other information as is necessary for the Trade Representative to carry out his functions under this section.

(2) Restrictions on release or use of information.

Nothing in this subsection shall authorize the release of information to, or the use of information by, the Trade Representative in a manner inconsistent with law or any procedure established pursuant thereto.

(3) Personnel and services.

The head of any department, agency, or instrumentality of the United States may detail such personnel and may furnish such services, with or without reimbursement, as the Trade Representative may request to assist in carrying out his functions.

SEC. 1003 Actions by United States Trade Representative

(a) Mandatory action.

19 USC 2411(a)

(1) If the United States Trade Representative

determines under section 1007(a)(1) of this subtitle that--

(A) the rights of the United States under any trade agreement are being denied; or

(B) an act, policy, or practice of a foreign country-

(i) violates, or is inconsistent with, the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or

(ii) is unjustifiable and burdens or restricts United States commerce;

the Trade Representative shall take action authorized in subsection (c) of this section, subject to the specific direction, if any, of the President regarding any such action, and shall take all other appropriate and feasible action within the power of the President that the President may direct the Trade

representative to take under this subsection, to enforce such rights or to obtain the elimination of such act, policy, or practice.

(2) The Trade Representative is not required to take action under paragraph (1) in any case in which—

(A) the Contracting Parties to the General Agreement on Tariffs and Trade have determined, a panel of experts has reported to the Contracting Parties, or a ruling issued under the formal dispute settlement proceeding provided under any other trade agreement finds, that--

(i) the rights of the United States under a trade agreement are not being denied, or

(ii) the act, policy, or practice--

(I) is not a violation of, or inconsistent with, the rights of the United States, or

(II) does not deny, nullify, or impair benefits to the United States under any trade agreement; or

(B) the Trade Representative finds that-

(i) the foreign country is taking satisfactory measures to grant the rights of the United States

under a trade agreement,

(ii) the foreign country has--

(I) agreed to eliminate or phase out the act, policy, or practice, or

(U) agreed to an imminent solution to the burden or restriction on United States commerce that is satisfactory to the Trade Representative,

(iii) it is impossible for the foreign country to achieve the results described in clause (i) or (ii), as appropriate, but the foreign country agrees to provide to the United States compensatory trade benefits that are satisfactory to the Trade Representative,

(iv) in extraordinary cases, where the taking of action under this subsection would have an adverse impact on the United States economy substantially out of proportion to the benefits of such action, taking into account the impact of not taking such action on the credibility of the provisions of sections 1003-1008, 1010-1013, 1014(f), and 1015 of this subtitle, or

(v) the taking of action under this subsection would cause serious harm to the national security of the United States.

(3) Any action taken under paragraph (1) to eliminate an act, policy, or practice shall be devised so as to affect goods or services of the foreign country in an amount that is equivalent in value to the burden or restriction being imposed by that country on United States commerce.

(b) Discretionary action.

19 USC 2411(b)

If the Trade Representative determines under section 1007(a)(1) of this subtitle that—

(1) an act, policy, or practice of a foreign country is unreasonable or discriminatory and burdens or restricts United States commerce, and

(2) action by the United States is appropriate, the Trade Representative shall take all appropriate and feasible action authorized under subsection (c) of this section, subject to the specific direction, if any, of the President regarding any such action, and all other

appropriate and feasible action within the power of the President that the President may direct the Trade Representative to take under this subsection, to obtain the elimination of that act, policy, or practice.

(c) Scope of authority.

(1) For purposes of carrying out the provisions of subsection (a) or (b) of this section, the Trade Representative is authorized to-- **19 USC 2411(c)**

(A) suspend, withdraw, or prevent the application of, benefits of trade agreement concessions to carry out a trade agreement with the foreign country referred to in such subsection;

(B) impose duties or other import restrictions on the goods of, and, notwithstanding any other provision of law, fees or restrictions on the services of, such foreign country for such time as the Trade Representative determines appropriate; or

(C) enter into binding agreements with such foreign country that commit such foreign country to--

(i) eliminate, or phase out, the act, policy, or practice that is the subject of the action to be taken under subsection (a) or (b) of this section,

(ii) eliminate any burden or restriction on United States commerce resulting from such act, policy, or practice, or

(iii) provide the United States with compensatory trade benefits that--

(1) are satisfactory to the Trade Representative, and

(II) meet the requirements of paragraph (4).

(2)(A) Notwithstanding any other provision of law governing any service sector access authorization, and in addition to the authority conferred in paragraph (1), the Trade Representative may, for purposes of carrying out the provisions of subsection (a) or (b) of this section--

(i) restrict, in the manner and to the extent the

Trade Representative determines appropriate, the terms and conditions of any such authorization, or

(ii) deny the issuance of any such authorization.

(B) Actions described in subparagraph (A) may only be taken under this section with respect to service sector access authorizations granted, or applications therefor pending, on or after the date on which--

(i) a petition is filed under section 1005(a) of this subtitle, or

(ii) a determination to initiate an investigation is made by the Trade Representative under section 1005(b) of this subtitle.

(C) Before the Trade Representative takes any action under this section involving the imposition of fees or other restrictions on the services of a foreign country, the Trade Representative shall, if the services involved are subject to regulation by any agency of the Federal Government or of any State, consult, as appropriate, with the head of the agency concerned.

(3) The actions the Trade Representative is authorized to take under subsection (a) or (b) of this section may be taken against any goods or economic sector—

(A) on a nondiscriminatory basis or solely against the foreign country described in such subsection, and

(B) without regard to whether or not such goods or economic sector were involved in the act, policy, or practice that is the subject of such action.

(4) Any trade agreement described in (1)(C)(iii) shall provide compensatory trade that benefit the economic sector which includes the domestic industry that would benefit from the elimination of the act, policy, or practice that is the subject of the action to be taken under subsection (a) or (b) of this section, or benefit the economic sector as closely related as possible to such economic sector, unless--

(A) the provision of such trade benefits is not feasible, or

(B) trade benefits that benefit any other economic sector would be more satisfactory than such trade benefits.

(5) In taking actions under subsection (a) or (b) of this section, the Trade Representative shall--

(A) give preference to the imposition of duties over the imposition of other import restrictions, and

(B) if an import restriction other than a duty is imposed, consider substituting, on an incremental basis, an equivalent duty for such other import restriction.

(6) Any action taken by the Trade Representative under this section with respect to export targeting shall, to the extent possible, reflect the full benefit level of the export targeting to the beneficiary over the period during which the action taken has an effect.

SEC. 1004 Definitions and special rules for sections 1003, 1005-1008, 1010-1013, 1014(f), and ==

19 USC 2411(d)

For purposes of sections 1003, 1005-1008, 1010-1013, 1014(f), and 1015 of this subtitle--

(1) The term "commerce" includes, but is not limited to—

(A) services (including transfers of information) associated with international trade, whether or not such services are related to specific goods, and

(B) foreign direct investment by United States persons with implications for trade in goods or services.

(2) An act, policy, or practice of a foreign country that burdens or restricts United States commerce may include the provision, directly or indirectly, by that foreign country of subsidies for the construction of vessels used in the commercial transportation by water of goods between foreign Countries and the United States.

(3)(A) An act, policy, or practice is unreasonable if the act, policy, or practice, while not necessarily in violation of, or inconsistent with, the international legal rights of the United States, is otherwise unfair and inequitable.

(B) Acts, policies, and practices that are unreasonable include, but are not limited to, any act, policy, or practice, or any combination of acts, policies, or practices, which--

(i) denies fair and equitable--

(I) opportunities for the establishment of an enterprise,

(II) provision of adequate and effective protection of intellectual property rights, or

(1I) market opportunities, including the toleration by a foreign government of systematic anticompetitive activities by private firms or among private firms in the foreign country that have the effect of restricting, on a basis that is inconsistent with commercial considerations, access of United States goods to purchasing by such firms,

(ii) constitutes export targeting, or

(iii) constitutes a persistent pattern of conduct that-

(1) denies workers the right of association,

(II) denies workers the right to organize and bargain collectively,

(III) permits any form of forced or compulsory labor,

(IV) fails to provide a minimum age for the employment of children, or

(V) fails to provide standards for minimum wages, hours of work, and occupational safety and health of workers.

(C)(i) Acts, policies, and practices of a foreign country described in subparagraph (B)(iii) shall not be treated as being unreasonable if the Trade Representative determines that-

(I) the foreign country has taken, or is taking, actions that demonstrate a significant and tangible overall advancement in providing throughout the foreign country (including any designated zone within the foreign country) the rights and other standards described in the subclauses of subparagraph (3)(iii), or

(II) such acts, policies, and practices are not inconsistent with the level of economic development of the foreign country.

(ii) The Trade Representative shall publish in the Federal Register any determination made under clause (i), together with a description of the facts on which such determination is based.

(I) For purposes of determining whether any act, policy, or practice is unreasonable, reciprocal opportunities in the United States for foreign nationals and firms shall be taken into account, to the extent appropriate.

(3) The term "export targeting" means any government plan or scheme consisting of a combination of coordinated actions (whether carried out severally or jointly) that are bestowed on a specific enterprise, industry, or group thereof, the effect of which is to assist the enterprise, industry, or group to become more competitive in the export of a class or kind of merchandise.

(4)(A) An act, policy, or practice is unjustifiable if the act, policy, or practice is in violation of, or inconsistent with, the international legal rights of the United States.

(B) Acts, policies, and practices that are unjustifiable include, but are not limited to, any act, policy, or practice described in subparagraph (A) which denies national or most-favored-nation treatment or the right of establishment or protection of intellectual property rights.

(5) Acts, policies, and practices that are discriminatory include, when appropriate, any act, policy, and practice which denies national or most-favored-nation treatment to United States goods, services, or investment.

(6) The term "service sector access authorization"

means any license, permit, order, or other authorization, issued under the authority of Federal law, that permits a foreign supplier of services access to the United States market in a service sector concerned.

(7) The term "foreign country" includes any foreign instrumentality. Any possession or territory of a foreign country that is administered separately for customs purposes shall be treated as a separate foreign country.

(8) The term "Trade Representative" means the United States Trade Representative.

(9) The term "interested persons", only for purposes of sections 1005(a)(4)(B), 1007(b)(1)(A), 1010(c)(2), and 1011(a)(2) of this subtitle, includes, but is not limited to, domestic firms and workers, representatives of consumer interests, United States product exporters, and any industrial user of any goods or services that may be affected by actions taken under subsection (a) or (b) of this section.

SEC. 1005 tion of investigations

(a) Initiation of investigation in response to a petition.

19 USC 2412(a)

(1) Any interested person may file a petition with the Trade Representative requesting that action be taken under section 1003 of this subtitle and setting forth the allegations in support of the request.

(2) The Trade Representative shall review the allegations in any petition filed under paragraph (1) and, not later than 45 days after the date on which the Trade Representative received the petition, shall determine whether to initiate an investigation.

(3) If the Trade Representative determines not to initiate an investigation with respect to a petition, the Trade Representative shall inform the petitioner of the reasons therefor and shall publish notice of the determination, together with a summary of such reasons, in the Federal Register.

(4) If the Trade Representative makes an affirmative determination under paragraph (2) with respect to a petition, the Trade Representative shall

initiate an investigation regarding the issues raised in the petition. The Trade Representative shall publish a summary 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 beginning on the date of the affirmative 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 or by any interested person.

(b) Initiation of investigation by means other than petition.

19 USC 2412(b)(1)

(1)(A) If the Trade Representative determines that an investigation should be initiated with respect to any matter in order to determine whether the matter is actionable under section 1003 of this subtitle, the Trade Representative shall publish such determination in the Federal Register and shall initiate such investigation.

(B) The Trade Representative shall, before making any determination under subparagraph (A), consult with appropriate committees established pursuant to section 2155 of title 19 of the United States Code (to provide advice concerning U.S. trade negotiating objectives, operation of the trade agreements program, and general policy objectives).

(c) Discretion.

19 USC 2412(c)

In determining whether to initiate an investigation under subsection (a) or (b) of this section of any act, policy, or practice that is enumerated in any provision of section 1004 of this subtitle, the Trade Representative shall have discretion to determine whether action under section 1003 of this subtitle would be effective in addressing such act, policy, or practice.

SEC. 1006 Consultation upon initiation of investigation

(a) In general.

(1) On the date on which an investigation is initiated under section 1005 or 1014(0 of this subtitle, the Trade Representative, on behalf of the United States, shall request consultations with the foreign country concerned regarding the issues involved in such investigation.

(2) If the investigation initiated under section 1005 or 1014(0 of this subtitle involves a trade agreement and a mutually acceptable resolution is not reached before the earlier of--

(A) the close of the consultation period, if any, specified in the trade agreement, or

(B) the 150th day after the day on which consultation was commenced, the Trade Representative shall promptly request proceedings on the matter under the formal dispute settlement procedures provided under such agreement.

(3) The Trade Representative shall seek information and advice from the petitioner (if any) and the appropriate committees established pursuant to section 2155 of title 19 of the United States Code (to provide advice concerning U.S. trade negotiating objectives, operation of the trade agreements program, and general policy objectives) in preparing United States presentations for consultations and dispute settlement proceedings.

(b) Delay of request for consultations.

(1) Notwithstanding the provisions of subsection (a) of this section—

(A) the United States Trade Representative may, after consulting with the petitioner (if any), delay for up to 90 days any request for consultation under subsection (a) of this section for the purpose of verifying or improving the petition to ensure an adequate basis for consultation, and

(B) if such consultations are delayed by reason of subparagraph (A), each time limitation under section 1007 of this subtitle shall be extended for the

period of such delay.

(2) The Trade Representative shall--

(A) publish notice of any delay under paragraph (1) in the Federal Register, and

(B) report to Congress on the reasons for such delay in the report required under section 1013(a)(3) of this subtitle (concerning administration of the authority conferred in sections 1003-1008, 1010-1012, 1014(f), and 1015).

SEC. 1007 Determinations by the Trade Representative

19 USC 2414

(a) In general.

(1) On the basis of the investigation initiated under section 1005 or 1014(f) of this subtitle and the consultations (and the proceedings, if applicable) under section 1006 of this subtitle, the Trade Representative shall--

(A) determine whether--

(i) the rights to which the United States is entitled under any trade agreement are being denied, Or

(ii) any act, policy, or practice described in subsection (a)(1)(B) or (b)(1) of section 1003 of this subtitle exists, and

(B) if the determination made under subparagraph (A) is affirmative, determine what action, if any, the Trade Representative should take under subsection (a) or (b) of section 1003 of this subtitle.

(2) The Trade Representative shall make the determinations required under paragraph (1) on or before—

(A) in the case of an investigation involving a trade agreement (other than the agreement on subsidies and countervailing measures described in section 2503(c)(5) of title 19 of the United States Code (concerning the Agreement on Interpretation and Application of Articles VI, XVI, and MUD of

the General Agreement on Tariffs and Trade relating to subsidies and countervailing measures), the earlier of-

(i) the date that is 30 days after the date on which the dispute settlement procedure is concluded, or

(ii) the date that is 18 months after the date on which the investigation is initiated, or

(B) in all cases not described in subparagraph (A) or paragraph (3), the date that is 12 months after the date on which the investigation is initiated.

(3)(A) If an investigation is initiated by reason of section 1014(f) of this subtitle and the Trade Representative does not make a determination described in subparagraph (B) with respect to such investigation, the Trade Representative shall make the determinations required under paragraph (1) with respect to such investigation by no later than the date that is 6 months after the date on which such investigation is initiated.

(B) If the Trade Representative determines with respect to any investigation initiated by reason of section 1014(f) of this subtitle that--

(i) complex or complicated issues are involved in the investigation that require additional time,

(ii) the foreign country involved in the investigation is making substantial progress in drafting or implementing legislative or administrative measures that will provide adequate and effective protection of intellectual property rights, or

(iii) such foreign country is undertaking enforcement measures to provide adequate and effective protection of intellectual property rights,

the Trade Representative shall publish in the Federal Register notice of such determination and shall make the determinations required under paragraph (1) with respect to such investigation by no later than the date that is 9 months after the date on which such investigation is initiated.

(4) 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 (other than the agreement on subsidies and countervailing

measures described in section 2503(c)(5) of title 19), the Trade Representative, within 15 days after the close of such dispute settlement period, shall submit a report to Congress setting forth the reasons why the dispute was not resolved within the minimum dispute settlement 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 at any stage.

(b) Consultation before determinations.

(1) Before making the determinations required under subsection (a)(1) of this section, the Trade Representative, unless expeditious action is required--

(A) shall provide an opportunity (after giving not less than 30 days notice thereof) for the presentation of views by interested persons, including a public hearing if requested by any interested person,

(B) shall obtain advice from the appropriate committees established pursuant to section 2155 of title 19 (to provide advice concerning U.S. trade negotiating objectives, operation of the trade agreements program, and general policy objectives), and

(C) may request the views of the United States International Trade Commission regarding the probable impact on the economy of the United States of the taking of action with respect to any goods or service.

(2) If the Trade Representative does not comply with the requirements of subparagraphs (A) and (B) of paragraph (1) because expeditious action is required, the Trade Representative shall, after making the determinations under subsection (a)(1) of this section, comply with such subparagraphs.

(c) Publication.

The Trade Representative shall publish in the Federal Register any determination made under subsection (a)(1) of this section, together with a description of the facts on which such determination is based.

SEC. 1008 Implementation of actions

19 USC 2415

(a) Actions to be taken under section 1003.

(1) Except as provided in paragraph (2), the Trade Representative shall implement the action the Trade Representative determines under section 1006(a)(1)(3) of this subtitle to take under section 1003 of this subtitle, subject to the specific direction, if any, of the President regarding any such action, by no later than the date that is 30 days after the date on which such determination is made.

(2)(A) Except as otherwise provided in this paragraph, the Trade Representative may delay, by not more than 180 days, the implementation of any action that is to be taken under section 1003 of this subtitle-

(i) if--

(I) in the case of an investigation initiated under section 1005(a) of this subtitle, the petitioner requests a delay, or

(II) in the case of an investigation initiated under section 1005(b)(1) of this subtitle or to which section 1007(a)(3)(3) of this subtitle applies, a delay is requested by a majority of the representatives of the domestic industry that would benefit from the action, or

(ii) if the Trade Representative determines that substantial progress is being made, or that a delay is necessary or desirable, to obtain United States rights or a satisfactory solution with respect to the acts, policies, or practices that are the subject of the action.

(B) The Trade Representative may not delay under subparagraph (A) the implementation of any action that is to be taken under section 1003 of this

subtitle with respect to any investigation to which section 1007(a)(3)(A) of this subtitle applies.

(C) The Trade Representative may not delay under subparagraph (A) the implementation of any action that is to be taken under section 1003 of this subtitle with respect to any investigation to which section 1007(a)(3)(B) of this subtitle applies by more than 90 days.

(b) Alternative actions in *certain* cases of export targeting.

(1) If the Trade Representative makes an affirmative determination under section 1007(a)(1)(A) of this subtitle involving export targeting by a foreign country and determines to take no action under section 1003 of this subtitle with respect to such affirmation determination, the Trade Representative--

(A) shall establish an advisory panel to recommend measures which will promote the competitiveness of the domestic industry affected by the export targeting,

(B) on the basis of the report of such panel submitted under paragraph (2)(B) and subject to the specific direction, if any, of the President, may take any administrative actions authorized under any other provision of law, and, if necessary, propose legislation to implement any other actions, that would restore or improve the international competitiveness of the domestic industry affected by the export targeting, and

(C) shall, by no later than the date that is 30 days after the date on which the report of such panel is submitted under paragraph (2)(B), submit a report to the Congress on the administrative actions taken, and legislative proposals made, under subparagraph (B) with respect to the domestic industry affected by the export targeting.

(2)(A) The advisory panels established under paragraph (1)(A) shall consist of individuals appointed by the Trade Representative who--

(i) earn their livelihood in the private sector of the economy, including individuals who represent management and labor in the domestic industry affected by the export targeting that is the subject of

the affirmative determination made under section 1007(a)(1)(A) of this subtitle, and

(ii) by education or experience, are qualified to serve on the advisory panel.

(B) By no later than the date that is 6 months after the date on which an advisory panel is established under paragraph (1)(A), the advisory panel shall submit to the Trade Representative and to the Congress a report on measures that the advisory panel recommends be taken by the United States to promote the competitiveness of the domestic industry affected by the export targeting that is the subject of the affirmative determination made under section 1007(a)(1)(A) of this subtitle.

SEC. 1009 Foreign export requirements: consultations and negotiations for reduction and elimination: restrictions on and exclusion from entry of products or services: savings provision: compensation authority applicable

19 USC 2114d

(a) If the United States Trade Representative, with the advice of the committee established by section 1872 of title 19 of the United States Code (to assist the President and carry out special trade policy functions), determines that action by the United States is appropriate to respond to any export performance requirements of any foreign country or instrumentality that adversely affect the economic interests of the United States, then the United States Trade Representative shall seek to obtain the reduction and elimination of such export performance requirements through consultations and negotiations with the foreign country or instrumentality concerned.

(b) In addition to the action referred to in subsection (a), the United States Trade Representative may impose duties or other import restrictions on the products or services of such foreign country or instrumentality for such time as he determines appropriate, including the exclusion from entry into the United States of products subject to such requirements.

(c) Nothing in subsection (b) shall apply to any products or services with respect to which--

(1) any foreign direct investment (including a purchase of land or facilities) has been made directly or indirectly by any United States person before October 30, 1984, or

(2) any written commitment relating to a foreign direct investment that is binding on October 30, 1984, has been made directly or indirectly by any United States person.

(d) Whenever the international obligations of the United States and actions taken under subsection (b) make compensation necessary or appropriate, compensation may be provided by the United States Trade Representative subject to the limitations and conditions contained in section 2133 of title 19 of the United States Code for providing compensation for actions taken under section 2253 of that title (i.e., action taken by the President after a determination of import injury).

§EC. 1010 Monitoring of foreign compliance

19 USC 2416

(a) In general.

The Trade Representative shall monitor the implementation of each measure undertaken, or agreement of a kind described in clause (i), (ii), or (iii) of section 1003(a)(2)(B) of this subtitle that is entered into under subsection (a) or (b) of section 1003 of this subtitle, by a foreign country--

(1) to enforce the rights of the United States under any trade agreement, or

(2) to eliminate any act, policy, or practice described in subsection (a)(1)(B) or (b)(1) of section 1003 of this subtitle.

(b) Further action.

If, on the basis of the monitoring carried out under subsection (a) of this section, the Trade Representative considers that a foreign country is not satisfactorily implementing a measure or agreement referred to in subsection (a) of this section, the Trade Representative shall determine what further action the Trade Representative shall take under section 1003(a) of this subtitle. For purposes of section 1003 of this subtitle, any such determination shall be treated as a determination made under section 1007(a)(1) of this subtitle.

(c) Consultations.

Before making any determination under subsection (b) of this section, the Trade Representative shall--

(1) consult with the petitioner, if any, involved in the initial investigation under section 1005 of this subtitle and with representatives of the domestic industry concerned; and

(2) provide an opportunity for the presentation of views by interested persons.

SEC. 1011 Modification and termination of

19 USC 2417

(a) In general.

(1) The Trade Representative may modify or terminate any action, subject to the specific direction, if any, of the President with respect to such action, that is being taken under section 1003 of this subtitle if--

(A) any of the conditions described in section 1003(a)(2) of this subtitle exist,

(B) the burden or restriction on United States commerce of the denial rights, or of the acts, policies, and practices, that are the subject of such action has increased or decreased, or

(C) such action is being taken under section 1003 of this subtitle and is no longer appropriate.

(2) Before taking any action under paragraph (1) to modify or terminate any action taken under section 1003 of this subtitle, the Trade Representative shall consult with the petitioner, if any, and with representatives of the domestic industry concerned, and shall provide opportunity for the presentation of views by other interested persons affected by the proposed modification or termination concerning the effects of the modification or termination and whether any modification or termination of the action is appropriate.

(b) Notice; report to Congress.

The Trade Representative shall promptly publish in the Federal Register notice of, and report in writing to the Congress with respect to, any modification or termination of any action taken under section 1003 of this subtitle and the reasons therefor.

(c) Review of necessity.

(¹) If--

(A) a particular action has been taken under section 1003 of this subtitle during any 4-year period, and

(B) neither the petitioner nor any representative of the domestic industry which benefits from such action has submitted to the Trade Representative during the last 60 days of such 4-year period a written request for the continuation of such action, such action shall terminate at the close of such 4-year period.

(2) The Trade Representative shall notify by mail the petitioner and representatives of the domestic industry described in paragraph (1)(B) of any termination of action by reason of paragraph (1) at least 60 days before the date of such termination.

(3) If a request is submitted to the Trade Representative under paragraph (1)(B) to continue taking a particular action under section 1003 of this subtitle, the Trade Representative shall conduct a review of—

(A) the effectiveness in achieving the objectives of section 1003 of this subtitle of--

(i) such action, and

(ii) other actions that could be taken (including actions against other products or services), and

(B) the effects of such actions on the United States economy, including consumers.

SEC. 1012 Request for information

19 USC 2418

(a) In general.

Upon receipt of written request therefor from any person, the Trade 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 country with respect to particular goods, services, investment, or intellectual property rights, to the extent that such information is available to the Trade 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 a person under subsection (a) of this section is not available to the Trade Representative or other Federal agencies, the Trade 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 refusal.

(c) Certain business information not made available.

(1) Except as provided in paragraph (2), and notwithstanding any other provision of law (including section 552 of title 5 on making agency information available to the public), no information requested and received by the Trade Representative in aid of any investigation under section 1003 of this subtitle shall be made available to any person if--

(A) the person providing such information certifies that--

- (i) such information is business confidential,
- (ii) the disclosure of such information would endanger trade secrets or profitability, and
- (iii) such information is not generally available;

(B) the Trade Representative determines that such certification is well-founded; and

(C) to the extent required in regulations prescribed by the Trade Representative, the person providing such information provides an adequate nonconfidential summary of such information.

(2) The Trade Representative may--

(A) use such information, or make such information available (in his own discretion) to any employee of the Federal Government for use, in any investigation under this subtitle, or

(B) may make such information available to any other person in a form which cannot be associated with, or otherwise identify, the person providing the information.

SEC. 1013 Administration

19 USC 2419

The Trade Representative shall--

(1) issue regulations concerning the filing of petitions and the conduct of investigations and hearings under section 1005 or 1014(f) of this subtitle,

(2) keep the petitioner regularly informed of all determinations and developments regarding the investigation conducted with respect to the petition under section 1005 of this subtitle, including the reasons for any undue delays, and

(3) submit a report to the House of Representatives and the Senate semiannually describing—

(A) the petitions filed and the determinations

made (and reasons therefor) under section 1005 of this subtitle,

(B) developments in, and the current status of, each investigation or proceeding under section 1005 or 1014(f) of this subtitle,

(C) the actions taken, or the reasons for no action, by the Trade Representative under section 1003 of this subtitle with respect to investigations conducted under section 1005 or 1014(f) of this subtitle, and

(D) the commercial effects of actions taken under section 1003 of this subtitle.

SEC. 1014 Identification of countries that deny adequate protection, or market access, for intellectual property rights

(a) In general.

19 USC 2242(a)

By no later than the date that is 30 days after the date on which the annual report is submitted to Congressional committees under section 1002(b) of this subtitle, the United States Trade Representative (hereafter in this section referred to as the "Trade Representative") shall identify--

(1) those foreign countries that--

(A) deny adequate and effective protection of intellectual property rights, or

(B) deny fair and equitable market access to United States persons that rely upon intellectual property protection, and

(2) those foreign countries identified under paragraph (1) that are determined by the Trade Representative to be priority foreign countries.

(b) Special rules for identifications.

19 USC 2242(b)

(1) In identifying priority foreign countries under subsection (a)(2) of this section, the Trade Representative shall only identify those foreign countries—

(A) that have the most onerous or egregious

acts, policies, or practices that--

(i) deny adequate and effective intellectual property rights, or

(ii) deny fair and equitable market access to United States persons that rely upon intellectual property protection,

(B) whose acts, policies, or practices described in subparagraph (A) have the greatest adverse impact (actual or potential) on the relevant United States products, and

(C) that are not--

(i) entering into good faith negotiations, or

(ii) making significant progress in bilateral or multilateral negotiations, to provide adequate and effective protection of intellectual property rights.

(2) In identifying priority foreign countries under subsection (a)(2), of this section, the Trade Representative shall--

(A) consult with the Register of Copyrights, the Commissioner of Patents and Trademarks, other appropriate officers of the Federal Government, and

(B) take into account information from such sources as may be available to the Trade Representative and such information as may be submitted to the Trade Representative by interested persons, including information contained in reports submitted under section 1002(b) of this subtitle and petitions submitted under section 1005 of this subtitle.

(3) The Trade Representative may identify a foreign country under subsection (a)(1)(B) of this section only if the Trade Representative finds that there is a factual basis for the denial of fair and equitable market access as a result of the violation of international law or agreement, or the existence of barriers, referred to in subsection (d)(3) of this section.

(c) Revocations and additional identifications.

19 USC 2242(c)

(1) The Trade Representative may at any time-

(A) revoke the identification of any foreign country as a priority foreign country under this section, or

(B) identify any foreign country as a priority foreign country under this section,

if information available to the Trade Representative indicates that such action is appropriate.

(2) The Trade Representative shall include in the semi-annual report submitted to the Congress under section 1013(3) of this subtitle a detailed explanation of the reasons for the revocation under paragraph (1) of the identification of any foreign country as a priority foreign country under this section.

(d) Definitions.

19 USC 2242(d)

For purposes of subsections (a)-(c)-

(1) The term "persons that rely upon intellectual property protection" means persons involved in—

(A) the creation, production or licensing of works of authorship (within the meaning of sections 102 and 103 of title 17 of the United States Code) that are copyrighted, or

(B) the manufacture of products that are patented or for which there are process patents.

(2) A foreign country denied adequate and effective protection of intellectual property rights if the foreign country denied adequate and effective means under the laws of the foreign country for persons who are not citizens or nationals of such foreign country to secure, exercise, and enforce rights relating to patents, process patents, registered trademarks, copyrights and mask works.

(3) A foreign country denies fair and equitable market access if the foreign country effectively denies access to a market for a product protected by a copyright, patent, or process patent through the use of laws, procedures, practices, or regulations which—

(A) violate provisions of international law or international agreements to which both the United States and the foreign country are parties, or

(B) constitute discriminatory nontariff trade bathers.

(e) Publication.

19 USC 2242(e)

The Trade Representative shall publish in the Federal Register a list of foreign countries identified under subsection (a) of this section and shall make such revisions to the list as may be required by reason of action under subsection (c) of this section.

(f) Investigation by the Trade Representative.

19 USC 2412(b)(2)

(1) By no later than the date that is 30 days after the date on which a country is identified under subsection (a)(2) of this section, the Trade Representative shall initiate an investigation under this section with respect to any act, policy, or practice of that country that--

(A) was the basis for such identification, and

(B) is not at that time the subject of any other investigation or action under this section.

(2) The Trade Representative is not required under subparagraph (A) to initiate an investigation under this section with respect to any act, policy, or practice of a foreign country if the Trade Representative determines that the initiation of the investigation would be detrimental to United States economic interests.

(3) If the Trade Representative makes a determination under subparagraph (B) not to initiate an investigation, the Trade Representative shall submit to the Congress a written report setting forth, in detail--

(A) the reasons for the determination, and

(B) the United States economic interests that would be adversely affected by the investigation.

(4) The Trade Representative shall, from time to time, consult with the Register of Copyrights, the Commissioner of Patents and Trademarks, and other appropriate officers of the Federal Government, during any investigation initiated under this section by reason of paragraph (1).

SEC. 1015 Identification of trade liberalization priorities

19 USC 2420

(a) Identification.

(1) By no later than the date that is 30 days after the date in calendar year 1989, and also the date in calendar year 1990, on which the report required under section 1002(b) of this subtitle is submitted to the appropriate Congressional committees, the Trade Representative shall identify United States trade liberalization priorities, including--

(A) priority practices, including major barriers and trade distorting practices, the elimination of which are likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent;

(B) priority foreign countries that, on the basis of such report, satisfy the criteria in paragraph (2);

(C) estimate the total amount by which United States exports of goods and services to each foreign country identified under subparagraph (B) would have increased during the preceding calendar year if the priority practices of such country identified under subparagraph (A) did not exist; and

(D) submit to the Committee on Finance of the Senate, the Committee on Ways and Means of the House of Representatives, and publish in the Federal Register, a report which lists--

(i) the priority foreign countries identified under subparagraph (B),

(ii) the priority practices identified under subparagraph (A) with respect to each of such priority foreign countries, and

(iii) the amount estimated under subparagraph (C) with respect to each of such priority foreign countries.

(2) In identifying priority foreign countries under paragraph (1)(B), the Trade Representative shall take into account—

(A) the number and pervasiveness of the acts, policies, and practices described in section

1002(a)(1)(A) of this subtitle, and

(B) the level of United States exports of goods and services that would be reasonably expected from full implementation of existing trade agreements to which that foreign country is a party, based on the international competitive position and export potential of such products and services.

(3) In identifying priority practices under paragraph (1)(A), the Trade Representative shall take into account--

(A) the international competitive position and export potential of United States products and services,

(B) circumstances in which the sale of a small quantity of a product or service may be more significant than its value, and

(C) the measurable medium-term and long-term implications of government procurement commitments to United States exporters.

(b) Initiation of investigations.

By no later than the date that is 21 days after the date on which a report is submitted to the appropriate Congressional committees under subsection (a)(1)(D) of this section, the Trade Representative shall initiate under section 1005(b)(1) of this subtitle investigations with respect to all of those priority practices identified in such report by reason of subsection (a)(1)(D) of this section for each of the priority foreign countries. The Trade Representative may initiate investigations under section 1005(b)(1) of this subtitle with respect to all other priority practices identified under subsection (a)(1)(A) of this section.

(c) Agreements for the elimination of barriers.

(1) In the consultations with a priority foreign country identified under subsection (a)(1) of this section that the Trade Representative is required to request under section 1006(a) of this subtitle with respect to an investigation initiated by reason of subsection (b) of this section, the Trade Representative shall seek to negotiate an agreement which provides for--

(A) the elimination of, or compensation for, the priority practices identified under subsection (a)(1)(A) of this section by no later than the close of the 3-year period beginning on the date on which such investigation is initiated, and

(B) the reduction of such practices over a 3-year period with the expectation that United States exports to the foreign country will, as a result, increase incrementally during each year within such 3-year period.

(2) Any investigation initiated under this section by reason of subsection (b) of this section shall be suspended if an agreement described in subparagraphs (A) and (B) of paragraph (1) is entered into with the foreign country before the date on which any action under section 1003 of this subtitle with respect to such investigation may be required under section 1008(a) of this subtitle to be implemented.

(3) If an agreement described in paragraph (1) is entered into with a foreign country before the date on which any action under section 1003 of this subtitle with respect to such investigation may be required under section 1007(a) of this subtitle to be implemented and the Trade Representative determines that the foreign country is not in compliance with such agreement, the Trade Representative shall continue the investigation that was suspended by reason of such agreement as though such investigation had not been suspended.

(d) Annual reports.

(1) On the date on which the report the Trade Representative is required to submit under subsection (a)(1)(D) of this section in calendar year 1990, and on the anniversary of such date in the succeeding calendar years, the Trade Representative shall submit a report which includes--

(A) revised estimates of the total amount determined under subsection (a)(1)(C) of this section for each priority foreign country that has been identified under subsection (a)(1)(B) of this section,

(B) evidence that demonstrates, in the form of increased United States exports to each of such priority foreign countries during the previous calendar year-

(i) in the case of a priority foreign country that has entered into an agreement described in subsection (c)(1) of this section, substantial progress during each year within the 3-year period described in subsection (c)(1)(A) of this section toward the goal of eliminating the priority practices identified under subsection (a)(1)(A) of this section by the close of such 3-year period, and

(ii) in the case of a country which has not entered into (or has not complied with) an agreement described in subsection (c)(1) of this section, the elimination of such practices, and

(C) to the extent that the evidence described in subparagraph (B) cannot be provided, any actions that have been taken by the Trade Representative under section 1003 of this subtitle with respect to such priority practices of each of such foreign countries.

(2) The Trade Representative may exclude from the requirements of paragraph (1) in any calendar year beginning after 1993 any foreign country that has been identified under subsection (a)(1)(A) of this section if the evidence submitted under paragraph (1)(B) in the 2 previous reports demonstrated that all the priority practices identified under subsection (a)(1)(A) of this section with respect to such foreign country have been eliminated.

SEC. 1016 Definitions for sections 1017-1025

19 USC 3102

For purposes of sections 1017-1025 of this subtitle--

(1) The term "Trade Representative" means the United States Trade Representative.

(2) The term "telecommunications product"
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(A) any paging devices provided for under item 685.65 of the Harmonized Tariff Schedule of the United States, and

(B) any article classified under any of the following item numbers of the Harmonized Tariff Schedule:

684.57	684.67	685.28	685.39
684.58	684.80	685.30	685.48
684.59	685.16	685.31	688.17
684.65	685.24	685.33	688.41
684.66	685.25	685.34	707.90

SEC. 1017 Investigation of foreign telecommunications trade barriers

19 USC 3103

(a) In general.

The Trade Representative shall conduct an investigation to identify priority foreign countries. Such investigation shall be concluded by no later than the date that is 5 months after August 23, 1988.

(b) Factors to be taken into account.

In identifying priority foreign countries under subsection (a) of this section, the Trade Representative shall take into account, among other relevant factors—

(1) the nature and significance of the acts, policies, and practices that deny mutually advantageous market opportunities to telecommunications products and services of United States firms;

(2) the economic benefits (actual and potential) accruing to foreign firms from open access to the United States markets;

(3) the potential size of the market of a foreign country for telecommunications products and services of United States firms;

(4) the potential to increase United States exports of telecommunications products and services, either directly or through the establishment of a beneficial precedent; and

(5) measurable progress being made to eliminate the objectionable acts, policies, or practices.

(c) Revocations and additional identifications.

(1) The Trade Representative may at any time, after taking into account the factors described in subsection (b) of this section--

(A) revoke the identification of any priority foreign country that was made under this section, or

(B) identify any foreign country as a priority foreign country under this section,

if information available to the Trade Representative indicates that such action is appropriate.

(2) The Trade Representative shall include in the semiannual report submitted to the Congress under section 1013(3) of this subtitle a detailed explanation of the reasons for the revocation under paragraph (1) of this subsection of any identification of any foreign country as a priority foreign country.

(d) Report to Congress.

By no later than the date that is 30 days after the date on which the investigation conducted under subsection (a) of this section is completed, the United States Trade Representative shall submit a report on the investigation to the President and to appropriate committees of the Congress.

SEC. 1018 Negotiations in response to investigation

19 USC 3104

(a) In general.

Upon—

(1) the date that is 30 days after the date on which any foreign country is identified in the investigation conducted under section 1017(a) of this subtitle as a priority foreign country, and

(2) the date on which any foreign country is identified under section 1017(c)(1)(B) of this subtitle as a priority foreign country,

the President shall enter into negotiations with such priority foreign country for the purpose of entering into a bilateral or multilateral trade agreement under

part 1 of subtitle A of the Omnibus Trade and Competitiveness Act of 1988 which meets the specific negotiating objectives established by the President under subsection (b) of this section for such priority foreign country.

(b) Establishment of specific negotiating objectives for each foreign priority country.

(1) The President shall establish such relevant specific negotiating objectives on a country-by-country basis as are necessary to meet the general negotiating objectives of the United States under this section.

(2)(A) The President may refine or modify specific negotiating objectives for particular negotiations in order to respond to circumstances arising during the negotiating period, including--

(i) changed practices by the priority foreign country,

(ii) tangible substantive developments in multilateral negotiations,

(iii) changes in competitive positions, technological developments, or

(iv) other relevant factors.

(B) By no later than the date that is 30 days after the date on which the President makes any modifications or refinements to specific negotiating objectives under subparagraph (A), the President shall submit to appropriate committees of the Congress a statement describing such modifications or refinements and the reasons for such modifications or refinements.

(c) General negotiating objectives.

The general negotiating objectives of the United States under this section are--

(1) to obtain multilateral or bilateral agreements (or the modification of existing agreements) that provide mutually advantageous market opportunities for trade in telecommunications products and services between the United States and foreign countries;

(2) to correct the imbalances in market opportunities accruing from reductions in barriers to the access of telecommunications products and services of foreign firms to the United States market; and

(3) to facilitate the increase in United States exports of telecommunications products and services to a level of exports that reflect the competitiveness of the United States telecommunications industry.

(d) Specific negotiating objectives.

The specific negotiating objectives of the United States under this section regarding telecommunications products and services are to obtain—

(1) national treatment for telecommunications products and services that are provided by United States firms;

(2) most-favored-nation treatment for such products and services;

(3) nondiscriminatory procurement policies with respect to such products and services and the inclusion under the Agreement on Government Procurement of the procurement (by sale or lease by government-owned or controlled entities) of all telecommunications products and services;

(4) the reduction or elimination of customs duties on telecommunications products;

(5) the elimination of subsidies, violations of intellectual property rights, and other unfair trade practices that distort international trade in telecommunications products and services;

(6) the elimination of investment barriers that restrict the establishment of foreign-owned business entities which market such products and services;

(7) assurances that any requirement for the registration of telecommunications products, which are to be located on customer premises, for the purposes of—

(A) attachment to a telecommunications network in a foreign country, and

(B) the marketing of the products in a foreign country,

be limited to the certification by the manufacturer that the products meet the standards established by the foreign country for preventing harm to the network or network personnel,

(8) transparency of, and open participation in, the standards-setting processes used in foreign countries with respect to telecommunications products;

(9) the ability to have telecommunications products, which are to be located on customer premises, approved and registered by type, and, if appropriate, the establishment of procedures between the United States and foreign countries for the mutual recognition of type approvals;

(10) access to the basic telecommunications network in foreign countries on reasonable and nondiscriminatory terms and conditions (including nondiscriminatory prices) for the provision of value-added services by United States suppliers;

(11) the nondiscriminatory procurement of telecommunications products and services by foreign entities that provide local exchange telecommunications services which are owned, controlled, or, if appropriate, regulated by foreign governments; and

(12) monitoring and effective dispute settlement mechanisms to facilitate compliance with matters referred to in the preceding paragraphs of this subsection.

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19 USC 3105

(a) In general.

(1) If the President is unable, before the close of the negotiating period, to enter into an agreement under subtitle A of the Omnibus Trade and Competitiveness Act of 1988 with any priority foreign country identified under section 1017 of this subtitle which achieves the general negotiating objectives described in section 1018 of this subtitle as defined by the specific objectives established by the

President of that country, the President shall take whatever actions authorized under subsection (b) of this section that are appropriate and most likely to achieve such general negotiating objectives.

(2) In taking actions under paragraph (1), the President shall first take those actions which most directly affect trade in telecommunications products and services with the priority foreign country referred to in paragraph (1), unless the President determines that actions against other economic sectors would be more effective in achieving the general negotiating objectives referred to in paragraph (1).

(b) Actions authorized.

' (1) The President is authorized to take any of the following actions under subsection (a) of this section with respect to any priority foreign country:

(A) termination, withdrawal, or suspension of any portion of any trade agreement entered into with such country under-

(i) the Trade Act of 1974 [19 U.S.C.A. § 2101 et seq.],

(ii) section 1821 of title 19 of the United States Code (regarding Presidential authority to enter into trade agreements modifying any existing duty or other import restrictions and to proclaim such modifications), or

(iii) section 1351 of title 19 of the United States Code (regarding Presidential authority to enter into trade agreements modifying tariffs or other import restrictions and to proclaim modifications of existing import duties and restrictions),

with respect to any duty or import restriction imposed by the United States on any telecommunications product;

(B) actions described in section 1003 of this subtitle;

(C) prohibition of purchases by the Federal Government of telecommunications products of such country;

(D) increases in domestic preferences under title M of the Act of March 3, 1933 (41 U.S.C. § 10a, et seq.) (relating to preferential treatment of American material in contracts for public improvements) for purchases by the Federal Government of telecommunications products of such country;

(E) suspension of any waiver of domestic preferences under title III of the Act of March 3, 1933 (41 U.S.C. § 10a et seq.) which may have been extended to such country pursuant to the Trade Agreements Act of 1979 [19 U.S.C.A. § 2501 et seq.] with respect to telecommunications products or any other products;

(F) issuance of orders to appropriate officers and employees of the Federal Government to deny Federal funds or Federal credits for purchases of the telecommunications products of such country; and

(G) suspension, in whole or in part, of benefits accorded articles of such country under chapter 1 of subtitle VI of this title (regarding the President's authority to provide duty-free treatment under the Generalized System of Preferences).

(2) Notwithstanding section 125 of the Trade Act of 1974 [19 U.S.C.A. § 2135] (regarding termination of and withdrawal from trade agreements) and any other provision of law, if any portion of a trade agreement described in paragraph (1)(A) is terminated, withdrawn, or suspended under paragraph (1) with respect to any duty imposed by the United States on the products of a foreign country, the rate of such duty that shall apply to such products entered, or withdrawn from warehouse for consumption, after the date on which such termination, withdrawal, or suspension takes effect shall be a rate determined by the President.

(c) Negotiating period.

(1) For purposes of this section, the term "negotiating period" means--

(A) with respect to a priority foreign country identified in the investigation conducted under section 1017 of this subtitle, the 18-month period beginning on August 23, 1988, and

(B) with respect to any foreign country

identified as a priority foreign country after the conclusion of such investigation, the 1-year period beginning on the date on which such identification is made.

(2)(A) The negotiating period with respect to a priority foreign country may be extended for not more than two 1-year periods.

(B) By no later than the date that is 15 days after the date on which the President extends the negotiating period with respect to any priority foreign country, the President shall submit to appropriate committees of the Congress a report on the status of negotiations with such country that includes-

(i) a finding by the President that substantial progress is being made in negotiations with such country, and

(ii) a statement detailing the reasons why an extension of such negotiating period is necessary.

(d) Modification and termination authority.

The President may modify or terminate any action taken under subsection (a) of this section if, after taking into consideration the factors described in section 1017(b) of this subtitle, the President determines that changed circumstances warrant such modification or termination.

(e) Report.

The President shall promptly inform the appropriate committees of the Congress of any action taken under subsection (a) of this section or of the modification or termination of any such action under subsection (d) of this section.

SEC. 1020 Review of telecommunications trade
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19 USC 3106

(a) In general.

(1) In conducting the annual analysis under section 1002(a) of this subtitle, the Trade Representative shall review the operation and effectiveness of--

(A) each trade agreement negotiated by reason of this part that is in force with respect to the United States; and

(B) every other trade agreement regarding telecommunications products or services that is in force with respect to the United States.

(2) In each review conducted under paragraph (1), the Trade Representative shall determine whether any act, policy, or practice of the foreign country that has entered into the agreement described in paragraph (1)--

(A) is not in compliance with the terms of such agreement, or

(B) otherwise denies, within the context of the terms of such agreement, to telecommunications products and services of United States firms mutually advantageous market opportunities in that foreign country.

(b) Review factors.

(1) In conducting reviews under subsection (a) of this section, the Trade Representative shall consider any evidence of actual patterns of trade (including United States exports to a foreign country of telecommunications products and services, including sales and services related to those products) that do not reflect patterns of trade which would reasonably be anticipated to flow from the concessions or commitments of such country based on the international competitive position and export potential of such products and services.

(2) The Trade Representative shall consult with the United States International Trade Commission with regard to the actual patterns of trade described in paragraph (1).

(c) Action in response to affirmative determination.

(1) Any affirmative determination made by the Trade Representative under subsection (a)(2) of this section with respect to any act, policy, or practice of a foreign country shall, for purposes of sections 1003-1008, 1010-1013, 1014(0, and 1015 of this subtitle, be treated as an affirmative determination section 1007(a)(1)(A) of this subtitle that such act,

policy, or practice violates a trade agreement.

(2) In taking actions under section 1003 of this subtitle by reason of paragraph (1), the Trade Representative shall first take those actions which most directly affect trade in telecommunications products and services with the priority foreign country referred to in paragraph (1), unless the Trade Representative determines that actions against other economic sectors would be more effective in achieving compliance by the foreign country with the trade agreement that is the subject of the determinative determination made under subsection (a)(2) of this section.

SEC. 1021 Compensation authority

19 USC 3107

If—

(1) the President has taken action under section 1019(a) of this subtitle with respect to any foreign country, and

(2) such action is found to be inconsistent with the international obligations of the United States, including the General Agreement on Tariffs and Trade,

the President may enter into trade agreements with such foreign country for the purpose of granting new concessions as compensation for such action in order to maintain the general level of reciprocal and mutually advantageous concessions.

SEC. 1022 Consultations

19 USC 3108

(a) Advice from departments and agencies.

Prior to taking any action under sections 1017-1025 of this subtitle the President shall seek information and advice from the interagency trade organization established under section 1872(a) of title 19 of the United States Code (to assist the President and carry out special trade policy functions).

(b) Advice from the private sector.

Before-

(1) the Trade Representative concludes the investigation conducted under section 1017(a) of this subtitle or takes action under section 1017(c) of this subtitle,

(2) the President establishes specific negotiating objectives under section 1018(b) of this subtitle with respect to any foreign country, or

(3) the President takes action under section 1019 of this subtitle,

the Trade Representative shall provide an opportunity for the presentation of views by any interested party with respect to such investigation, objectives, or action, including appropriate committees established pursuant to section 2155 of title 19 of the United States Code (to provide advice concerning U.S. trade negotiating objectives, operation of the trade agreements program, and general policy objectives).

(c) Consultations with Congress and official advisors.

For purposes of conducting negotiations under section 1018(a) of this subtitle, the Trade Representative shall keep appropriate committees of the Congress, as well as appropriate committees established pursuant to section 2155 of title 19 of the United States Code, currently informed with respect to—

(1) the negotiating priorities and objectives for each priority foreign country;

(2) the assessment of negotiating prospects, both bilateral and multilateral; and

(3) any United States concessions which might be included in negotiations to achieve the objectives described in subsections (c) and (d) of section 1018 of this subtitle.

(d) Modification of specific negotiating objectives.

Before the President takes any action under section 1018(b)(2)(A) of this subtitle to refine or modify specific negotiating objectives, the President shall consult with the Congress and with members of the industry, and representatives of labor, affected by the proposed refinement or modification.

SEC. 1023 Submission of data: action to ensure
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19 USC 3109

(a) Submission of data.

The Federal Communications Commission (hereafter in this section referred to as the "Commission") shall periodically submit to appropriate committees of the House of Representatives and of the Senate any data collected and otherwise made public under Report No. DC-1105, "Information Reporting Requirements Established for Common Carriers", adopted February 25, 1988, relating to FCC Docket No. 86-494, adopted December 23, 1987.

(b) Action to ensure compliance.

(1)(A) Any product of a foreign country that is subject to registration or approval by the Commission may be entered only if--

(i) such product conforms with all applicable rules and regulations of the Commission, and

(ii) the information which is required on Federal Communications Commission Form 740 on August 23, 1988, is provided to the appropriate customs officer at the time of such entry in such form and manner as the Secretary of the Treasury may prescribe.

(B) For purposes of this paragraph, the term "entered" means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(2) The Commission, the Secretary of Commerce, and the Trade Representative shall provide such assistance in the enforcement of paragraph (1) as the Secretary of the Treasury may request.

(3) The Secretary of the Treasury shall compile the information collected under paragraph (1)(A)(ii) into a summary and shall annually submit such summary to the Congress until the authority to negotiate trade agreements under part 1 of subtitle A of the Omnibus Trade and Competitiveness Act of 1988 expires. Such information shall also be made available to the public.

SEC. 1024 Study on telecommunications competitiveness in the United States.

19 USC 3110

(a) In general.

The Secretary of Commerce, in consultation with the Federal Communications Commission and the United States Trade Representative, shall conduct a study of the competitiveness of the United States telecommunications industry and the effects of foreign telecommunications policies and practices on such industry in order to assist the Congress and the President in determining what actions might be necessary to preserve the competitiveness of the United States telecommunications industry.

(b) Public comment.

The Secretary of Commerce may, as appropriate, provide notice and reasonable opportunity for public comment as part of the study conducted under subsection (a) of this section.

(c) Report.

The Secretary of Commerce shall, by no later than the date that is 1 year after August 23, 1988, submit to the Congress and the President a report on the findings and recommendations reached by the Secretary of Commerce as a result of the study conducted under subsection (a) of this section. Such report shall be referred to the appropriate committees of the House of Representatives and of the Senate.

SEC. 1025 International obligations

19 USC 3111

Nothing in sections 1017-1024 of this subtitle may be construed to require actions inconsistent with the international obligations of the United States, including the General Agreement on Tariffs and Trade.

SEC. 1026 Monitoring and enforcement

19 USC 2515(d)

(a) Annual report on foreign discrimination.**(1) Annual report required.**

The President shall, no later than April 30,

1990, and annually on April 30 thereafter, submit to the appropriate committees of the House of Representatives and the Committee on Governmental Affairs of the Senate, as well as other appropriate Senate committees, a report on the extent to which foreign countries discriminate against United States products or services in making government procurements.

(2) Identifications required.

In the annual report, the President shall identify (and continue to identify subject to subsections (c)(5) and (d)(3) of this section) any countries, other than least developed countries, that—

(A) are signatories to the Agreement [on Government Procurement] and not in compliance with the requirements of the Agreement;

(13)(i) are signatories to the Agreement; (ii) are in compliance with the Agreement but, in the government procurement of products or services not covered by the Agreement, maintain a significant and persistent pattern or practice of discrimination against United States products or services which results in identifiable harm to United States businesses; and (iii) whose products or services are acquired in significant amounts by the United States Government; or

(C)(i) are not signatories to the Agreement; (ii) maintain, in government procurement, a significant and persistent pattern or practice of discrimination against United States products or services which results in identifiable harm to United States businesses; and (iii) whose products or services are acquired in significant amounts by the United States Government.

(3) Considerations in making identifications.

In making the identifications required by paragraph (2), the President shall--

(A) use the requirements of the Agreement [on Government procurement], government procurement practices, and the effects of such practices on United States businesses as a basis for evaluating whether the procurement practices of foreign governments do not provide fair market opportunities for United States products or services;

(B) take into account, among other factors, whether and to what extent countries that are signatories to the Agreement, and other countries described in paragraph (2) of this subsection-

(i) use sole-sourcing or otherwise noncompetitive procedures for procurements that could have been conducted using competitive procedures;

(ii) conduct what normally would have been one procurement as two or more procurements, to decrease the anticipated contract values below the Agreement's value threshold or to make the procurements less attractive to United States businesses;

(iii) announce procurement opportunities with inadequate time intervals for United States businesses to submit bids; and

(iv) use specifications in such a way as to limit the ability of United States suppliers to participate in procurements; and

(C) use any other additional criteria deemed appropriate.

(4) Contents of reports.

The reports required by this subsection shall include, with respect to each country identified under subparagraph (A), (B), or (C) of paragraph (2), the following:

(A) a description of the specific nature of the discrimination, including (for signatory countries) any provision of the Agreement [on Government procurement] with which the country is not in compliance;

(B) an identification of the United States products or services that are affected by the noncompliance or discrimination;

(C) an analysis of the impact of the noncompliance or discrimination on the commerce of the United States and the ability of United States companies to compete in foreign government procurement markets; and

(D) a description of the status, action taken, and disposition of cases of noncompliance or discrimination identified in the preceding annual report with respect to such country.

(5) Information and advice from government agencies and United States businesses.

In developing the annual reports required by this subsection, the President shall seek information and advice from executive agencies through the interagency trade organization established under section 1872(a) of title 19 of the United States Code (to assist the President and carry out special trade policy functions), and from United States businesses in the United States and in countries that are signatories to the Agreement [on Government procurement] and in other foreign countries whose products or services are acquired in significant amounts by the United States Government.

(6) Impact of noncompliance.

The President shall take into account, in identifying countries in the annual report and in any action required by this section, the relative impact of any noncompliance with the Agreement [on Government procurement] or of other discrimination on United States commerce and the extent to which such noncompliance or discrimination has impeded the ability of United States suppliers to participate in procurements on terms comparable to those available to suppliers of the country in question when seeking to sell goods or services to the United States Government.

(7) Impact on procurement costs.

Such report shall also include an analysis of the impact on United States Government procurement costs that may occur as a consequence of any sanctions that may be required by subsection (c) or (d) of this section.

(b) Consultation.

19 USC 2515(e)

No later than the date the annual report is submitted under subsection (b)(1) of this section, the United States Trade Representative, on behalf of the United States, shall request consultations with any countries identified in the report to obtain their compliance with the Agreement [on Government procurement] or the elimination of their discriminatory procurement practices unless the

country is identified as discriminatory pursuant to subsection (a)(1) of this section in the preceding annual report.

(c) Procedures with respect to violations of the Agreement.

19 USC 2515(f)

(1) Initiation of dispute settlement procedures.

If, within 60 days after the annual report is submitted under subsection (a)(1) of this section, a signatory country identified pursuant to subsection (a)(1)(A) [FN1PP] [1] has not complied with the Agreement [on Government procurement], then the United States Trade Representative shall promptly request proceedings on the matter under the formal dispute settlement procedures provided under the Agreement unless such proceedings are already underway pursuant to the identification of the signatory country under subsection (a)(1) of this section as not in compliance in a preceding annual report.

(2) Settlement of disputes.

If, before the end of a year following the initiation of dispute settlement procedures--

(A) the other participant to the dispute settlement procedures has complied with the Agreement,

(B) the other participant to the procedures takes the action recommended as a result of the procedures to the satisfaction of the President, or

(C) the procedures result in a determination requiring no action by the other participant,

the President shall take no action to limit Government procurement from that participant.

(3) Sanctions after failure of dispute resolution.

If the dispute settlement procedures initiated pursuant to this subsection with any signatory country to the Agreement are not concluded within one year from their initiation or the country has not met the requirements of paragraph (2)(A) or (2)(B), then—

(A) from the end of such one year period, such

signatory country shall be considered as a signatory not in good standing of the Agreement and the prohibition on procurement contained in section 10b-1 of title 41 of the United States Code, shall apply to such country; and

(B) on the day after the end of such one year period, the President shall revoke the waiver of discriminatory purchasing requirements granted to that signatory country pursuant to section 2511(a) of title 19 of the United States Code.

(4) Withholding and modification of sanctions.

If the President determines that imposing or continuing the sanctions required by subparagraph (A) or (B) of paragraph (3) would harm the public interest of the United States, the President may, to the extent necessary to apply appropriate limitations that are equivalent, in their effect, to the noncompliance with the Agreement by that signatory country—

(A) withhold the imposition of either (but not both) of such sanctions;

(B) modify or restrict the application of either or both such sanctions, subject to such terms and conditions as the President considers appropriate; or

(C) take any combination of the actions permitted by subparagraph (A) or (B) of this Paragraph.

(5) Termination of sanctions and reinstatement of waivers.

The President may terminate the sanctions imposed under paragraph (3) or (4), reinstate the waiver of discriminatory purchasing requirements granted to that signatory country pursuant to section 2511(a) of title 19 of the United States Code, and remove that country from the report under subsection (a)(1) of this section at such time as the President determines that--

(A) the signatory country has complied with the Agreement;

(B) the signatory country has taken corrective action as a result of the dispute settlement procedures to the satisfaction of the President; or

(C) the dispute settlement procedures result in a determination requiring no action by the other signatory country.

(d) Procedures with respect to other discrimination. 19 USC 2515(g)

(1) Imposition of sanctions.

If, within 60 days after the annual report is submitted under subsection (a)(1) of this section, a country that is identified pursuant to subparagraph (B) or (C) of such subsection has not eliminated their discriminatory procurement practices, then, on the day after the end of such 60-day period--

(A) the President shall identify such country as a country that maintains, in government procurement, a significant and persistent pattern or practice of discrimination against United States products or services which results in identifiable harm to United States businesses; and

(B) the prohibition on procurement contained in section 10b-1 of title 41 of the United States Code, shall apply to such country.

(2) Withholding and modification of sanctions.

If the President determines that imposing or continuing the sanction required by paragraph (1) would harm the public interest of the United States, the President may, to the extent necessary to impose appropriate limitations that are equivalent, in their effect, to the discrimination against United States products or services in government procurement by that country, modify or restrict the application of such sanction, subject to such terms and conditions as the President considers appropriate.

(3) Termination of sanctions.

The President may terminate the sanctions imposed under paragraph (1) or (2) and remove a country from the report under subsection (a)(1) of this section at such time as the President determines that the country has eliminated the discrimination identified pursuant to subsection (a)(2)(B) or (C) of this section.

(e) Limitations on imposing sanctions.**19 USC 2515(h)****(1) Avoiding adverse impact on competition.**

The President shall not take any action under subsection (c) or (d) of this section if the President determines that such action—

(A) would limit the procurement or class of procurements to, or would establish a preference for, the products or services of a single manufacturer or supplier; or

(B) would, with respect to any procurement or class of procurements, result in an insufficient number of potential or actual bidders to assure procurement of *services*, articles, materials, or supplies of requisite quality at competitive prices.

(2) Advice from U.S. agencies and businesses.

The President, in taking any action under this subsection to limit government procurements from foreign countries, shall seek the advice of executive agencies through the interagency trade organization established under section 1872(a) of title 19 of the United States Code (to assist the President and carry out special trade policy functions) and the advice of United States businesses and other interested parties.

(f) Renegotiation to secure full and open competition.**19 USC 2515(i)**

The President shall instruct the United States Trade Representative, in conducting renegotiations of the Agreement, to seek improvements in the Agreement [on Government procurement] that will secure full and open competition consistent with the requirements imposed by the amendments made by the Competition in Contracting Act (Public Law 98-369;98 Stat. 1175).

(g) Federal Register notices of actions.**19 USC 2515(j)****(1) Notices required.**

A notice shall be published in the Federal Register on the date of any action under this section, describing--

(A) the results of dispute settlement proceedings under subsection (c)(2) of this section;

(B) any sanction imposed under subsection (c)(3) or (d)(1) of this section;

(C) any withholding, modification, or restriction of any sanction under subsection (c)(4) or (d)(2) of this section; and

(D) the termination of any sanction under subsection (c)(5) or (d)(3) of this section.

(2) Publication of determinations lifting sanctions.

A notice describing the termination of any sanction under subsection (c)(5) or (d)(3) of this section shall include a copy of the President's determination under such subsection.

(h) General report on actions under this section. · 19 USC 2515(k)

(1) Advice to the Congress.

The President shall, as necessary, advise the Congress and, by no later than April 30, 1994, submit to the appropriate committees of the House of Representatives, and to the Committee on Governmental Affairs and other appropriate committees of the Senate, a general report on actions taken pursuant to this section.

(2) Contents of report.

The general report required by this subsection shall include an evaluation of the adequacy and effectiveness of actions taken pursuant to subsections (b), (c), and (d) of this section as a means toward eliminating discriminatory government procurement practices against United States businesses.

(3) Legislative recommendations.

The general report may also include, if appropriate, legislative recommendations for enhancing the usefulness of this section or for other measures to be used as means for eliminating or responding to discriminatory foreign government procurement practices.

SEC. 1027 Investigation by the Trade Representative concerning contractors and Suppliers from foreign countries which deny fair and equitable market opportunities for United States products and services for construction micas

41 USCA § 10b--Historical and Statutory Notes, Pub.L. 101-514, Title V, § 511, Nov. 5, 1990, 104 Stat. 2098; and Pub.L. 101-516, Title § 340, Nov. 5, 1990, 104 Stat. 2187

(a)(1) None of the funds appropriated by the Airport and Airways Improvement Act (41 U.S.C. § 10b) may be obligated or expended to enter into any contract for the construction, alteration, or repair of any public building or public work in the United States or any territory or possession of the United States with any contractor or subcontractor of a foreign country, or any supplier of products of a foreign country, during any period in which such foreign country is listed by the United States Trade Representative under subsection (c) of this section.

(2) The President or the head of a Federal agency administering the funds for the construction, alteration, or repair may waive the restrictions of paragraph (1) of this subsection with respect to an individual contract if the President or the head of such agency determines that such action is necessary for the public interest. The authority of the President or the head of a Federal agency under this paragraph may not be delegated. The President or the head of a Federal agency waiving such restrictions shall, within 10 days, publish a notice thereof in the Federal Register describing in detail the contract involved and the reason for granting the waiver.

(b)(1) Not later than May 1, 1991, the United States Trade Representative shall make a determination with respect to each foreign country of whether such foreign country--

(A) denies fair and equitable market opportunities for products and services of the United States in procurement, or

(B) denies fair and equitable market opportunities for products and services of the United States in bidding,

for construction projects that cost more than \$500,000 and are funded (in whole or in part) by the government of such foreign country or by an entity controlled directly or indirectly by such foreign

country.

(2) In making determinations under paragraph (1), the United States Trade Representative shall take into account information obtained in preparing the report submitted under section 1002(b) of this subtitle and such other information or evidence concerning discrimination in construction projects against United States products and services that are available.

(c)(1) The United States Trade Representative shall maintain a list of each foreign country which—

(A) denies fair and equitable market opportunities for products and services of the United States in procurement, or

(B) denies fair and equitable market opportunities for products and services of the United States in bidding,

for construction projects that cost more than \$500,000 and are funded (in whole or in part) by the government of such foreign country or by an entity controlled directly or indirectly by such foreign country.

(2) Any foreign country that is initially listed or that is added to the list maintained under paragraph (1) shall remain on the list until—

(A) such country removes the barriers in construction projects to United States products and services;

(B) such country submits to the United States Trade Representative evidence demonstrating that such barriers have been removed; and

(C) the United States Trade Representative conducts an investigation to verify independently that such barriers have been removed and submits, at least 30 days before granting any such waiver, a report to each House of the Congress identifying the barriers and describing the actions taken to remove them.

(3) The United States Trade Representative shall publish in the Federal Register the entire list required under paragraph (1) and shall publish in the Federal Register any modifications to such list that are made

after publication of the original list.

(d) For purposes of this section, the term "foreign country" includes any foreign instrumentality. Each territory or possession of a foreign country that is administered separately for customs purposes shall be treated as a separate foreign country.

(2) Any contractor or subcontractor that is a citizen or national of a foreign country, or is controlled directly or indirectly by citizens or nationals of a foreign country, shall be considered to be a contractor or subcontractor of such foreign country.

(3) Subject to paragraph (4), any product that is produced or manufactured (in whole or in substantial part) in a foreign country shall be considered to be a product of such foreign country.

(4) The restrictions of subsection (a)(1) shall not prohibit the use, in the construction, alteration, or repair of a public building or public work, of vehicles or construction equipment of a foreign country.

(5) The terms "contractor" and "subcontractor" include any person performing any architectural, engineering, or other services directly related to the preparation for or performance of the construction, alteration, or repair.

(e) Subsection (a)(1) of this section shall not apply to contracts entered into prior to the date of enactment of the Airport and Airways Improvement Act [Nov. 5, 1990].

(f) The provisions of this section are in addition to, and do not limit or supersede, any other restrictions contained in any other Federal law.

1. The citation "[FN1PP]" appears in the original statute. Westlaw speculates that it probably should have been "(d)(2)(A)" for purposes of the original statute.

SECTION-BY-SECTION ANALYSIS

SUBTITLE I—GLOBAL SAFEGUARD ACTIONS

Subtitle I consists of four chapters. The first three chapters incorporate provisions in the U.S. safeguard law, 19 U.S.C. §§ 2251-2254 (sections 201-204 of the Trade Act of 1974). The first chapter provides for investigations and determinations by the Commission, the second, action by the President, and the third, monitoring, modification, and termination of such actions. The fourth chapter incorporates provisions in the Trade and Tariff Act of 1984, the Caribbean Basin Economic Recovery Act (CBERA), and the Andean Trade Preference Act that provide for emergency investigations with respect to perishable agricultural products by the Secretary of Agriculture during the course of a Commission investigation under 19 U.S.C. § 2251 et seq. (new chapter 1).

sec. 101. Applicability. This section is new, and states that the subtitle applies with respect to actions to facilitate positive adjustment to import competition.

Chapter 1: Investigations and determinations by Commission

Sec. 102. Investigations and determinations. Section 102 combines in one place the basis upon which the Commission conducts an investigation, the four types of determinations that the Commission may be required to make during the injury phase of an investigation, and the two statutory limitations on investigations. Under current law, these provisions are in three nonconsecutive subsections of section 2252 and in the U.S.-Canada Free-Trade Agreement (CFTA) Implementation Act (19 U.S.C. § 2112 note).

Subsection (a) incorporates the language in current section 2252(b)(2)(A) concerning the basis for a Commission investigation and the determination that the Commission must make in all investigations. Subsection (b) incorporates language in current section 2252(d)(1)(C) that describes the circumstances under which a petitioner may also request an expedited investigation and determination with respect to a perishable agricultural product that is the subject of an investigation under subsection (a). Subsection (c) incorporates language in section 2252(b)(3) that describes when the Commission is to make a determination with respect to critical circumstances, and the nature of that determination. Subsection (d) incorporates the language in section 302(b) of the CFTA Implementation Act (19 U.S.C. § 2112 note) concerning the determination that the Commission must make with respect to imports from Canada if the Commission makes an affirmative injury determination under subsection (a). Subsection (e) incorporates the limitations on new Commission investigations involving the same subject matter as a previous investigation; these limitations are currently found in section 2252(h).

Headings have been added to identify the material in each of the subsections. Wording in section 2252(b)(3) and (d)(1)(C) relating to the time for making critical circumstances and perishable agricultural product determinations, respectively, has been placed in new section 106, which sets forth the various deadlines for Commission determinations and reports.

Sec. 103. Definitions, factors, and considerations. This section brings together in one place the various definitions, economic factors, considerations, and other information that the Commission is to *seek* and consider in making its determinations under section 102.

Subsection (a) sets out the definitions of key terms that are currently found in sections 2251(b) and 2252(b)-(d) and the CFTA Implementation Act, including "substantial cause," "contributing importantly," "perishable agricultural product," and "provisional relief." Because of the way in which the provisions have been rearranged, it was necessary to make certain nonsubstantive changes to several of these definitions. For example, references to "for purposes of this section" or "for purposes of this subsection" were changed to "for purposes of this subtitle", since, with one exception, the definitions are broadly applicable. (The one exception is the definition of perishable agricultural product, which would be applicable only to chapters 1-3. Chapter 4 contains its own definition of perishable agricultural product.)

Subsection (b) lists the economic factors applied by the Commission with respect to serious injury, threat of serious injury, and causation; these factors are set out in current section 2252(c)(1)-(3). These factors have been separated out from other considerations and requirements in current section 2252(c) and given their own heading for ease of use. Subsection (c) sets out the considerations with respect to domestic industry found in current section 2252(c)(4), and subsection (d) sets out the requirement in current section 2252(c)(5) that the Commission investigate factors contributing to increased imports; each is given a new heading. Subsection (d) requires that the Commission seek information on industry efforts to adjust; this requirement is found in current section 2252(a)(6)(A).

Scr. 1114. ittitianuaLadiusunalam. This section brings together the various provisions relating to industry petitions and adjustment plans filed by petitioners, including the procedures relating thereto. It includes not only the provisions in current section 2252(a) relating to petitions and adjustment plans, but the provision in section 2252(d)(1) relating to the filing of petitions with the United States Trade Representative (USTR) for the monitoring of imports of perishable agricultural products.

Subsection (a) lists the types of entities that may file a petition and the requirements concerning the contents of petitions in current section 2252(a)(1)-(2). Subsection (b) provides for the filing of petitions with the USTR for the monitoring of imports of perishable agricultural products, and sets out the standard to be applied by the USTR in determining whether to monitor, and the duration of monitoring; these provisions are found in current section 2252(d)(1). Subsection (c) sets out the provisions in section 2252(a)(4)-(5) of current law relating to the filing of adjustment plans by petitioners with the Commission and the USTR.

Sec. 105. Industry commitment & This section incorporates provisions in current section 2252(a)(6)(13) regarding industry commitments to adjust that are not part of the petitioner's adjustment plan. It also incorporates the provision in section 2252(a)(7) that states that nothing in provisions providing for the filing of such plans and commitments is to be construed as providing immunity from the antitrust laws.

SSLISKL.. TABIrrifiLMakillg&10101illidiftgliDdICIEnt This section ^{groups} together the various statutory deadlines for Commission determinations with respect to serious injury or threat, perishable agricultural products, and critical circumstances, and the deadline for submission of the Commission's report on an investigation to the President. These deadlines are currently found in section 2252(b)(2)-(3), (d)(1), and (f)(1) of current law.

Subsection (a) sets out the various deadlines for making determinations, and subsection (b) sets out the deadline for submitting the Commission report. Introductory language of a

nonsubstantive nature was added to the paragraphs relating to perishable agricultural product and critical circumstances determinations.

Sec. 107. Public hearings. This section sets out the two statutory requirements for public hearings, one during the injury phase of the investigation (subsection (a)), and a second during the remedy phase, should the Commission make an affirmative injury determination (subsection (b)). The hearing requirements are found in section 2251(b)(4) and (e)(5)(A) of current law.

Sec. 108. Recommendations. This section brings together the various provisions relating to remedy that apply if the Commission makes an affirmative injury determination. This section incorporates not only the general provisions relating to remedy found in current section 2252(e), but also the provisions in current section 2252(d) that apply in the case of an affirmative preliminary determination with respect to a perishable agricultural product or an affirmative determination of critical circumstances. It also incorporates provisions found in CBERA, the Andean Trade Preference Act, the Trade and Tariff Act of 1984, requiring the Commission to state whether and to what extent its findings apply to CBERA and Andean Pact countries and Israel, and the provision in the CFTA Implementation Act that requires the Commission to exclude Canada from its recommendation if it has made a negative determination (under section 102(d), above) with respect to imports from Canada. Finally, it incorporates the various limitations in current section 2253(e) with respect to the relief action that may be recommended, and the limitation on Commissioners who may participate in the vote on remedy found in current section 2252(e)(6).

Subsection (a) sets out the general provisions relating to remedy, including the Commission's obligation to make a recommendation if it has made an affirmative injury determination, the forms of relief that the Commission may recommend, factors that the Commission must take into account, findings concerning the applicability of the recommendation to Caribbean Basin and Andean Pact countries and Israel, and the Commission's obligation to exclude Canada from its recommendation if it has made a negative determination with respect to Canada under section 102(d). Subsections (b) and (c) set out the nature of the Commission's obligation concerning remedy in the case of an affirmative preliminary determination with respect to a perishable agricultural product or an affirmative determination of critical circumstances. Subsection (d) sets out the limitations that apply to the Commission in making its recommendation.

Sec. 109. Report by Commission. This section brings together the various provisions that relate to the report that the Commission must submit to the President on each investigation undertaken under section 102. This section is drawn principally from current section 2252(f), but also incorporates requirements found in 19 U.S.C. § 1330(d)(3) (section 330(d)(3) of the Tariff Act of 1930, regarding divided Commission votes), and references to required findings concerning Canada, Israel, and beneficiary CBERA and Andean countries provided for in the CFTA Implementation Act, the Trade and Tariff Act of 1984, CBERA, and the Andean Trade Preference Act, respectively.

Subsection (a) states that the Commission must submit such a report on each investigation.

Subsection (b) lists the contents of the report, including the contents listed in current section 2252(f)(2), the findings concerning Canada, Israel, and beneficiary CBERA and Andean countries required by the CFTA Implementation Act, the Trade and Tariff Act of

1984, CBERA, and the Andean Trade Preference Act, respectively, and the findings and determinations required by section 1330(d)(3). The order of the contents list has been reorganized to insert the material relating to findings concerning Canada, etc. and findings and recommendations required by section 1330(d) ahead of other materials that the Commission must submit. Also, the wording in section 109(b)(6) concerning applicability of findings and recommendations to Israel, etc., is new, since no comparable composite wording existed in the statutes from which the paragraph is drawn.

Subsection (c) incorporates the provisions in current section 2252(0)(3) concerning the availability and publication of the report.

Sec. 110. Notification to and assistance from other agencies. This section brings together several provisions relating to interaction between the Commission and other agencies. Subsection (a) incorporates the provision in current section 2252(a)(3) that requires the Commission to transmit a copy of a petition to the USTR and other concerned agencies. Subsection (b) incorporates provisions in current section 2252(g) relating to Commission notification to the Secretaries of Labor and Commerce of an affirmative determination in order that they might give expedited consideration to petitions for adjustment assistance filed at their agencies. Subsection (c) incorporates the provision in current section 2252(d)(1)(D) that requires the Secretary of Agriculture to provide relevant information to the Commission in the event the Commission institutes an investigation with respect to a perishable agricultural product.

Sec. 111. Special rules with respect to divided Commission findings. This section incorporates the provisions in current section 1330(d)(1), (2), and (4) concerning the effect of equally divided Commission votes on injury, divided Commission votes on remedy, and Congressional resolutions in the case of certain divided votes on remedy, respectively.

Subsection (a) incorporates the provision in current section 1330(d)(1) concerning the effect of an equally divided Commission vote on injury. Subsection (b) incorporates the provision in current section 1330(d)(2) concerning the effect of an equally divided Commission vote on remedy. Subsection (c) incorporates the provision in current section 1330(d)(4) concerning Congressional resolutions in the case of certain divided votes on remedy.

Secs. 112-120. These sections are reserved.

Chapter 2: Action by President

Sec. 121. Action by President after determination of import injury. This section brings together in one section the various provisions relating to the President's obligation to take an action after receiving a report from the Commission containing an affirmative determination, including an affirmative determination with respect to a perishable agricultural product or critical circumstances, and to determine whether to take action with respect to imports from Canada. Section 2253(a) (section 203(a) of the Trade Act of 1974), the counterpart provision in current law, makes no reference to the President's obligations in the case of an affirmative Commission determination with respect to a perishable agricultural product or critical circumstances; instead, such obligations are found in section 2252 of current law, a section that generally relates to Commission investigations and determinations. The President's obligation to make a determination with respect to imports from Canada is found in section 302(b)(2) of the CFA Implementation Act (19

U.S.C. § 2112 note).

Subsection (a) sets out the general obligation to take action that is found in current section 2253(a)(1). Virtually identical language found in current section 2251(a) would be eliminated as unnecessarily duplicative.

Subsections (b) and (c) set out the President's obligations in the event of an affirmative Commission determination with respect to a perishable agricultural product or in the case of critical circumstances. The wording in these subsections is based on that in current section 2252(d)(1)(G) and (d)(2)(B), with appropriate nonsubstantive editorial changes. Wording within current section 2252(d)(1) and (2) relating to deadlines for taking action is in new section 125.

Subsection (d) sets out the President's obligations with respect to Canadian imports. The subsection repeats, for purposes of clarity, the standard for determining whether imports from Canada are "substantial" and the definition of "contributing importantly" also found in sections 102(d) and 103(a), respectively.

Sec. 122. Actions the President may take. This section sets out the forms of relief that the President may provide if he determines to proclaim relief. Subsection (a) incorporates the general listing of actions in current section 2253(a)(3). Subsection (b) sets out the provisional relief actions in current section 2252(d)(3) and (4) that the President may take with respect to a perishable agricultural product or in the case of critical circumstances.

Sec. 123. Limitations on actions. This section tracks current section 2253(e), but with headings added to make the various limitations more readily identifiable. In addition, subsection (f) of new section 123 incorporates special rules in current section 2253(e)(6) and CBERA, the Andean Trade Preference Act, and the Trade and Tariff Act of 1984 (with respect to Israel) that apply in the case of certain limited suspensions of duty.

Sec. 124. Factors to be considered. This section sets out the factors to be considered by the President in determining what action to take. Subsection (a) sets out the general factors listed in current section 2253(a)(2). Subsection (b) sets out other considerations currently listed in section 2254(d) (with respect to reciprocal nondiscriminatory treatment of imports, and an industry in a geographic area).

Sec. 125. Time for taking effect of certain relief. This section brings together the various time deadlines for Presidential action. Subsection (a) sets out the general deadlines in current section 2253(a)(4) as well as the deadlines in current section 2252(d)(1) and (2) in the case of a Commission recommendation of provisional relief. The provisions in subsection (a)(2) relating to provisional relief have been edited in a nonsubstantive manner to parallel the general provision in subsection (a)(1). Subsection (d) sets forth the time deadline in current section 2253(d) by which the relief action must take effect.

Sec. 126. Requests for additional information from Commission. This section sets out the President's authority in current section 2253(a)(5) to request additional information from the Commission in the event he receives a report from the Commission containing an affirmative determination.

Sec. 127. Reports to Congress. Subsection (a) of this section sets out the requirements in current section 2253(b) concerning Commission reports to the Congress. Subsection (b) sets out the procedure in current section 2253(c) under which Congress may direct the President to implement the relief action recommended by the Commission.

Sec. 128. Orderly marketing and other agreements. This section sets out the President's authority in current section 2253(f) to negotiate orderly marketing agreements with foreign countries after taking action in another form, or, if an orderly marketing agreement implemented under section 121 proves ineffective, to take additional action under section 121.

Sec. 129. Regulations. This section sets forth the President's authority in current section 2253(g) to issue regulations relating to actions taken under this chapter.

Secs. 130-140. These sections are reserved.

Chapter 3: Monitoring, modification, and termination of actions

Sec. 141. Monitoring, modification, and termination of action. This section tracks the provisions of current section 2254(a)-(c). As indicated above, the provisions in subsection (d) of current section 2254 (relating to reciprocal nondiscriminatory treatment of imports, and an industry in a geographic area) have been moved to section 124(b).

Sec. 142. Special inquiries with respect to import surges from Canada. This section incorporates the surge provision in section 302(b)(3) of the CFTA Implementation Act (19 U.S.C. 2112 note). This provision permits the President, when imports from Canada have been excluded from a global safeguard action, to modify the action to include imports from Canada if the President thereafter determines that a surge in such imports is undermining the effectiveness of the action.

Secs. 143-150. These sections are reserved.

Chapter 4: Investigations by Secretary of Agriculture with respect to perishable agricultural products

Sec. 151. Emergency relief with respect perishable products. This section combines largely duplicative provisions in the CBERA, Andean Trade Preference Act, and Trade and Tariff Act of 1984 (19 U.S.C. § 2703(f), 19 U.S.C. § 3203(e), and 19 U.S.C. § 2112 note, respectively). These provisions provide for expedited investigations by the Secretary of Agriculture with respect to imports from a CBERA or Andean beneficiary country or from Israel of a perishable agricultural product that is the subject of a petition filed with the Commission under section 2252 (section 202 of the Trade Act of 1974).

Each of the current statutory provisions is divided into five subsections or paragraphs, depending upon the provision. These involve two principal areas of subject matter, investigations at the Secretary level, and actions by the President. Accordingly, the section is divided into two subsections. Subsection (a) incorporates provisions in all three statutes relating to the filing of petitions with, and the making of determinations by, the Secretary of Agriculture; and subsection (b) pertains to actions by the President after receipt of a recommendation from the Secretary.

Headings were added to identify the subject matter of the subsections. In addition, certain nonsubstantive editorial changes were made in subsection (a)(1) to refer to the filing of petitions with the ITC "for an investigation", and to refer to countries whose imports could be the subject of a petition filed with the Secretary. Also, the description of perishable agricultural products potentially subject to such an investigation was moved up and included in subsection (a). The list of products in each of the three statutory provisions has been regrouped into three lists—the first lists products common to all three country areas, the second lists products common only to CBERA and Andean beneficiary countries, and the third lists products pertaining only to Israel.

SUBTITLE II—BILATERAL SAFEGUARD ACTIONS

Sec. 201. Applicability. This section is new, and states that the subtitle applies with respect to bilateral actions.

Sec. 202. Bilateral actions with respect to imports from Canada. This section sets out the bilateral safeguard provision with respect to imports from Canada in section 302(a) of the ~~arrA~~ Implementation Act (19 U.S.C. § 2112 note). The section has been subdivided into two subsections--the first pertains to investigations and determinations by the Commission, and the second, actions by the President. The material within the respective subsections has been reorganized to parallel the order in subtitle I. A third subsection incorporates the provision in current section 302(c) that states that petitions may be filed with the Commission under both this provision and the global action safeguard provision (chapter 1 of subtitle I) at the same time.

Subsection (a) pertains to Commission investigations and determinations. Paragraph (1)(A) sets out the Commission basis for conducting an investigation and the determination that the Commission makes in current section 302(a)(2)(A), and paragraph (1)(B) sets out the limitation on investigations in current section 302(a)(4)(A). Paragraph (2) lists the provisions (in new subtitle I) that current section 302(a)(2)(B) makes applicable to Commission investigations. (The references in paragraph (2) have been revised to refer to the provisions in current law, as reflected in subtitle I, rather than to the provisions in the Trade Act of 1974 as it existed in June 1988, prior to the amendments by the Omnibus Trade and Competitiveness Act of 1988.) Paragraph (3) incorporates the provision in current section 302(a)(1) concerning who may file a petition, and paragraph (4) incorporates the provision in section 302(a)(2)(D) concerning Commission recommendations. Paragraph (5) incorporates the provision in current section 302(a)(2)(C) concerning the time by which the Commission must make a determination. Paragraph (6) incorporates the provisions in current section 302(e) concerning the time by which the Commission must make its report and the contents of such report; the paragraph has been edited to itemize better the contents of reports. Paragraphs (7) and (8) track current section 302(a)(2)(F) and (G).

Subsection (b) pertains to action by the President. Paragraph (1) sets out the President's obligation to provide relief and the exception thereto found in current section 302(a)(3)(A) and (B). However, the time for taking action referred to in current section 302(a)(3)(A) has been moved to new paragraph (4). Paragraph (2) incorporates the list of actions that the President may take in current section 302(a)(3)(C), and paragraph (3) sets out the limitation on such action in current section 302(a)(4)(B). Paragraph (5) sets out the reference to 19 U.S.C. § 2133 in current section 302(a)(5) and adds a parenthetical

describing section 2133.

Subsection (c) incorporates current section 302(c).

SUBTITLE III—MARKET DISRUPTION FROM COMMUNIST COUNTRIES

Sec. 301. Applicability. This section is new, and states that the subtitle applies with respect to market disruption from communist countries.

Sec. 302. Investigation and determination by Commission. This section sets out the functions of the Commission in proceedings under 19 U.S.C. § 2436 (section 406 of the Trade Act of 1974). Such functions, for the most part, are contained in current section 2436(a). The text of current section 2436(a) has been reorganized to follow the basic format of chapter 1 of subtitle I. Headings have been added to make the provision easier to use, and text in current 19 U.S.C. § 2252 referenced in section 2436(a) has been reproduced to eliminate the need to refer back to section 2252. Also included in this section are definitions of terms set out in section 2436(e).

Subsection (a) tracks current section 2436(a)(1) and sets out the basis for a Commission investigation and the determination that the Commission makes. Text in current section 2436(a)(1) relating to who may file a petition has been moved to subsection (c). Subsection (b) incorporates the definitions in current section 2436(e) and, in addition, reproduces for ease of use the text in current section 2252(c)(4) regarding "domestic industry" that is referenced in current section 2436(a)(2). Subsection (c) states who may file a petition, and also reproduces the text in current section 2252(a)(3) referenced in current section 2236(a)(2) regarding transmittal of petitions to the USTR. Subsection (d) reproduces the text in current section 2252(b)(4) referenced in section 2436(a)(2) concerning Commission hearings. Subsections (e) and (1) set out the Commission's obligations in current section 2436(a)(3) and (4) to make a remedy recommendation and submit a report to the President. The Commission has incorporated a technical suggestion by the Department of Commerce to move from subsection (e) to subsection (f) the requirement that the Commission include its remedy finding in its report to the President.

Sec. 303. Action by President. This section describes the actions that the President may take if he receives a report from the Commission containing an affirmative determination. Current section 2436(b) does not specifically describe these actions, but instead adopts by reference provisions in sections 202 and 203 of the Trade Act of 1974 as they existed immediately prior to enactment of the Omnibus Trade and Competitiveness Act of 1988. The pre-1988 act provisions, which had been codified at 19 U.S.C. §§ 2252 and 2253, are not readily accessible to the user of this provision. To make them more accessible, they have been edited and reproduced as section 303 of this subtitle.

New section 303 sets out the provisions in former sections 202 and 203 of the Trade Act with only minor changes. Several subsections, however, were combined when possible to reduce the overall number of subsections; and certain nonsubstantive editorial changes were made to facilitate the combining. The text of current section 2436(b) has been deleted. The provision in current section 2436(b) limiting the President's action to imports from the country or countries that are the subject of the Commission's affirmative determination is now section 303(a)(4), and the 60-day rule applicable in the case of orderly marketing agreements is reflected in section 303(h)(1). Numerous headings were added to make it easier to locate material within the section.

Sec. 304. Emergency action by President. This section sets out the President's authority in current section 2436(c) to take emergency action. The section is unchanged from the current subsection, except that it has been divided into two parts, one providing for the taking of an emergency action, and the second providing for termination of such action if the Commission makes a negative determination or the Commission makes an affirmative determination and the President takes action pursuant to that determination.

Sec. 305. Consultations. This section sets out, without change, the provision regarding requests for consultations in current section 2436(d).

SUBTITLE IV—NATIONAL SECURITY

Sec. 401. Applicability. This section is new, and states that the subtitle applies with respect to safeguarding the national security.

Sec. 402. Safeguarding national security. This section incorporates the general prohibition on Presidential action in current 19 U.S.C. § 1862 (section 232 of the Trade Expansion Act of 1962). Section 1862 does two things—(1) it provides a general prohibition against action by the President to reduce or eliminate a duty or other import restriction if the President finds that such reduction or elimination would threaten to impair the national security (subsection (a)), and (2) it provides for investigations and determinations by the Secretary of Commerce and determinations and actions by the President with respect to whether imports threaten to impair the national security (subsections (b)-(f)). The two have been placed in separate sections, with the general prohibition placed in this section, and the provisions relating to investigations and determinations placed in section 403.

The text of this section is unchanged from that of 19 U.S.C. § 1862(a), except for the addition of a parenthetical after the two title 19 citations that states that the cited provisions are concerned with the President's authority to enter into trade agreements.

Sec. 403. Investigations and determinations. This section incorporates the provisions in current section 1862(b)-(f) relating to investigations and determinations by the Secretary of Commerce, determinations and actions by the President, reports to the Congress, and Congressional disapproval resolutions. New headings have been added to the subsections, and the lengthy paragraph relating to factors to be considered (current section 1862(d)) has been divided into two paragraphs.

Sec. 404. Import sanctions for export controls. This section incorporates the provision in current section 1864 without change.

SUBTITLE V—PROVISIONS CONCERNING AGRICULTURAL PRODUCTS

Sec. 501. Applicability. This section is new, and states that the subtitle applies with respect to provisions concerning agricultural products.

Sec. 502. Authority to enter into agreements to restrict imports of agricultural and textile products. This section incorporates without change the provisions of 7 U.S.C. § 1854 (section 204 of the Agricultural Act of 1956).

Sec. 503. Restrictions on imports that interfere with programs administered by the Department of Agriculture. This section incorporates the provisions of 7 U.S.C. § 624 (section 22 of the Agricultural Adjustment Act of 1933). Headings were added to make the section easier to use, and subsection (b) was subdivided into paragraphs and subparagraphs for ease of use.

SUBTITLE VI—TRADE PREFERENCES FOR DEVELOPING COUNTRIES

Subtitle VI consists of three chapters relating to trade preferences provided to developing countries under the Generalized System of Preferences (GSP) and to certain CBERA and Andean countries. It incorporates text from three different acts—(1) title V (GSP) of the Trade Act of 1974, as amended (19 U.S.C. §§ 2461-2466); (2) CBERA, as amended (19 U.S.C. §§ 2701-2706); and (3) the Andean Trade Preference Act (19 U.S.C. §§ 3201-3206). The subtitle is prefaced by two sections. The first describes the subject matter that the subtitle applies to, and the second sets out definitions common to all three chapters.

Sec. 601. Applicability. This section is new, and states that the subtitle applies with respect to trade preferences provided to developing countries under the GSP and to certain CBERA and Andean countries.

Sec. 602. Definitions. This section sets forth definitions common to all three chapters. For two of the definitions, those defining "entered" and "HTS," there is no counterpart in the current GSP legislation. However, the two definitions are commonly used definitions for those terms, and use of a common definition avoids the need for duplicative definitions in the chapters relating to preferences for Caribbean Basin and Andean countries. There is no definition of "Commission" in any of the three chapters, although there are various references to the "United States International Trade Commission" and "International Trade Commission." The definition eliminates unnecessary wording in the text of the chapters. The "worker rights" definition is common to all three underlying statutes.

Chapter 1: Generalized System of Preferences

SALAIL_Aulbiffill...111123011dX inignagas. This section sets forth the President's basic authority in section 2461 to provide duty-free treatment, subject to consideration of four listed factors.

Sec. 612. Countries eligible for designation. This section is largely based on current section 2462, but the title has been changed, the provisions have been rearranged, and material in other sections of the current legislation relating to country designation has been incorporated. New headings and editing of a nonsubstantive nature were required to accomplish this.

The section has been retitled "countries eligible for designation" to distinguish it from the next section, which is titled "articles eligible for designation." The provisions have been rearranged into what the Commission believes is a more logical order to first define the relevant terms, and then to indicate the factors considered in designating a country, the countries that are ineligible for designation, the provisions related to withdrawing, suspending, or limiting country designation (which are actually in section 2464), and finally

the notification requirements. It seemed more logical to reverse the order of the subject matter in subsection (b) and (c) of current section 2462 to state first the factors relating to a determination of which countries may be designated and then to indicate the countries not eligible, rather than vice versa as under current law. In addition, the material in current section 2462(d) setting out exceptions to the ineligible country rules in section 2462(b) has been combined so that all the provisions relating to ineligible countries are in one subsection (new subsection (c)). Finally, by including in this section certain material in section 2464 relating to withdrawal, suspension, and limitation of country designation, all provisions relevant to the issue of country designation are now contained in one section.

Thus, subsection (a) defines the terms "beneficiary developing country" and "country" (found in current section 2462(a)(1) and (3)); subsection (b) sets out the factors to be considered by the President in designating a country as a beneficiary developing country (currently in section 2462(c)); subsection (c) lists the ineligible countries and lists other factors that may make a country ineligible (currently in section 2462(b) and (d)); subsection (d) sets out provisions relating to withdrawal, suspension, or limitation of country designation (currently in section 2464); and subsection (e) sets out the notification requirements (currently in section 2462(a)).

Sec. 613. Articles eligible for duty-free treatment. This section is largely based on current sections 2463 and 2464, which concern eligible articles and limitations, respectively. The current provisions, particularly those in section 2464 relating to the so-called competitive need limitation, were viewed as difficult to follow because definitions, factors to be considered, and exceptions to the general rules were not always in a logical order. Section 613 follows the basic order of section 612 by first setting out the general rules concerning which articles the President may designate, and then identifying the articles that may not be designated, followed by the provisions relating to withdrawal, suspension, or limitation of duty-free treatment (including the competitive need limitation), special rules relating to waiver of the competitive need limitation, certain actions that the President must take in conjunction with designation, and a special rule concerning Puerto Rico. A similar reordering was done in the case of the competitive need limitation paragraph and the subsection relating to waiving of the competitive need limitation. As in the case of section 612, new headings were added.

Considerable editing of a nonsubstantive nature was necessary in the case of the competitive need limitation paragraph. First, the paragraph has been given a title of "competitive need limitation," which has become its commonly recognized title. Second, the introductory subparagraph has been reorganized and rewritten to inform the reader upfront of the substance of the paragraph. Under current law (section 2464(c)(1)), the reader must read through two rather lengthy technical definitional paragraphs before learning the substance to which they relate. Furthermore, the text infers but does not directly state that the President takes the action. The proposed revised text (new subsection (c)(2)(A)) starts by telling the reader who takes the action and the substance of that action—"The President shall withdraw duty-free treatment . . ."—and then sets out the technical parts of the paragraph relating to the limitations and other relevant material. Third, the remaining parts of the paragraph have been reorganized into a more logical format.

Thus, subsection (a) describes the procedure that the President is following in designating an article as an eligible article, and the circumstances under which an eligible article may be entered duty-free (currently in section 2463(a) and (b)); subsection (b) lists the articles that may not be designated as eligible articles (currently in section 2463(c)); subsection (c) sets forth the President's authority for withdrawing, suspending, or limiting

duty-free treatment and also the competitive need limitation (currently in section 2464(a)(1) and parts of section 2464(c), (d), and (0)); subsection (d) sets forth the procedures for waiving the competitive need limitation (currently in section 2464(c)(3) and (4)); subsection (e) describes certain special actions that the President must take in furnishing lists of articles to the Commission, and making determinations with respect to whether a country is a leastdeveloped-developing country (currently in sections 2463(a) and 2464(c)(6)(13)); and subsection (e) sets out the special rule concerning Puerto Rico (currently in section 2464(e)).

Sec. 614. Reviews and reports to Congress. This section lists the four types of reviews and reports to Congress that the President is required to make. The current requirements are set forth in four different subsections in current sections 2464 and 2465.

Sec. 615. Agricultural exports of beneficiary developing countries. This section sets out certain obligations to assist beneficiary developing countries in current section 2466.

Sec. 616. Date of termination. This section sets out the new date of termination of the duty-free treatment under the program, September 30, 1994.

Secs. 617-620. These sections are reserved.

Chapter 2: Trade Preferences for Caribbean Basin Countries

Sec. 621. Authority to grant duty-free treatment. This section sets forth the President's basic authority in section 2701 to provide duty-free treatment, subject to the limitation in current section 2703(g) (concerning effect on fees imposed pursuant to section 503 of subtitle V (7 U.S.C. 624, section 22 of the Agricultural Adjustment Act)).

Sec. 622. Countries eligible for designation. This section largely follows the order of section 612 above, setting forth the definition of beneficiary country, the list of countries eligible for designation, the factors affecting designation, the countries ineligible for designation, provisions relating to withdrawal or suspension of country designation, and notification to Congress, found in current section 2702. New headings have been added to add clarity, and minor editing of a nonsubstantive nature was also done.

Sec. 623. Articles eligible for duty-free treatment. This section similarly follows the order of section 613, setting forth the general rules concerning what articles the President may designate, and then identifying the articles that may not be designated, followed by the provisions relating to withdrawal, suspension, or limitation of duty-free treatment, special rules regarding suspension, and special rules concerning Puerto Rico. All of the material in this section is from current section 2703. However, certain material in section 2703 relating to suspension of eligibility as a result of an action by the President under 19 U.S.C. 2253 (global safeguard actions) and special investigations by the Secretary of Agriculture with respect to perishable agricultural products in the course of a safeguard investigation is referenced here but otherwise has been moved to subtitle I of this proposed reorganization, since this material relates to determinations and actions under that subtitle. Also, material in section 2703 relating to articles that may be the subject of duty reductions (as opposed to duty-free treatment) has been moved to the next section, section 624, which provides specifically for such reductions. New headings have been added, and new language of a nonsubstantive nature was added in new subsection (d)(1) to refer to and describe the safeguard actions that the President may take under subtitle I. Certain

material in subsection (d)(2) relating duty-free treatment extended to sugar and beef products was reorganized to follow the format used in other reorganizations of provisions above.

Sec. 624. Duty reductions for certain articles. This section tracks current section 2703(h), but with new headings added for clarity.

Sec. 625. Reports by the President. This section sets out the report requirement in current section 2702(f).

Sec. 626. Commission reports on impact of this chapter. This section tracks the Commission reporting requirement in current section 2704.

Sec. 627. Impact study by Secretary of Labor. This section tracks the reporting requirement for the Secretary of Labor in current section 2705.

Sec. 628. Effective date and termination of duty-free treatment. This section tracks current section 2706.

Secs. 629-630. These sections are reserved.

Chapter 3: Trade Preferences for Andean Countries

Sec. 631. Authority to grant duty-free treatment. This section sets forth the President's basic authority in section 3201 to provide duty-free treatment, subject to the limitation in current section 3203(f) (concerning effect on *fees* imposed pursuant to section 503 of subtitle V (7 U.S.C. 624, section 22 of the Agricultural Adjustment Act)).

Sec. 632. Countries eligible for designation. This section largely follows the order of sections 612 and 622 above, setting forth the definition of beneficiary country, the list of countries eligible for designation, the factors affecting designation, the countries ineligible for designation, provisions relating to withdrawal or suspension of country designation, and notification to Congress, found in current section 3202. New headings have been added to add clarity, and minor editing of a nonsubstantive nature was also done.

Sec. 633. Articles eligible for duty-free treatment. This section similarly follows the order of sections 613 and 623, setting forth the general rules concerning which articles the President may designate, and then identifying the articles that may not be designated, followed by the provisions relating to withdrawal, suspension, or limitation of duty-free treatment. All of the material in this section is from current section 3203. However, as in the case of section 623, certain material in section 3203 relating to suspension of eligibility as a result of an action by the President under 19 U.S.C. 2253 (a safeguard action) and special investigations by the Secretary of Agriculture with respect to perishable agricultural products in the course of a safeguard investigation is referenced here but otherwise has been moved to subtitle I of this proposed reorganization, since this material relates to determinations and actions under that subtitle. Also, material in section 3203 relating to articles that may be the subject of duty reductions (as opposed to duty-free treatment) has been moved to the next section, section 624, which provides specifically for such reductions. New headings have been added, and new language of a nonsubstantive nature was added in new subsection (c)(3) to refer to and describe the safeguard actions that the President may take under subtitle I.

sec. 634. Duty reductions for certain articles. This section tracks current section 3203(c), but with new headings added for clarity.

Sec. 635. Reports by the President: draft legislation. This section sets out the requirements in current sections 3202(0 and 3203(a)(4).

Sec. 636. Commission reports on impact of this chapter. This section tracks the Commission reporting requirement in current section 3204.

Sec. 637. Impact study by Secretary of Labor. This section tracks the reporting requirement for the Secretary of Labor in current section 3205.

Sec. 638. Effective date and termination of duty-free treatment. This section tracks current section 3206.

SUBTITLE WI—ANTIDUMPING AND COUNTERVAILING DUTIES

Sec. 701. Applicability. This section is new and states that the individual sections of subtitle VII apply in general to both antidumping and countervailing duty proceedings unless otherwise specified.

Sec. 702. Requirements for imposition of antidumping and countervailing duties. This section brings together the general requirements for imposition of antidumping and countervailing duties. These provisions are currently set forth in 19 U.S.C. fl 1303, 1671, and 1673, and are considerably redundant.

Subsection (a) sets forth the general statutory standards that must be met for the imposition of antidumping and countervailing duties for imports from countries entitled to a material injury test. This provision combines sections of the antidumping and countervailing duty laws that are currently set forth at section 1671 (countervailing duties) and in section 1673 (antidumping duties) since those provisions contain substantial similarities and are repetitive. Subsection (a)(1) contains language regarding Commerce's determination with respect to the existence of sales at less than fair value and foreign subsidies. Because Commerce's statutory criteria are different in antidumping and countervailing duty investigations, subsection (a)(1)(A) specifies the standard for antidumping duty investigations and subsection (a)(1)(B) specifies the standard for countervailing duty investigations. Subsection (a)(2) sets forth the Commission's material injury standard, which is identical for both antidumping and countervailing duty investigations.

Subsection (b) sets forth the countervailing duty rules for imports from countries that are not entitled to an injury test. Currently, these rules are set forth at 19 U.S.C. § 1303. Thus, section 702 places all of the general rules relating to countervailing duties together in one provision. Subsection (b) also adopts the use of the term "subsidy" in place of the term "bounty or grant" which is used in section 1303. This change is made to achieve consistency in terminology without effecting a change in meaning. In this connection, it is noteworthy that the definition of "subsidy" in existing section 1677(5) states that "[t]he term subsidy has the same meaning as the term 'bounty or grant' as that term is used in section 1303 of this title" Thus, replacing the term "bounty or grant" wherever it appears in the countervailing duty provisions does not entail a substantive change and

harmonizes the language of the different provisions.

Paragraph (3) of subsection 702(b) is a new provision that states that the placement of section 1303 in this subtitle is not intended to create any substantive or procedural changes in the countervailing duty laws.

Sections 1303(d) and (e) have been deleted from the reorganized countervailing duty provision as they constitute transitional provisions needed only in the years during which the Tokyo Round trade agreements were being negotiated. Section 1303(d) required that the President negotiate for international rules that would govern the use of subsidies and the application of countervailing duties. This temporary authority allowed the Secretary of the Treasury to determine that the imposition of duties under section 1303 was not required if a country took steps to reduce the effects of a bounty or grant, there was a reasonable prospect that trade agreements providing for the elimination of barriers to trade would be entered into, and imposition of a duty under section 1303 would be likely to jeopardize the completion of the trade negotiations. Section 1303(d) was originally set to expire on January 3, 1975, but was then extended to September 30, 1979. Section 1303(e) required that the Secretary of the Treasury send a report to Congress if a determination not to require the imposition of duties under section 1303(d) was made.

Sections 702(c) and (d) set forth the definition of "country under the Agreement" and related rules, which are taken directly from sections 1671(b) and (c) without change.

As noted above, section 702(a) incorporates most of current sections 1671 and 1673. Subsections (d) and (d) of 1671 (there are two sections 1671(d) in the current law), however, have been moved to other sections of this subtitle. Both of these subsections contain subsidy-related provisions that contain a degree of specificity which makes them inappropriate in a section that contains only general rules governing antidumping and countervailing duties. Because these sections are ancillary provisions that are not always invoked, they have been moved to section 709 which contains the provisions governing Commerce's other specific subsidy findings. Thus, section 1671(d), entitled "Upstream subsidy," governing Commerce's upstream subsidy determinations, is now section 709(c)(3)(A). It has been merged with section 1677-1, which contains the definition of upstream subsidy and the rules Commerce is to use in determining whether an upstream subsidy exists, and with the rules governing the time period of preliminary investigations where upstream subsidization is involved pursuant to section 1671b(g). In this manner all of the provisions relating to upstream subsidies are placed together in one section. Subsection (d) entitled "Treatment of international consortia," is now in section 709(c)(6) since it also relates to specific subsidy findings.

Finally, the language of section 1671(f) which contains the cross-reference to section 1303 has been deleted as the section 1303 provisions are now contained in the same section

One issue that arises in recodifying section 303 of the Tariff Act of 1930 (19 U.S.C. § 1303) is to what extent a country could argue that a recodification of this provision would preclude the United States from arguing that section 1303 is "grandfathered" under the General Agreement on Tariffs and Trade (GATT). The legislative history of any legislation that codifies this reorganization should state that such reorganization of the U.S. trade laws is not designed to make any substantive changes to section 303 of the Tariff Act of 1930.

as the provisions formerly contained in section 1671.

Sec. 703. General definitions. This section is the general definitional section derived primarily from current section 1677. It defines those terms used generally throughout Subtitle VII, for example, "Commission," "country," "industry," and "subsidy." This section also places the definitions in alphabetical order (which is not currently the case under section 1677). However, when a definition is specific to a particular section of this subtitle, it is set out in that section rather than in section 703.

The term "administering authority" has been replaced with the name of the agency, the Department of Commerce, which is responsible for conducting the non-injury aspects of antidumping and countervailing duty investigations. The definition of "administering authority" in current law was adopted prior to the reorganization of the trade function and continues to refer to "the Secretary of Treasury or any other officer of the United States to whom the responsibility for carrying out the duties of the administering authority under this subtitle is transferred by law." The Commerce Department has fulfilled these responsibilities since 1980 and the provision is made clearer and more accurate by reference to Commerce directly.

Regarding the definition of "Agreement on Subsidies and Countervailing Measures," the current definition states that the "Agreement on Interpretation and Application of Articles VI, XVI, and XVIII of the General Agreement on Tariffs and Trade" is defined as either the "Agreement on Subsidies and Countervailing Measures" or simply "Agreement." This definition is changed to specify the particular agreement in question as the adoption of other international trade agreements since the passage of the 1979 Trade Agreements Act now requires greater detail to identify the specific agreement in issue. For example, the U.S.-Canada Free Trade Agreement is also referred to in several places in current law as the "Agreement." Therefore, wherever the term "Agreement" is used by itself, clarifying language has been added, such as "U.S.-Canada Agreement" or "Agreement on Subsidies and Countervailing Measures" to distinguish between the several outstanding trade agreements.

The definition of "industry" in section 703 excludes the language pertaining to the wine and grape product industries contained in current law. The existing provision was added in 1984, but contained a sunset clause and the language is no longer applicable. In this connection, the "Historical and Statutory Notes" to the provision contained in the annotations of current section 1677(4) states that a 1984 amendment added the wine and grape products language and that this 1984 amendment is inapplicable to petitions filed under sections 1671a or 1673a after September 30, 1986.

The definition of "subsidy" is set forth in section 703(k) and is based on current section 1677(5)(A). Section 1677(5)(B), currently entitled "Special rule," has been moved to new section 709(c)(1), the section that sets forth those provisions of law relating to specific

² Specifically, it contains the following definitional sections of 19 U.S.C. § 1677: 1677(8) ("Agreement on Subsidies and Countervailing Measures"); 1677(1) ("Commerce"); 1677(2) ("Commission"); 1677(3) ("Country"); 1677(4) ("Industry"); 1677(9) ("Interested party"); 1677(10) ("Like product"); 1677(18) ("Nonmarket economy country"); 1577(15) ("Ordinary course of trade"); 1677(14) ("Sold or, in the absence of sales, offered for sale"); 1677(5) ("Subsidy"); 1677(16) ("Such or similar merchandise"); 1677(18) ("United States-Canada Agreement"); and 1677(17) ("Usual commercial quantities").

findings in Commerce's countervailing duty determinations, and has been retitled "In general." The "Special rule" is more appropriately placed in section 709 since it is not a definition, but rather a rule that Commerce must consider when examining whether a subsidy exists.

Sec. 704. Summary of applicable time periods in antidumping and countervailing duty investigations. This section is new and summarizes the applicable time periods and deadlines in antidumping and countervailing duty administrative proceedings, and provides cross-references to each provision where the statutory time requirements are set forth in greater detail. This provision will assist users of the antidumping and countervailing duty laws to better understand the rather complicated processes and time frames involved in antidumping and countervailing duty proceedings by setting forth all applicable provisions in a single section.

Sec. 705. Initiation of antidumping and countervailing duty investigations. This section sets forth the procedures and time limits for initiating an antidumping or countervailing duty investigation. It combines current section 1671a, governing initiation of countervailing duty investigations, and section 1673a; governing initiation of antidumping duty investigations. Currently sections 1671a and 1673a set forth almost identical procedures and time periods for initiation. Therefore, to avoid duplicative language and provisions, section 705 combines the rules for initiating antidumping and countervailing duty investigations. This subsection is retitled from "Procedures for initiating [an antidumping/ countervailing] duty investigation" to "Initiation of Antidumping and Countervailing Duty Investigations."

Both sections 1671a and 1673a, upon which this section is based, contain provisions regarding critical circumstances. All of the provisions regarding critical circumstances are moved into new section 711. There is no compelling reason for the critical circumstances provisions of current sections 1671a and 1673a to be in the section regarding initiation of investigations. General provisions, such as section 705 on initiation of investigations have been purposefully kept as simple as possible and free from ancillary provisions that can be more clearly set forth in separate sections of the subtitle.

Current section 1673a(a)(2) entitled "Cases involving persistent dumping" is moved to new section 715(h) entitled "Administration of antidumping and countervailing duty orders." The provision on persistent dumping, which involves the monitoring of certain products that are already subject to an antidumping duty order relating to one or more countries, is more properly addressed together with other matters involving post-order procedures. Section 705, like its predecessor provision, contains a cross-reference to the persistent dumping procedure.

Sec. 706. Preliminary determinations. This section sets forth the standards and time periods for conducting preliminary antidumping and countervailing duty investigations. It combines in one provision the antidumping and countervailing duty schedules and standards, currently set forth in sections 1673b and 1671b, respectively.

³ Currently, there are rules governing critical circumstances set forth in the following 12 provisions: § 1671a(e), § 1671b(e), § 1671d(a)(2), § 1671d(b)(4), § 1671d(c)(3), § 1671d(c)(4), § 1673a(e), § 1673b(e), § 1673d(a)(3), § 1673d(b)(4), § 1673d(c)(3), and § 1673d(c)(4).

Section 706(a) governs Commission findings in preliminary investigations, which are identical for both antidumping and countervailing duty investigations.

Subsection 706(b) governs Commerce's findings. Since the time periods and standards that Commerce must follow are different depending on whether the investigation involves allegations of antidumping duties or countervailing duties, the applicable provisions are set forth in sections 706(b)(1) and 706(b)(2), respectively. Although subsection (b)(1) is based on current section 1673b(b), it omits discussion of short life cycle merchandise currently set forth at section 1673b(b)(1)(B). All of the provisions concerning short life cycle merchandise have instead been moved to new section 713 entitled "Short life cycle merchandise" because these provisions pertain to ancillary rules that are not invoked in every antidumping investigation. To streamline the general provisions relating to preliminary determinations, the short life cycle merchandise provision is simply cross-referenced parenthetically in section 706(b)(1).

Section 706(b)(3) sets forth the rules for preliminary determinations if verification is waived. Except for the differing time periods for antidumping and countervailing duty investigations, these provisions are identical; section 706(b)(3) combines the antidumping and countervailing duty provisions by setting forth the applicable time periods for each in the same paragraph.

Sections 706(c), (d), and (e) combine the antidumping and countervailing duty rules for extending the time periods in extraordinarily complicated cases, for notices of postponements, and for notice of determinations, respectively. These rules are currently set forth separately in the antidumping duty and countervailing duty statutes; however, they are identical. Thus, no changes were made in merging these antidumping and countervailing duty rules into subsections (c), (d), and (e) except for the addition of descriptive cross-references.

Both sections 1671b(e) and 1673b(e) of current law contain provisions regarding critical circumstances. These provisions have been moved to section 711 entitled "Critical circumstances" for greater clarity and ease of reference. A cross-reference is added in subsection (e) of section 706 to new section 711(b), however, which requires the responsible agencies, the Commission and Commerce, to notify each other of any determinations made under section 711.

Section 1671b(g) of existing law contains the provisions on the time periods applicable when upstream subsidization is under investigation. This section has been moved to section 709(c)(3)(E) which, as noted above, unites together all of the provisions regarding upstream subsidization. A parenthetical cross-reference is made in section 706(b)(2), noting that the time periods are different where upstream subsidization is involved and directing further reference to section 709(c)(3).

Sec. 707. Final determinations. This section combines the standards and time periods for conducting final antidumping and countervailing duty investigations, currently set forth at sections 1673d and 1671d, respectively.

Subsection (a) governs final determinations by Commerce, which precede in time Commission final determinations. As in the case of preliminary determinations, the time periods and standards that Commerce must follow in final investigations are different for antidumping and countervailing duty investigations. Therefore, subsection (a) separately

sets forth the applicable time periods and standards for antidumping and countervailing duty investigations in subsections (a)(1) and (a)(2), respectively.

Subsection (b) combines the rules governing Commission findings in final investigations, which are identical for both antidumping and countervailing duty investigations.

Subsection (c) sets forth the effect of final determinations, subsection (d) requires publication of notices of determinations, and subsection 707(e) concerns the correction of ministerial errors. No changes were necessitated by merging the existing antidumping and countervailing duty provisions regarding these subjects into section 707; however, descriptive parentheticals were added following certain cross-references.

Both the antidumping and countervailing duty provisions governing final Commerce determinations contain provisions on critical circumstances (sections 1671d(a)(2) and 1673d(a)(3)). There are also provisions relating to critical circumstances determinations in the current antidumping and countervailing duty subsections governing final determinations by the Commission (sections 1671d(b)(4) and 1673(b)(4)). As with the critical circumstances provisions that are contained in the current provisions on initiation of investigations and preliminary determinations, the critical circumstances provisions relating to final determinations have been moved to section 711. Subsection (c)(1) (requiring that Commerce make available to the Commission all information upon which affirmative determinations under section 707 are based), and subsection (d) (requiring the Commission and Commerce to publish notices of all determinations), cross-reference section 711, which contains all provisions regarding critical circumstances.

Sec. 708. Specific Commission findings in antidumping and countervailing duty investigations. Section 708 is new and pulls together in one place a variety of different sections of current law pertaining to specific issues and considerations that are germane to determinations by the Commission. This provision is entitled "Specific Commission findings in antidumping and countervailing duty investigations" to identify clearly the nature of the subject which it addresses. The provisions set forth in section 708 are taken from various provisions of current section 1677.

Section 708(a), based on current section 1677(7), contains the statutory criteria for making material injury findings. Under the current organization of title 19, the provision on material injury is contained in section 1677 which is entitled "Definitions; special rules." The proposed section 708(a) would simplify the material injury provisions by moving the discussion of threat of material injury and cumulation into distinct subsections. New section 708(b) contains the statutory criteria for making threat of material injury findings, currently set forth at section 1677(7)(F); section 708(c) contains the cumulation provisions, currently set forth at sections 1677(7)(C) and 1677(7)(F).

New subsection (a) does not contain the "Nature of subsidy" discussion found in section 1677(7)(3)M of the current law. The language in the existing provision relates to the threat of material injury and, therefore, is not pertinent to the treatment of present material injury. Moreover, virtually identical language is found in current section 1677(F)(i)(I), which is incorporated into new subsection (b) relating to the threat of material injury. The term "Agreement" in section 1677(7)(F)(i)(I) is also modified to identify more specifically the "Agreement on Subsidies and Countervailing Measures," consistent with changes in terminology elsewhere in the reorganized statutory provisions.

The subsection in the material injury section currently in section 1677(7)(E)(ii), entitled "Standard for determination" has not been changed, and is now new subsection 708(a)(5).

New subsection (c) combines the provisions on cumulation applied in material injury findings (current section 1677(7)(C)(iv)) with those provisions on cumulation applied in threat of material injury findings (current section 1677(7)(F)(iv)). Consequently, subsection (c)(a) is entitled "Material injury findings" and subsection (c)(2) is entitled "Threat of material injury findings." Subsection (c)(3) is entitled "CBI exception" and subsection (c)(4) is entitled "Treatment of negligible imports." These last two subjects are currently addressed in the material injury cumulation provisions (sections 1677(7)(C)(iv)(II) and (v)); however, since these provisions are used in both material injury and threat of material injury determinations, they are now placed in the new cumulation section following the provisions setting forth the cumulation standards for material injury and threat of material injury determinations.

Subsection (d) sets forth the rule governing affirmative determinations when there is a divided Commission, which is based on current section 1677(11).

Sec. 709. Specific Commerce findings in antidumping and countervailing duty investigations. Section 709 is also a new section and pulls together in one place a variety of different sections of current law pertaining to specific issues and considerations that are applicable to determinations by Commerce. The provisions set forth in section 709 are currently found throughout title 19 of the U.S. Code.

Subsection (a) contains rules that pertain to both antidumping and countervailing duty determinations: subsection (a)(1) pertains to nonmarket economy countries (based on current section 1677(18)), and subsection (a)(2) pertains to the equivalency of leases to sales (based on current section 1677(19)).

Subsection (b) contains the rules pertaining only to Commerce's antidumping duty determinations. Subsection (b)(1) sets forth the rules for determining U.S. price (based on current section 1677a(d)). This subsection moves the definition of "exporter," currently set forth in the general definitional section 1677(13), and places it in subsection (b)(2)(A)(iii), following subparagraph (B) entitled "Exporter's sales price." The definition of "exporter" specifically states that for the purpose of determining United States price, the term "exporter" includes Thus, this definition is used only for purposes of determining U.S. price, is not a general definition, and is more appropriately placed in the section on U.S. price.

Subsection (b)(2) sets forth the rules for determining foreign market value (based on current section 1677b), which are unchanged, except for the addition of descriptive parentheticals following certain cross-references.

Subsection (b)(3) pertains to sampling and averaging (based on current section 1677f-1), and remains unchanged.

Subsection (c) unites the rules pertaining only to Commerce's countervailing duty determinations currently found in various provisions of sections 1671, 1671b, and 1677. Paragraph (1) is a general rule governing subsidy findings (based on current section 1677(5)(B)). Paragraph (2) sets forth the rules for calculating net subsidies (based on current section 1677(6)).

Subsection (c)(3) brings together the various provisions governing upstream subsidies derived from current sections 1671(d), 1671b(g), and 1677-1. Paragraph (3)(A) is a general provision, based on current section 1671(d), which directs Commerce to investigate whether an upstream subsidy has been paid or bestowed. Paragraphs (3)(B) and (3)(C) set forth the definition of upstream subsidy and the rules for determining the existence of upstream subsidies based on current sections 1677-1(a) and (b). Paragraph (3)(D) is entitled "Inclusion of amount of subsidy" and is derived from current section 1677-1(c), which states that if Commerce suspects that an upstream subsidy is being paid or bestowed, it should investigate further. Subparagraph (3)(E), based on current section 1671b(g), sets forth the time period for preliminary countervailing duty investigations if an upstream subsidy is involved.

Subsections (c)(4)-(5) relate to subsidy issues that are specific to particular circumstances, but which are not universal to all countervailing duty proceedings. Paragraph (4) pertains to the calculation of subsidies on certain processed agricultural products (based on current section 1677-2). Paragraph (5) pertains to subsidy practices discovered during a proceeding (based on current section 1677d). Paragraph (6) pertains to the treatment of members of an international consortium who receive subsidies (based on section 1671(d)). Finally, paragraph (7) sets forth the effect of derogation of Export-Import Bank Financing (based on current section 1671g).

Sec. 710. Termination or suspension of investigation. This section combines the very similar, but currently separate, antidumping and countervailing duty rules on termination or suspension of investigations. The existing antidumping duty provisions are set forth at section 1673c and the countervailing duty provisions are set forth at section 1671c. Where the antidumping and countervailing duty provisions are not identical, separate subsections have been created for each (e.g., compare sections 710(b) and (c) and sections 710(d)(1) and (d)(2)). Descriptive parentheticals were added to certain cross-references, but the provisions are otherwise unchanged.

Sec. 711. Critical circumstances. This section is new and contains all of the provisions relating to "critical circumstances" that currently appear in several different provisions in the antidumping and countervailing duty laws. There are 12 separate sections that provide rules governing critical circumstances determinations: sections 1671a(e), 1671b(e), 1671d(a)(2), 1671d(b)(4), 1671d(c)(3), 1673d(c)(4), 1673a(e), 1673b(e), 1673d(a)(3), 1673d(b)(4), 1673d(c)(3), and 1673d(c)(4).

The purpose of combining all of the critical circumstance provisions in one place is twofold. First, a separate section devoted to and entitled "Critical circumstances" makes it easier to locate all relevant provisions and serves to clarify the procedures applicable to consideration of the subject of critical circumstances. Second, deleting ancillary rules, such as critical circumstances, from the general antidumping and countervailing duty provisions simplifies those general provisions and makes them easier to understand. Where necessary, cross-references in the general provisions will guide a reader to the pertinent critical circumstances subsections.

Subsection (a), entitled "Collection of information," combines the provisions of current sections 1671a(e) (regarding the initiation of countervailing duty investigations) and 1673a(e) (regarding the initiation of antidumping investigations). Since the antidumping duty provisions vary slightly from the countervailing duty provisions, they are set forth in subsections (a)(1) and (a)(2), respectively.

For the most part the antidumping and countervailing duty critical circumstances provisions that are currently set forth in sections 1671b and 1673b concerning preliminary determinations are the same but, because there are some differences, proposed subsection (b), entitled "Preliminary determinations," sets forth the rules for antidumping duty investigations separately from countervailing duty rules. The provisions are found respectively in subsections (b)(1)(A) and (b)(1)(B).

Subsection (c) sets forth the rules governing critical circumstances that are currently in the antidumping and countervailing duty provisions governing final determinations (current sections 1671d and 1673d). In both the antidumping and countervailing duty final determination provisions there are four separate subsections relating to critical circumstances. The first provision is set forth identically in both sections 1671d(a)(2) and section 1673d(a)(3) and concerns certain findings that Commerce must make when its final determination is affirmative and the presence of critical circumstances is alleged.⁴ New subsection (c) combines these antidumping and countervailing provisions and is divided into subparagraph (A), governing antidumping duty investigations, and subparagraph (B), governing countervailing duty investigations. The second provision is currently set forth in both sections 1671d(b)(4) and 1673d(b)(4) (entitled "Certain additional findings) and concerns findings that the Commission must make (i.e., whether retroactive imposition of duties is warranted) if Commerce's finding on critical circumstances is affirmative. Proposed subsection (c)(2) combines these antidumping and countervailing duty provisions.

The third and fourth provisions that are found in both the antidumping and countervailing duty final determination provisions are in current sections 1671d(c) and section 1673d(c). Sections 1671d(c)(3) and 1673d(c)(3) state the effect of negative determinations by Commerce and the Commission under the critical circumstances provisions (e.g., regarding the suspension of liquidation and release of bonds). Sections 1671d(c)(4) and 1673d(c)(4) state the effect of affirmative critical circumstances determinations by Commerce. Proposed subsections (c)(3) and (c)(4) combine these antidumping and countervailing duty provisions.

Also, wherever the term "Agreement" appears in the critical circumstances provisions, it has been clarified to read "Agreement on Subsidies and Countervailing Measures."

sec. 712. Downstream product monitoring. This section sets forth the provisions for downstream product monitoring, currently set forth at section 1677i. Except for the addition of descriptive parentheticals following certain cross-references, this section does not change the organization or substance of the downstream product provisions.

Sec. 713. Short life cycle merchandise. This section is new and combines the two short life cycle merchandise provisions now set forth separately in sections 1673b(b)(1)(B) and (C) and 1673h. Subsection (a) is based on the current antidumping duty provision on preliminary determinations (section 1673b(b)(1)(13)), which lists the time periods that control if certain short life cycle merchandise is involved. Subsection (b) is based on current section 1673h. In addition, subsection (c) contains the definitions currently found separately in sections 1673b(b)(1)(C) and 1673h(b).

A cross-reference to section 707 has been added to the proposed new section 710(c)(1) so that it reads: "If the final determination of Commerce under section 707 is affirmative" (Emphasis added).

Sec. 714. Administrative procedures for conducting antidumping and countervailing duty investigations. This section is new and brings together in one section the various current measures involving administrative procedures in antidumping and countervailing duty investigations. Provisions that are currently found in various provisions of sections 1677c, e and f are now set forth in section 714. The provisions chosen for inclusion in this section relate to procedural rules of antidumping and countervailing duty investigations.

Subsection (a), based on current section 1677c, sets forth the rules on hearings, and is unchanged.

Subsection (b), based on current section 1677f, sets forth the rules on access to information and service. This section remains unchanged except that the rules regarding access to information pursuant to the CFTA have been moved to subsection (f)(11) of section 717, which is the judicial review section pertaining specifically to Canadian merchandise. Also, the current section is entitled "Access to information" and is slightly changed to read "Access to information and service" to reflect the fact that the rules on service are also included therein. Lastly, descriptive parentheticals were added to certain cross-references.

Subsection (c), based on current section 1677e(a), sets forth the requirements for certifying submissions, and is unchanged.

Subsection (d), based on current section 1677e(c), sets forth the rules on best information available, and is unchanged.

Finally, subsection (e), based on current section 1677e(b), sets forth the rules regarding Commerce's verification of information, and is unchanged.

Sec. 715. Administration of antidumping and countervailing duty orders. This section creates a new heading and category entitled "Administration of Antidumping and Countervailing Duty Orders." It consolidates the provisions involving antidumping and countervailing duty orders, currently found in various sections of title 19. Subsection (a) combines the antidumping *and* countervailing duty provisions governing the assessment of duties (based on current sections 1671e and 1673e). These antidumping and countervailing duty provisions overlap substantially, but where there are divergences, appropriate subsections have been created to preserve those distinctions. For example, subsection (a)(1)(A) governs antidumping duty investigations and subsection (a)(1)(13) governs countervailing duty investigations.

Subsection (b) combines into one section the virtually identical antidumping and countervailing duty rules pertaining to the treatment of differences between the deposit of estimated antidumping and countervailing duties and the final assessed duties under antidumping and countervailing duty orders (based on current sections 1671f and 1673f). In a similar manner, subsection (c) pertaining to the conditional payment of duties combines the existing provisions relating to antidumping and countervailing duties (based on current sections 1671h and 1673g). The only difference between sections 1671h and 1673g is that the latter provision has an additional subsection, current section 1673g(b)(3), which requires that a person make a statement under oath regarding whether or not that person is an exporter. This provision is set forth in subsection (c)(2)(D), and the language "for purposes of antidumping duty proceedings," has been added to the beginning of that provision to distinguish it from the other provisions that relate both to antidumping and

countervailing duty proceedings.

Most of the remaining subsections of section 715 are derived from various other provisions that involve antidumping or countervailing duty orders. Subsection (d) pertains to the prevention of circumvention of antidumping and countervailing duty orders (based on current section 1677j). Subsection (e) pertains to the attribution of merchandise to the country of manufacture or production (based on current section 1677(12)). Subsection (f) pertains to interest on certain overpayments and underpayments of duties (based on current section 1677g). Subsection (g) pertains to drawback treatment (based on current section 1677h). Subsection (h) pertains to cases involving persistent dumping (based on current section 1673(a)(2)). Finally, subsection (i) pertains to merchandise imported by the U.S. Government (based on current section 1677(20)).

Sec. 716. Administrative review of antidumping and countervailing duty determinations. This section brings together the provisions dealing with administrative review of antidumping and countervailing duty determinations, which are currently set forth at sections 1675, 1676, and 1676a. Subsection (a) contains the rules relating to administrative review of antidumping and countervailing duty determinations, currently set forth at section 1675. Subsections (b) and (c) contain the rules on consultations and determinations regarding quantitative restriction agreements based on current sections 1676 and 1676a. These provisions are otherwise unchanged, except for the addition of descriptive parentheticals to certain cross-references.

Sec. 717. Judicial and bi-national review of antidumping and countervailing duty proceedings This section contains the rules relating to judicial review of antidumping and countervailing duty determinations, currently set forth at section 1516a. The current organization of these provisions has been modified by moving the provisions relating to access to confidential information pursuant to the CFA from section 1677f to subsection (f) of section 717, which is the section pertaining to review of antidumping and countervailing duty determinations involving Canadian merchandise. In addition, new subsection (f)(11) adds clarifying language wherever the term "Agreement" is used by changing it to "U.S.-Canada Agreement."

Another change to current section 1516a made in new section 717 is to move the definitional section to the end so that it is now contained in section 717(g). Currently the definitions are in subsection (f), before the provisions regarding review of determinations involving Canadian merchandise which are currently contained in subsection (g). Since the definitions apply to subsection (g) as well, it is more appropriate that the definitions be placed at the very end. Also, many of the definitions in section 1516a duplicate the definitions in section 1677, or cross-reference the definitions in section 1677. Because sections 1677 and 1516a are now consolidated into one subtitle, there is no longer a need to state the definitions twice. Thus, only those definitions that are applicable solely to section 1516a are maintained in the definitional section of the proposed section 717(g).

Sec. 718. Third country dumping. This section contains the rules relating to third country dumping, currently set forth at section 1677k, without changing the current organization or substance of these provisions. In the definitional section, subsection (a), the designated shortened form of "Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade" is changed from "Agreement" to "Agreement on Antidumping Measures" to avoid confusion with the other agreements mentioned throughout the provisions of this subtitle.

**SUBTITLE VIII—RETALIATORY AND OTHER RELIEF FOR
CERTAIN DISCRIMINATORY FOREIGN PRACTICES**

Sec. 801. Applicability. This section is new, and states that the subtitle applies with respect to relief for certain intentional methods of price competition as well as with respect to other forms of discriminatory foreign trading practices.

Sec. 802. Importation or sale of articles at less than market value or wholesale price. This section incorporates the language previously contained in 15 U.S.C. §§ 71 and 72 relating to the definition of "person" and the causes of action under the Antidumping Act of 1916. The provision has been subdivided into subsections to enhance clarity. Subsection (a) sets forth the general standard applicable to a finding of intentional price discrimination. Subsection (b) contains the misdemeanor offense provided by existing law. Subsection (c) contains the private cause of action established under the 1916 Act. Subsection (d) sets forth the definition previously contained in 15 U.S.C. § 71.

Sec. 803. Agreements involving restrictions in favor of imported goods. This provision, which incorporates unchanged the existing laws contained in 15 U.S.C. §§ 73 and 74, addresses the problem of foreign imposed restrictions on merchandise sold in the United States. Subsection (a) sets forth the standard involved and the basis for relief taken from 15 U.S.C. § 73. Subsection (b) contains the authority to issue appropriate implementing regulations as currently provided for in 15 U.S.C. § 74.

Sec. 804. Retaliation against country prohibiting importations. The current provision, found in 15 U.S.C. § 75, provides for retaliatory action against foreign entities that embargo any U.S. product. The language of the provision has been amended only to delete the word "colony" wherever it appears to reflect geopolitical changes that have occurred since 1916 when the existing provision was enacted.

Sec. 805. Retaliation against restriction of importations in time of war. This provision which provides for retaliation against foreign governmental entities which discriminate against U.S. products is a recodification of 15 U.S.C. § 76. The only change in the provision is the deletion of the reference to "colony" where that anachronistic term appears.

This provision incorporates unchanged the substance of 15 U.S.C. § 77 relating to retaliation for discrimination against U.S. persons or vessels that occurs in a foreign country in time of war not involving the United States. The existing law, however, is divided into four subsections to improve its readability.

SUBTITLE IX—RELIEF FROM UNFAIR PRACTICES IN IMPORT TRADE

Sec. 901. Applicability. This section is new, and states that subtitle IX provides relief from infringement of U.S. intellectual property rights and other unfair methods of competition or unfair acts in U.S. import trade.

Sec. 902. Relief from unfair practices. Section 902 is a reorganized version of 19 U.S.C. § 1337 (section 337 of the Tariff Act of 1930, as amended), which authorizes import restrictions in the form of exclusion and/or cease and desist orders to relieve domestic industries or domestic trade and commerce from infringement of U.S. intellectual property rights and other unfair methods of competition or unfair acts involving imports. Section 902 is divided into subsections (a)-(m).

Subsection (a) contains the text of section 1337(a), which identifies the acts and practices constituting violations of section 1337. To eliminate the repetition of various phrases, the Commission reorganized section 1337(a)(1) by--

1. Inserting the phrase "actions by the owner, importer, or consignee of imported articles" after the word "following" in the first sentence;
2. Eliminating the phrase "by the owner, importer, or consignee" from subparagraph (A); and
3. Consolidating subparagraphs (B)-(D) into a single subparagraph (B).

At the suggestion of the ITC Trial Lawyers Association and the Department of Commerce, the Commission also revised the cross-references to provisions of the U.S. Code title 17 and the Trademark Act of 1946). The revisions will make those cross-references stylistically consistent with similar cross-references in other subsections of section 902 and in section 903.

Subsection (b) of section 902 contains the provisions of section 1337(b), Investigations of violations by Commission: time limits. The Commission eliminated all references to "the administering authority" for matters within the purview of subtitle VII. That term is appears in the relevant existing laws, but is not used in subtitle VII.

Subsection (c) of section 902 contains reorganized provisions of section 1337(c), which discuss (1) whether the Commission must issue a determination on violation of section 1337 in every investigation; (2) the procedures that are to be followed in certain investigations;

^s The ITC Trial Lawyers Association (hereinafter ITCTLA) commented that section 901 "would make the substantive provisions of section 902 generally more accessible without affecting the substance of the statute [upon which section 902 is based]."

^e The ITCTLA generally supported the Commission reorganization of section 1337, subject to minor editorial or technical revisions (which the Commission has made).

⁷ The ITCTLA supported the Commission rearrangement of section 1337(a), noting that it "would eliminate duplicative wording and simplify the statute without altering the substantive protection provided by [section 1337]."

(3) the defenses that may be asserted in all investigations; and (4) the right to judicial review of the Commission's determinations on various issues. The Commission prepared this section by taking the following steps:

First, the section 1337(c) provisions concerning judicial review were placed in subsection (h) of section 902. The subject matter of subsection (c) thus is limited to adjudicative procedures that are to be followed in each investigation.

Second, the Commission eliminated an inconsistency between the second and third sentences of section 1337(c) that created uncertainty as to whether an opportunity for a hearing would be provided if the complainant is seeking a preliminary or final cease and desist order. ° The Commission's rewording of the relevant provisions clarifies that an opportunity for a hearing is to be provided in all cases, regardless of whether the complainant is seeking an exclusion order, a cease and desist order, or both. °

Third, the Commission inserted a parenthetical description behind the cross-reference to provisions of title 5 of the U.S. Code.

Subsection (d) of section 902 incorporates the text of section 1337(h), which authorizes the Commission to impose sanctions for abuse of discovery or process. Sanctions can be a factor in determining whether section 1337 has been—or appears to have been--violated.

The second sentence of section 1337(c) indicates that notice and an opportunity for a hearing are required only in cases where the complainant is seeking a preliminary or final exclusion order. The third sentence of section 1337(c) indicates, however, that legal or equitable defenses may be asserted in all investigations--which would cover those in which the complainant is seeking a preliminary or final cease and desist order. Moreover, the Commission practice is to provide an opportunity for a hearing in all cases, regardless of whether the complainant is seeking an exclusion order, a cease and desist order, or both. See 19 C.F.R. § 210.41(a)(1) (1993).

° The ITC/ILA viewed this as a substantive change in the existing law, but supported it as being consistent with Commission practice under interim Commission rule 210.24(e)(13), as well as other parts of section 1337.

The Commission is cognizant that drafting subsection (c) of section 902 to indicate that an opportunity for a hearing will be provided in every case, regardless of the type of relief sought, may technically be a "substantive" change. The Commission also notes, however, that paragraph (2) will not alter the operation of the existing law. As the preceding footnote points out, the third sentence of section 1337(c) indicates that legal or equitable defenses may be asserted in a investigations—which would cover those in which the complainant is seeking a preliminary or final cease and desist order. Moreover, the Commission's practice under section 337(c) is to provide an opportunity for a hearing in all cases, regardless of whether the complainant is seeking an exclusion order, a cease and desist order, or both. See 19 C.F.R. § 210.41(a)(1).

¹⁰ ra, Investigation No. 337-TA-143, Certain Amorphous Metal Alloys and Amorphous Metal Articles, USITC Publication 1664, [Unreviewed] Initial Determination at 61, 137, and findings of fact 446-451 (Nov. 1984) (sanctions for failure to cooperate in discovery led to a determination that respondent TDK Electronics Corp. had infringed complainant's process patent and violated section 1337).

The Commission thus thought it appropriate for the sanctions provision to be located adjacent to subsection (c) of section 902, which provides adjudicative procedures for making preliminary and final determinations concerning violations of section 1337.

Subsection (e) of section 902 pertains to the issuance of final relief,¹¹ and is based on several existing subsections of section 1337. In order to group all final relief provisions together and to eliminate multiple recitations of the public interest factors that must be assessed in every case, the Commission created subsection (e) of section 902 by consolidating the provisions of section 1337(d) pertaining to the issuance of exclusion orders, section 1337(0(1) pertaining to the issuance of cease and desist orders, and section 1337(g) pertaining to the issuance of limited or general exclusion orders in cases where one or more respondents default. Subsection (e) thus contains three paragraphs.

Paragraph (1) deals with the issuance of final relief after the Commission has determined that section 1337 has been violated. Subparagraph (1)(A) consists of the provisions of section 1337(d) pertaining to the issuance of a final exclusion order. Subparagraph (1)(B) consists of the provisions of section 1337(0(1) concerning the issuance of a final cease and desist order in addition to or in lieu of an exclusion order. The provisions of sections 1337(d) and 1337(0(1) concerning the overriding public interest factors were omitted. (The public interest factors are set forth in paragraph (3) of subsection (e).)

Paragraph (2) of subsection (e) contains provisions of the current section 1337(g) concerning the issuance of final relief in a case in which one or more respondents default. The only provisions that were omitted are those pertaining to the public interest restriction. (The overriding public interest factors appear in paragraph (3) of subsection (e).)

Paragraph (2) of subsection (e) also includes new provisions stating that the Commission will notify the Secretary of the Treasury when it issues a limited or general exclusion order in a default case and that the Secretary shall refuse such entry of goods covered by the order. Similar provisions appear in section 1337(d) concerning exclusion orders in nondefault cases, but do not appear in section 1337(g) concerning exclusion orders in default cases. The Customs Service enforces **a** exclusion orders, however, regardless of whether they were issued pursuant to section 1337(d) or 1337(g).¹² Paragraph (2) of subsection (e) thus corrects an anomaly in the existing law. Paragraph (2) also is based on existing provisions that require the Commission to cooperate with the

Although the Commission traditionally has used the term "permanent" relief to describe remedial orders issued after an affirmative determination on violation of section 1337, such orders in fact may not be permanent, but may be of fixed duration (g_ar., the duration of the intellectual property right which the order is designed to protect). Such orders also can be revoked for various reasons, such as a Commission determination that conditions which led to the order no longer exist. Sz sections 1337(0(1) and 1337(k), as well as subsection (f) at subparagraph (1)(B) of section 902 and subsection (j) of section 902. For those reasons, the Commission has used the term "final relief" throughout section 902 of subtitle IX.

¹² See 19 C.F.R. 12.39(b) (1993).

Treasury Department (of which Customs is a part)¹³ and to provide all information that Customs needs to enforce each exclusion order. '

Paragraph (3) of subsection (e) of section 902 directs the Commission to consider certain public interest factors in determining whether to grant a remedy under paragraphs (1) or (2)—and to decline to issue the remedy if the probable effect of the remedial order in question is likely to be so adverse to one or more of the specified aspects of the public interest that issuance of the remedial order is not warranted. "

The Commission notes also that section 1337(g)(2) as currently written (and hence, paragraph (2) of subsection (e) of section 902) does not direct the Commission to consider the public interest factors in determining whether to issue a general exclusion order when one or more respondents has defaulted. The Commission questions whether the omission of such a provision from section 1337(g) was an oversight, in light of the legislative history of section 1337 indicating that the public interest is to be paramount in the administration of section 1337, " the fact that the public interest must be considered in connection with the proposed issuance of every other remedial order available under section 1337, and the absence of any suggestion in the legislative history of section 1337(g) indicating that general exclusion orders in default cases may be issued without consideration of the public interest.

Subsection (f) of section 902 provides for the issuance of "preliminary" remedies. " Subsection (f) is divided into three paragraphs.

Paragraph (1) is based on section 1337(e)(1) and section 1337(0)(1). Those sections collectively provide that if the Commission determines that there is reason to believe that a violation has occurred, the Commission shall issue a preliminary exclusion order, a preliminary cease and desist order, or both, unless the public interest precludes such relief. Paragraph (1) of subsection (f) is arranged like the final relief provisions of subsection (e), in the sense that there is only one recitation of the overriding public interest factors, and that recitation appears after the provisions outlining the kinds of relief that may be

" 19 U.S.C. §§ 1334 and 2071.

¹⁴ SIM 19 U.S.C. § 1334(n)(2)(C).

" The Commission notes that section 1337(0 and subsection (d) of section 902 do not address the administration of cease and desist orders. The current practice is for the Commission to administer such orders, including the cease and desist orders that direct a respondent to cease and desist from unlawful importations of articles into the United States. The Customs Service does not participate in the administration of cease and desist orders. To ensure that the subject imports do not enter the United States, cease and desist orders prohibiting importations of certain articles are normally accompanied by an exclusion order covering the articles in question.

" Sim S. Rep. No. 1298, 93d Cong., 2d Sess. 193 and 197 (1974).

¹⁷ Although the Commission traditionally has used the term "temporary relief," the relevant provisions of section 1337 refer to "preliminary relief." The term "preliminary relief" is used in subsection (e) of section 902 for that reason.

provided.

Paragraph (2) of subsection (f) incorporates section 1337(e)(2). That section sets deadlines for Commission decisions on whether to grant motions for preliminary relief and authorizes the Commission to require the complainant to post a bond as a prerequisite to the issuance of a preliminary exclusion order. The Commission revised section 1337(e)(2) so that it does not limit the bonding authority to cases in which the complainant is seeking a preliminary exclusion order. " Paragraph (2) in subsection (f) of section 902 thus states that the Commission may require a bond from the complainant as a prerequisite to the issuance of "an order under this subsection." "

Paragraph (3) of subsection (f) is a revised version of section 1337(e)(3), which states that preliminary relief under section 1337 may be granted to the same extent that preliminary injunctions and temporary restraining orders are granted in Federal Courts under the Federal Rules of Civil Procedure (hereinafter FRCP).

The process by which the Commission issues preliminary exclusion orders or preliminary cease orders under section 1337 is comparable to the process by which district courts issue preliminary injunctions. There are significant differences, however, between the process by which the Commission issues preliminary relief under section 1337 and that by which district courts issue temporary restraining orders. District courts may issue

" Paragraph (2) of section 1337(e) authorizes the Commission to require a bond from the complainant as a prerequisite to the issuance of a preliminary exclusion order, but there is no explicit authority to require a bond for a preliminary cease and desist order. The Commission noted, however, that paragraph (3) of section 1337(e) provides authorization for the Commission to require a bond as a condition precedent for the issuance of a preliminary cease and desist order, since (1) it indicates that the Commission may grant preliminary cease and desist orders "to the same extent as preliminary injunctions and temporary restraining orders may be granted under the Federal Rules of Civil Procedure [FRCP]," and (2) FRCP 65(c) requires the posting of security (ex.,, a bond) as a prerequisite to the issuance of a preliminary injunction or a restraining order.

The Commission is cognizant that the rationale for requiring a bond or other security in a district court action and the computation of the amount of the bond or other security differ from the rationale for and computation of a temporary relief bond under section 1337. The Commission is of the opinion that the existence of the bond requirement in FRCP 65 is, nevertheless, a reasonable basis for the Commission to require the posting of a bond in connection with a temporary cease and desist order as well as in connection with a temporary exclusion order.

" The ITCTLA viewed this as a substantive change in the existing law. The ITCTLA supported the revision, nevertheless, since it "appears to be consistent with existing Commission practice."

The Commission acknowledges that drafting paragraph (2) of subsection (f) in section 902 so that it enables the Commission to require a temporary relief bond from a complainant, regardless of the type of relief sought, may technically be a "substantive" change. The Commission also notes, however, that paragraph (2) will not change the operation of the existing law. As the preceding footnote explains, the Commission has authority to require bonds for temporary cease and desist orders (as well as temporary exclusion orders), under section 1337(e)(3).

temporary restraining orders ex parte and on the basis of affidavits, but the Commission cannot properly issue a preliminary remedial order under section 1337 (or section 902) in that manner.

To prevent uncertainty as to whether the Commission may issue preliminary remedial orders under section 902 parte on the basis of affidavits, the Commission did not include a reference to preliminary restraining orders in paragraph (3) in subsection (f) of section 902.

The foregoing provisions of subsection (f) of section 902 adhere closely to section 1337(e) and section 1337(0(1)). There are several anomalies or omissions, however, which the Commission did not attempt to correct in subsection (f), since the Committee did not intend for the Commission to make substantive changes in the existing law.

The Commission notes first that section 1337(0(1) governing preliminary cease and desist orders is silent on the issue of whether the Customs Service or the Commission is responsible for administering such orders.²² Moreover, there is no provision anywhere in section 1337 for importations or sales under bond of imported articles covered by a preliminary cease and desist order, during the pendency of an investigation.

The Commission notes further that the plain language of section 1337(e)(2) indicates that the right to file a petition for preliminary relief and the prescribed deadline for adjudication of the petition apply only to petitions for preliminary exclusion orders. No similar provisions appear—in section 1337(e) or in section 1337(0—concerning the filing and adjudication of petitions for preliminary cease and desist orders. A person who is not familiar with section 1337 practice and procedure may conclude that a section 1337 complainant has the right to petition for a preliminary exclusion order, but not for a preliminary cease and desist order. V

²² The legislative history of section 1337 explicitly provides that the Commission "should look to the standards and procedures employed by the Federal district courts when they decide whether to issue preliminary injunctions," and that a preliminary exclusion order [and presumably, a preliminary cease and desist order] should not be granted without an inter varies hearing. H.R. Rep. No. 576, 100th Cong., 2d Sess. (1988) at 635; 133 CONG. REC. S10365 (July 21, 1987) (Statement of Sen. Lautenberg) and 144 CONG. REC. H2044 (Apr. 20, 1988). Moreover, section 1337(c) enables respondents to assert every available defense to a motion for preliminary relief. "All legal and equitable defenses may be presented in all cases." 19 U.S.C. § 1337(c).

²¹ The ITCTLA commented that this proposed revision "would conform paragraph (3) of section 902(f)] to other parts of section 1337 and to existing Commission practice."

²² The Commission currently administers such orders, in the same manner that it administers final cease and desist orders.

" The likelihood of confusion or misunderstanding is compounded by the fact that paragraph (3) of section 1337(e) indicates that the Commission may grant preliminary cease and desist orders to the same extent that it may grant preliminary exclusion orders—namely, "to the same extent as preliminary injunctions and temporary restraining orders may be granted under the Federal Rules of Civil Procedure." A person who is not familiar with
(continued...)

The Commission notes finally that authorization to require forfeiture of a complainant's preliminary relief bond appears in the legislative history of the 1988 amendments to section 1337, but not in the statute itself, and that the authorization applies expressly to bonds posted to obtain preliminary exclusion orders and does not mention bonds posted to obtain cease and desist orders.³⁴

Subsection (g) of section 902 pertains to judicial review and contains provisions of the current section 1337(c) dealing with judicial review of Commission determinations concerning violation of section 1337, whether there is reason to believe that section 1337 has been violated, the appropriate form of relief, and whether a complainant should be required to post a bond as a prerequisite to the issuance of a preliminary exclusion order. The Commission inserted a parenthetical description behind the cross-reference to section 706 of title V of the U.S. Code.²⁵

Subsection (h) of section 902 contains all existing provisions of section 1337 pertaining to the enforcement of or penalties for violations of final exclusion or cease and desist orders. It thus contains the text of the current section 1337(i) concerning seizure and forfeiture of articles imported in violation of a final exclusion order, as well the provisions of the current section 1337(0)(2) concerning civil penalties for violation of a final cease and desist order.

Subsection (i) of section 902 incorporates all provisions of the current section 1337(j), which concern referral of section 1337 remedial orders to the President for review.

The Commission notes that in section 1337(j)(1), there is an incongruity between the opening clause and the material in subparagraph (1)(B) as it relates to preliminary relief. Section 1337(e)(1) refers to the existence of a determination that there is reason to believe that a violation exists and that a preliminary exclusion order is an appropriate remedy. The language of the opening clause in section 1337(j)(1) suggests that the obligation to publish a notice in the Federal Register pursuant to subparagraph (1)(A) does not apply when the Commission has found reason to believe that a violation exists and that a preliminary cease and desist order should be issued. Subparagraph (1)(B) of section 1337(j) requires, however, that the Commission determination on reason to believe that a violation exists,

"(...continued)

section 1337 practice and procedure could read the aforesaid provisions to mean that while there is no provision for a party to petition for a preliminary cease and desist order, the Commission may issue such orders *ma sponte*—and within a time frame of the Commission's choosing, since the prescribed deadlines specifically apply to the adjudication of motions for preliminary exclusion orders.

³⁴ &it H.R. Rep. No. 576 at 635; 133 CONG. REC. S10365 (July 21, 1987) (Statement of Sen. Lautenberg) and 144 CONG. REC. H2044; H.R. Rep. No. 40, 100th Cong., 1st Sess. (1987) at 158-159.

" The Commission notes that, like section 1337(c), subsection (g) of section 902 does not specifically discuss the standards under which a reviewing court is to assess Commission determinations to require the posting of a bond by the complainant in a preliminary relief case.

the remedial order, and the administrative record must be forwarded to the President when the Commission has determined that a preliminary cease and desist order is an appropriate remedy, as well as when a preliminary exclusion order has been issued. To correct the aforesaid problem, the Commission drafted the opening clause of subsection (i) in section 902 to refer to the issuance of preliminary exclusion orders (section 902(0)(1)(A)) and preliminary cease and desist orders (section 902(0)(1)(13)).

The Commission notes that subsection (i) of section 902 adheres closely to the provisions of section 1337(j) and thus is missing certain information. Specifically, section 1337(j)(3) and, hence, subsection (i) of section 902 of subtitle IX, fail to make any provision for. (1) importations and sales under bond of imported articles covered by a final cease and desist order, while the order is being reviewed by the President; and (2) the posting, administration, and return or forfeiture of such bonds. Although section 1337 does not address those subjects, the Commission currently prescribes and administers bonds posted by respondents in connection with a preliminary or final cease and desist order prohibiting U.S. sales of the subject imported articles during the Presidential review period as a result of a ruling by the U.S. Court of Appeals for the Federal Circuit in connection with Investigation No. 337-TA-276, Certain Erasable Programmable Read Only Memories, Componenti Thereof. Products Containing Same and Processes for Making Such Mimes. The Commission has applied the provisions of interim rule 210.58(b) to the posting of such bonds, " and has decided whether to permit the return of such bonds based on the facts of each case.

Subsection (j) of section 902 contains the provisions of the current section 1337(k). No change was made in the arrangement of those provisions.

Subsection (k) of section 902 incorporates the provisions of the current section 1337(1). The Commission did not reorganize those provisions.

Subsection (l) of section 902 incorporates the current section 1337(m) (pefinition of United States). Unlike section 1337(m), however, subsection (l) does not contain a cross-reference to section 1340 of title 19 of the U.S. Code (section 340 of the Tariff Act of 1930). " The Commission made other changes as well. A parenthetical description was inserted behind the cross-reference to section 338 of title 19. Finally, at the suggestion of the Department of Commerce, "note 2" was substituted for "headnote 2" in the citation to the Harmonized Tariff Schedule of the United States (hereinafter HTS).

th re Atmel Corporation, Docket No. 89-1382, Unpublished Order dated Apr. 27, 1989, at 3-4 (writ of mandamus (1) requiring vacatur of cease and desist order that would have prevented respondents from selling their imported merchandise during the Presidential review period, and (2) authorizing issuance of modified order permitting sales under bond). (Seg dig 54 Fed. *Reg.* 19962 (May 9, 1989).)

" Interim rule 210.58(b)(3)-(8), 19 C.F.R. § 210.58(b)(3)-(8) (1993), governs the posting of a bond by the complainant as a condition precedent to the issuance of a temporary exclusion order under section 1337.

' That section, which dealt with the preparation of certain Commission reports to Congress, has been omitted from title 19 of the U.S. Code.

Subsection (m) of section 902 incorporates the current section 1337(n) **disclosure of confidential information**. The arrangement of section 1337(n) was not altered.

Sec. 903. Performance of Commission functions. Section 903 states that, for the performance of its functions under section 902, the Commission may exercise authority conferred by 19 U.S.C. § 2482 (section 603 of the Trade Act of 1974), which authorizes the Commission to conduct preliminary investigations, to consolidate proceedings, and to take other measures in the performance of its functions under various statutes.

In the past, when the Commission has used section 2482 in connection with section 1337, it has done so in order to conduct preliminary investigations to aid the Commission in determining whether to institute a section 1337 investigation and to enable the Commission to use compulsory process to obtain the necessary information when voluntary cooperation was not received. Many of the aforesaid section 2482 investigations terminated without further action by the Commission, but others resulted in a settlement and/or the issuance of a consent order, or institution of an investigation under section 1337.

In light of that precedent—and the fact that some members of the trade bar and other interested persons may not be aware of section 2482 and its application to section 1337—the Commission thought it appropriate to include a reference to section 2482 in subtitle IX of the proposed trade relief laws title.

**SUBTITLE X—ENFORCEMENT OF UNITED STATES RIGHTS
UNDER TRADE AGREEMENTS. RESPONSE TO CERTAIN FOREIGN
TRADE PRACTICES. AND OTHER MATTERS**

Sec. 1001. Applicability. This section is new, and states that subtitle X provides authority for (1) the enforcement of U.S. rights under international trade agreements, (2) responses to unjustifiable, unreasonable, or discriminatory foreign trade practices that burden or restrict U.S. commerce, and (3) other related purposes.

SM.1202.iiilkIZON110211akraill.11111tkitiC&Ca. Section 1002 inco/Ponttes the text of 19 U.S.C. § 2241 (section 181 of the Trade Act of 1974, as amended). That law requires the USTR to identify, analyze, estimate—and prepare annual reports to Congressional committees concerning—the impact foreign countries' acts, policies, and practices constituting significant barriers to or distortions of U.S. exports of goods and services and foreign direct investment by U.S. persons.

" Subsections (a) and (b) of section 2482 explicitly refer to the performance of functions under "this chapter." The historical notes to that reference indicate that this chapter covers section 1337, by virtue of the amendments and enactments to section 1337 provided in the Trade Act of 1974. See Historical Note to 19 U.S.C. § 2482—References in Text; Historical Note to 19 U.S.C. § 2101—References in Text; and Historical Note to 19 U.S.C. § 1337-1975 Amendment[s] [Provided by Pub. L. 96-39, is,, the Trade Act of 1974].

" The ITCTLA commented that "[t]he reference in Section 903 to Section 603 proceedings will improve the accessibility of Section 603 to those unfamiliar with the full scope of remedies available at the Commission."

In subsection (a), the Commission inserted parenthetical descriptions behind cross-references to sections 1872(a), 2171(d)(2), and 2155 of title 19.

Sec. 1003. Actions by United States Trade Representative. Section 1003 contains the text of 19 U.S.C. § 2411(a)-(c) (section 301(a)-(c) of the Trade Act of 1974, as amended). Those provisions authorize the USTR to take certain mandatory or discretionary actions, at the specific direction of the President, to enforce U.S. rights under international trade agreements and to respond to certain unfair foreign trade practices. The Commission did not rearrange the text of section 2411(a)-(c) before copying it into section 1003.

Sec. 1004. Definitions and special rules for sections 1003, 1005-1008, 1010-1013, 1014M, and 1015. Section 1004 contains the text of 19 U.S.C. § 2411(d) (section 301(d) of the Trade Act of 1974, as amended). That section consists of definitions for sections 2411-2420 of title 19 (sections 301-310 of the Trade Act). The Commission made no change in the text of section 2411(d) before copying it into section 1004.

Sec. 1005. Initiation of investigations. Section 1005 incorporates the provisions of 19 U.S.C. § 2412(a), (b)(1), and (c) (section 302(a), (b)(1), and (c) of the Trade Act of 1974, as amended). Those provisions contain authority and procedures for the institution of an investigation to determine whether the USTR should take action under section 1003 to enforce U.S. rights under international trade agreements and to respond to certain unfair foreign trade practices.

In paragraph (1) of subsection (b) of section 1005, the Commission inserted a parenthetical description behind the cross-reference to section 2155 of title 19.

Sec. 1006. Initiation of investigations. Section 1006 contains the text of 19 U.S.C. § 2413 (section 303 of the Trade Act of 1974, as amended). That provision requires the USTR to do the following:

1. Request consultation with the foreign country involved in an investigation under section 1003 of subtitle X;
2. Attempt to reach a mutually acceptable resolution of the dispute if a trade agreement is involved—or to initiate formal dispute settlement procedures under the agreement, if a mutually acceptable resolution cannot be reached by a prescribed deadline;
3. Seek information and advice from the petitioner, if any, and appropriate Congressional committees in preparing for consultations and dispute settlement proceedings; and
4. Delay requests for consultations (after consulting with the petitioner, if any).

In subsection (b), the Commission inserted a parenthetical description behind the cross-reference to section 2155 of title 19.

Sec. 1007. Determinations by the Trade Representative. Section 1007 incorporates the provisions of 19 U.S.C. 2414 (section 304 of the Trade Act of 1974, as amended). Those provisions do the following:

1. Govern determinations that the USTR is authorized to make in connection with investigations initiated under section 1005 of subtitle X and consultations or settlement proceedings initiated under section 1006;
2. Dictate the content, deadlines, notice requirements for such determinations; and
3. Describe discretionary or mandatory consultations that the USTR may or must undertake prior to reaching any of the subject determinations.

In subparagraph (2)(A) of subsection (a), the Commission added a parenthetical description of the subject matter of section 2503(c)(5) of title 19.

Sec. 1008. Implementation of actions. Section 1008 contains the text of 19 U.S.C. § 2415 (section 305 of the Trade Act of 1974, as amended). That section discusses the implementation of actions that the USTR is authorized to take under section 1003 of subtitle X of the proposed trade relief laws title, as well as the alternative actions that the USTR is authorized to take in certain cases of export targeting. The Commission did not alter the arrangement of the existing provisions of section 2415 before incorporating them in section 1008.

Sec. 1009. Foreign export requirements: consultations and negotiations for reduction and elimination: restrictions on and exclusion from entry of products or services: savings provision: compensation authority applicable. Section 1009 incorporates the provisions of 19 U.S.C. § 2114d (section 307(b) of the Trade and Tariff Act of 1984). Those provisions authorize the USTR to take action in response to export performance requirements of foreign countries that adversely affect the economic interests of the United States.

In paragraph (4), the Commission inserted a parenthetical description behind the cross-reference to section 2253.

Sec. 1010. Monitoring of foreign compliance. Section 1010 contains the text of 19 U.S.C. § 2416 (section 306 of the Trade Act of 1974, as amended), which requires the USTR to monitor foreign countries' compliance with each measure undertaken and each agreement entered into under section 1003 of subtitle X, to enforce U.S. rights under a trade agreement or to eliminate unjustifiable, unreasonable, or discriminatory foreign trade acts, policies, or practices that burden or restrict U.S. commerce. Section 1010 also authorizes the USTR to determine, on the basis of the aforesaid monitoring, whether further action is needed. The Commission did not alter the existing text of section 2416 before copying it into section 1010.

Sec. 1011. Modification and termination of actions. Section 1011 incorporates the provisions of 19 U.S.C. § 2417 (section 307 of the Trade Act of 1974). Those provisions govern the modification and termination of actions that the USTR has taken under section 1003 of subtitle X. The Commission did not rearrange the existing provisions of section 2417 before incorporating them in section 1011.

Sec. 1012. Request for information. Section 1012 contains the text of 19 U.S.C. § 2418 (section 308 of the Trade Act of 1974). That section authorizes the USTR to make certain information available upon receipt of a written request for information concerning (1) the nature or extent of a specific trade policy or practice of a foreign country with respect to particular goods, services, investment, or intellectual property rights, (2) U.S. rights under any trade agreement and the remedies available under that agreement and 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.

In subsection (c), a parenthetical description was inserted behind the cross-reference to section 552 of title 5.

Sec. 1013. Administration. Section 1013 incorporates the provisions of 19 U.S.C. § 2419 (section 309 of the Trade Act of 1974). Those provisions outline the USTR's responsibilities in the administration of sections 1003, 1005, and 1014(f) of subtitle X. The statutory responsibilities include (1) issuing regulations governing the filing of petitions and the conduct of investigations under section 1005 or 1014(f), (2) keeping the petitioner advised of all determinations and developments regarding the investigation, and (3) filing semiannual reports with the House of Representatives and the Senate. The Commission did not reorganize the existing provisions of section 2419 before copying them into section 1013.

Sec. 1014. Identification of countries that deny adequate protection, or market access, for intellectual property rig. Section 1014 is divided into subsections (a)-(f). Subsections (a)-(e) contain the provisions of 19 U.S.C. § 2242 (section 182 of the Trade Act of 1974, as amended). Those provisions require the USTR to identify (1) foreign countries that deny adequate and effective protection of intellectual property rights or fair and equitable market access to U.S. persons that rely upon intellectual property protection, and (2) "priority" foreign countries within that category. Subsection (f) contains the text of 19 U.S.C. § 2412(b)(2) (section 302(b)(2) of the Trade Act of 1974, as amended). That provision governs the USTR investigation of countries identified in accordance with section 2242. The Commission did not revise the existing provisions of sections 2242 and 2412 (b)(2) before incorporating them in section 1014.

Sec. 1015. Identification of trade liberalization priorities. Section 1015 of title X contains the provisions of 19 U.S.C. § 2420 (section 310 of the Trade Act of 1974). It requires the USTR to identify trade liberalization priorities, to initiate investigations of the priority practices so identified, and to seek to negotiate agreements for the elimination of, the reduction of, or the payment of compensation for such practices. Section 2420 also requires the USTR to file annual reports on the foregoing matters with the Senate Finance Committee and the House Committee on Ways and Means, and to publish in the &dual Register. The Commission did not reorganize the existing provisions of section 2420 before copying them into section 1015.

Sec. 1016. Definitions for sections 1017-1025. Section 1016 incorporates the text of 19 U.S.C. § 3102 (a provision of the Telecommunications Trade Act of 1988, ix,, section 1373 of the Omnibus Trade and Competitiveness Act of 1988). Section 3102 contains definitions for the Telecommunications Trade Act.

In the definition of the term "telecommunications product," the Commission inserted references to the HTS, in place of references to the Tariff Schedules of the United States.

Sec. 1017. Investigation of foreign telecommunications trade barriers. Section 1017 incorporates the text of 19 U.S.C. § 3103 (a provision of the Telecommunications Trade Act of 1988, Le., section 1374 of the Omnibus Trade and Competitiveness Act of 1988). Section 3103 authorizes the USTR to investigate foreign telecommunications trade barriers to identify priority foreign countries. Section 3103 also requires the USTR to file a report concerning each investigation with the President and with Congress. The Commission did

not reorganize the text of section 3103 before copying it into section 1017.

Sec. 1018. Neg • ' dons in response to investigation. Section 1018 contains the text of 19 U.S.C. § 3104 (a provision of the Telecommunications Trade Act of 1988, Lt., section 1375 of the Omnibus Trade and Competitiveness Act of 1988). Section 3104 authorizes the President to enter negotiations with foreign countries identified as priority foreign countries under section 1017 of subtitle X, for the purpose of entering into bilateral or multilateral trade agreements (or the modification of existing agreements) to achieve one or more prescribed negotiating objectives.

In subsection (a), the Commission deleted the reference to "part 1 of subtitle A" and replaced it with a reference to "part I of subtitle A of the Omnibus Trade and Competitiveness Act of 1988."

Sec. 1019. Actions to be taken if no agreement obtained. Section 1019 of subtitle X contains the text of 19 U.S.C. § 3105 (a provision of the Telecommunications Trade Act of 1988, Lt., section 1376 of the Omnibus Trade and Competitiveness Act of 1988). Section 3105 enumerates various actions that the President is authorized to take if he is unable to enter an agreement with a priority foreign country that achieves the prescribed negotiating objectives.

In subsection (a), the Commission replaced a reference to "subtitle A" with a reference to "subtitle A of the Omnibus Trade and Competitiveness Act of 1988."

In subsection (b), parenthetical descriptions were placed behind cross-references to chapter 1 of subtitle VI of the proposed trade relief laws title, section 1821 or 1351 of title 19, and 41 U.S.C. § 10a et seq..

Sec. 1020. Review of telecommunications trade agreement implementation by trade representative. Section 1020 of subtitle X incorporates the text of 19 U.S.C. § 3106 (a provision of the Telecommunications Trade Act of 1988, Lt., section 1377 of the Omnibus Trade and Competitiveness Act of 1988). Section 3106 requires the USTR to conduct an annual review of the operation and effectiveness of each telecommunications trade agreement negotiated under section 1018 of subtitle X that is in force with respect to the United States, as well as every other trade agreement concerning telecommunications products or services that is in force with respect to the United States. The Commission did not reorganize the existing provisions of section 3106 before incorporating them in section 1020.

Sec. 1021. Compensation authority. Section 1021 of subtitle X incorporates the text of 19 U.S.C. § 3107 (a provision of the Telecommunications Trade Act of 1988, Lt., section 1378 of the Omnibus Trade and Competitiveness Act of 1988). Section 3107 states that if the President has taken action under section 1019(a) with respect to any foreign country, and that action is found to be inconsistent with the international obligations of the United States, including the GATE, the President may enter into trade agreements with the foreign country in question, for the purpose of granting new concessions as compensation for the action taken under section 1019(a). The Commission did not rearrange the text of section 3107 before copying it into section 1021.

Sec. 1022. Consultations. Section 1022 of subtitle X contains the text of 19 U.S.C. § 3108 (a provision of the Telecommunications Trade Act of 1988, kr,, section 1379 of the Omnibus Trade and Competitiveness Act of 1988). Section 3108 directs the President or

the USTR to seek advice from other Federal agencies and departments, advice from the private sector, or consultations with Congress and official advisors in the performance of various functions under subtitle X.

In subsection (a), the Commission inserted a parenthetical description of the subject matter of section 1872 of title 19. The Commission also placed a parenthetical description in subsection (b) behind a cross-reference to section 2155 of title 19.

Sec. 1023. Submission of data: action to ensure compliance. Section 1023 of subtitle X contains the provisions of 19 U.S.C. § 3109 (a provision of the Telecommunications Trade Act of 1988, ~~is,~~ section 1380 of the Omnibus Trade and Competitiveness Act of 1988). Section 3109 requires the Federal Communications Commission (hereinafter FCC) to periodically submit to appropriate House and Senate committees data that the FCC has collected or otherwise made public concerning common carriers. Section 3109 also establishes conditions under which any product of a foreign country, that is subject to registration or approval by the FCC, may be entered--or withdrawn from a warehouse for consumption--in the Customs territory of the United States. Finally, section 3109 requires the Secretary of the Treasury to compile certain data into a summary that is to be made available to the public and submitted to Congress annually.

In subsection (b), a reference to "part 1 of subtitle A" was changed to "part 1 of subtitle A" of the Omnibus Trade and Competitiveness Act of 1988.

Sec. 1024. Study on telecommunications competitiveness in the United States. Section 1024 of subtitle X contains the provisions of 19 U.S.C. § 3110 (a section of the Telecommunications Trade Act of 1988, ~~is,~~ section 1381 of the Omnibus Trade and Competitiveness Act of 1988). Section 3110 requires the Secretary of Commerce, in consultation with the FCC and the USTR, to conduct a study of the competitiveness of the U.S. telecommunications industry and the effects of foreign telecommunications policies and practices on such industry. The study is to assist Congress and the President in determining what actions might be necessary to preserve the competitiveness of the U.S. telecommunications industry. Section 1024 thus requires the Secretary of Commerce to submit a report to Congress and the President, which sets forth the findings and recommendations reached by the Secretary of Commerce as a result of the study.

The Commission made no changes in the existing provisions of section 3110 before copying them into section 1024.

Sec. 1025. International obligations. Section 1025 of subtitle X contains the text of 19 U.S.C. § 3111 (a provision of the Telecommunications Trade Act of 1988, ~~is,~~ section 1382 of the Omnibus Trade and Competitiveness Act of 1988). Section 3111 states that nothing in certain provisions of subtitle X may be construed to require actions inconsistent with the international obligations of the United States, including the GATT. The Commission did not reorganize the text of section 3111 before copying it into section 1025.

Sec. 1026. Monitoring and enforcement. Section 1026 of subtitle X incorporates the text of 19 U.S.C. § 2515(d)-(k) (section 305(d)-(k) of the Trade Agreements Act of 1979, as amended). Those provisions require the USTR to prepare annual reports to Congressional committees concerning foreign countries that discriminate against U.S. products or services in making government procurements.

The Commission made several changes before incorporating the provisions of section

2515(d)-(k) into section 1026 of subtitle X: First, certain references to "the Agreement" in paragraphs (2)-(6) of section 2515(d) were changed to "the Agreement [on Government procurement]." The same change was made in sections 2515(e), 2515(0)(1), and 2515(i).

Other changes were made in section 2515(d) as well. In paragraph (3), an apparently erroneous cross-reference to "paragraph (1)" was changed to "paragraph (2)." The Commission also inserted a parenthetical description of the subject matter of section(a) 1872 of title 19.

In section 2515(f), the Commission inserted a citation to "[FNIPP]" in paragraph (1), since that citation appears in the original statute. In paragraph (2), the Commission also inserted a parenthetical description of the subject matter of section 1872(a) of title 19.

Sec. 1027. Investigation by the Trade Representative concerning contractors and suppliers from foreign countries which deny fair and

matigti. Section 1027 incorporates the text of Public Law 101-514, title V; § 511, Nov. 5, 1990, 104 Stat. 2098, and Public Law 101-516, title In, § 340, Nov. 5, 1990, 104 Stat. 2187, which are set forth in the Historical and Statutory Notes to 41 U.S.C.A. § 10b. Those provisions require the USTR to maintain a list of suppliers from foreign countries that deny market opportunities for U.S. products and services for construction contracts.

In subsection (a), the Commission replaced "this Act" with a citation to "the Airport and Airways Improvement Act (41 U.S.C. § 10b)." In paragraph (2) of subsection (b), a reference to "section 181(b) of the Trade Act of 1974 [19 U.S.C. § 2241(b)]" was changed to "section 1002(b) of this subtitle," to reflect the reorganization and renumbering of that provision in subtitle X of the proposed trade relief laws title.

³¹ Westlaw speculates that the citation probably should have been "(d)(2)(A)" in the original statute.

LIST OF STATUTES

Set forth below is a list of the existing statutes that are incorporated, in whole into each subtitle of the Proposed Trade Relief Laws Title.

Subtitle I — Global Safeguard Actions

**Chapter I of Title II (Sections 201-204) of the Trade Act of 1974, as amended
(19 U.S.C. §§ 2251-2254)**

**Section 330(d) of the Tariff Act of 1930, as amended
(19 U.S.C. § 1330(d))**

**Section 302(b) of the U.S.-Canada Free Trade Agreement Implementation Act
(19 U.S.C. § 2112 note)**

**Sections 403 and 404 of the Trade and Tariff Act of 1984
(19 U.S.C. § 2112 note)**

**Section 213 of the Caribbean Basin Economic Recovery Act
(19 U.S.C. § 2703)**

**Section 204 of the Andean Trade Preference Act
(19 U.S.C. § 3203)**

Subtitle II — Bilateral Safeguard Actioi

**Section 302(a) of the U.S.-Canada Free Trade Agreement Implementation Act
(19 U.S.C. § 2112 note)**

Subtitle III — Market Disruption From Communist Countries

**Section 406 of the Trade Act of 1974, as amended
(19 U.S.C. § 2436)**

Subtitle IV — safeguarding National Security

**Section 232 of the Trade Expansion Act of 1962, as amended
(19 U.S.C. §§ 1862 and 1864)**

Subtitle V -- Provisions Concerning Agricultural Products

**Section 204 of the Agricultural Act of 1956
(7 U.S.C. § 1854)**

**Section 22 of the Agricultural Adjustment Act of
1933, as amended
(7 U.S.C. § 624)**

Subtitle VI — Trade Preferences for Developing Countries

**Title V (Sections 501-506) of the Trade Act of 1974,
as amended
(19 U.S.C. §§ 2461-2466)**

**Sections 211-216 of the Caribbean Basin Economic
Recovery Act
(19 U.S.C. §§ 2701-2706)**

**Sections 202-208 of the Andean Trade Preference Act
(19 U.S.C. §§ 3201-3206)**

Subtitle VII — Antidumping and Countervail Duties

**Section 303 of the Tariff Act of 1930, as amended
(19 U.S.C. § 1303)**

**Subtitle A of Title VII (Sections 701-709) of the
Tariff Act of 1930, as amended
(19 U.S.C. § 1671 a ma.)**

**Subtitle B of Title VII (Sections 731-739) of the
Tariff Act of 1930, as amended
(19 U.S.C. § 1673 et mgi.)**

**Subtitle C of Title VII (Sections 751, 761 and 762)
of the Tariff Act of 1930, as amended
(19 U.S.C. § 1675 g mg.)**

**Subtitle D of Title VII (Sections 771-781) of the
Tariff Act of 1930, as amended
(19 U.S.C. § 1677 et sm.)**

**Section 1317 of the Omnibus Trade and
Competitiveness Act of 1988
(19 U.S.C. § 1677k)**

**Section 516A of the Tariff Act of 1930
(19 U.S.C. § 1516a)**

**Subtitle VIII -- Retaliatory and Other Relief For Certain
Discriminatory Foreign Practices**

**Antidumping Act of 1916
(15 U.S.C. § 71 g .)**

Subtitle IX -- Relief From Unfair Practices in Import Trade

**Section 337 of the Tariff Act of 1930, as amended
(19 U.S.C. § 1337)**

**Section 603 of the Trade Act of 1974
(19 U.S.C. § 2482)**

**Subtitle X -- Enforcement of United States Rights Under Trade
Agreements. Response to Certain Foreign Trade
Practices. and Other Matters**

**Section 181 of the Trade Act
of 1974, as amended
(19 U.S.C. § 2241)**

**Title III, Chapter 1 (Sections 301-310) of
the Trade Act of 1974, as amended
(19 U.S.C. §§ 2411-2420)**

**Section 307(b) of the Trade and
Tariff Act of 1984
(19 U.S.C. § 2114d)**

**Section 182 of the Trade Act of 1974
(19 U.S.C. § 2242)**

**Sections 1373-1382 of the Omnibus Trade and
Competitiveness Act of 1988
(provisions of the Telecommunications
Trade Act of 1988)
(19 U.S.C. §§ 3102-3111)**

**Section 305(d)-(k) of the Trade Agreements
Act of 1979, as amended
(19 U.S.C. § 2515(d)-(k))**

**41 U.S.C.A. § 10b--Historical and
Statutory Notes, Pub. L. 101-514, Title V,
§ 511, Nov. 5, 1990, 104 Stat. 2098; and
Pub. L. 101-516, Title M, § 340
Nov. 5, 1990, 104 Stat. 2187**

DERIVATION TABLE**Proposed Trade Relief Laws Title Source****SUBTITLE I**

Sec. 101	New
Sec. 102	Sections 202(b) and (d) of the Trade Act of 1974, as amended; and 302(b) of the U.S.-Canada FTA Implementation Act (19 U.S.C. §§ 2112 note, 2252(b), and (d))
Sec. 103	Sections 201(b), 202(a)(6)(A), (b), (c), and (d) of the Trade Act of 1974, as amended; and 302(b) of the U.S.-Canada PTA Implementation Act (19 U.S.C. §§ 2112 note, 19 U.S.C. §§ 2251(b), 2252(a)(6)(A), (b), (c), and (d))
Sec. 104	Section 202(a) and (d) of the Trade Act of 1974, as amended (19 U.S.C. § 2252(a) and (d))
Sec. 105	Section 202(a)(6)(B) and (a)(7) of the Trade Act of 1974, as amended (19 U.S.C. § 2252(a)(6)(B), and (a)(7))
Sec. 106	Section 202(b)(2), (b)(3), (d)(1), and (f)(1) of the Trade Act of 1974, as amended (19 U.S.C. §§ 2252(b)(2), (b)(3), (d)⁽¹⁾, and (f)⁽¹⁾)
Sec. 107	Section 202(b)(4) and (e)(5)(A) of the Trade Act of 1974, as amended (19 U.S.C. § 2252(b)(4) and (e)(5)(A))
Sec. 108	Sections 403(b) of the Trade and Tariff Act of 1984; 202(d), (e), and 203(e)(6) of the Trade Act of 1974, as amended; 213(e)(2) of the Caribbean Basin Economic Recovery Act, as amended (hereinafter CBERA); and 204(d)(2) of the Andean Trade Preference Act (19 U.S.C. §§ 2112 note, 2252(d), (e), 2253(e)(6)), 2703(e)(2), and 3203(d)(2))

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- Sec. 109** Sections 1330(d)(3) of the Tariff Act of 1930, as amended; 403(b) of the Trade and Tariff Act of 1984; 202(f) of the Trade Act of 1974, as amended; 213(e)(2) of CBERA; 204(d)(2) of the Andean Trade Preference Act (19 U.S.C. §§ 1330(d)(3), 2112 note, 2252(f), 2703(e)(2), and 3203(d)(2))
- Sec. 110** Section 202(a)(3), (d)(1), and (g) of the Trade Act of 1974, as amended (19 U.S.C. § 2252(a)(3), (d)(1), and (g))
- Sec. 111** Section 1330(d) of the Tariff Act of 1930, as amended (19 U.S.C. § 1330(d))
- Sec. 121** Sections 302(b) of the U.S.-Canada FTA Implementation Act; and 202(d) and 203(a)(1) of the Trade Act of 1974, as amended (19 U.S.C. §§ 2112 note, 2252(d), and 2253(2)(1))
- Sec. 122** Sections 202(d) and 203(a)(3) of the Trade Act of 1974, as amended (19 U.S.C. §§ 2252(d) and 2253(a)(3))
- Sec. 123** Sections 203(e) of the Trade Act of 1974, as amended; 403(b) of the Trade and Tariff Act of 1984; 213(e)(3)-(4) of CBERA; and 204(d)(3)-(4) of the Andean Trade Preference Act (19 U.S.C. §§ 2253(e), 2112 note, 2703(e)(3)-(4), 3203(d)(3)-(4))
- Sec. 124** Sections 203(a)(2) and 204(d) of the Trade Act of 1974, as amended (19 U.S.C. §§ 2253(a)(2) and 2254(d))
- Sec. 125** Sections 202(d), 203(a)(4), and (a)(5) of the Trade Act of 1974, as amended (19 U.S.C. §§ 2252(d), 2253(a)(4), and (a)(5))
- Sec. 126** Section 203(a)(5) of the Trade Act of 1974, as amended (19 U.S.C. § 2253(a)(5))

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Sec. 127	Section 203(b) and (c) of the Trade Act of 1974, as amended (19 U.S.C. § 2253(b) and (c))
Sec. 128	Section 203(f) of the Trade Act of 1974, as amended (19 U.S.C. § 2253(f))
Sec. 129	Section 203(g) of the Trade Act of 1974, as amended (19 U.S.C. § 2253(g))
Sec. 141	Section 204 of the Trade Act of 1974, as amended (19 U.S.C. § 2254)
Sec. 142	Section 302(b) of the U.S.-Canada FTA Implementation Act (19 U.S.C. § 2112 note)
Sec. 151	Sections 213(e) and (f) of CBERA; 204(e) and (f) of the Andean Trade Preference Act; 404 of the Trade and Tariff Act of 1984 (19 U.S.C. II 2112 note, 2703, 3203(e) and (f))
SUBTITLE II	
Sec. 201	New
Sec. 202	Section 302(a) of the U.S.-Canada FTA Implementation Act (19 U.S.C. § 2112 note)
SUBTITLE DI	
Sec. 301	New
Sec. 302	Section 406(a), (b), and (e) of the Trade Act of 1974, as amended (19 U.S.C. § 2436(a), (b), and (e))
Sec. 303	Section 406(b) of the Trade Act of 1974, as amended (19 U.S.C. §§ 2253 note and 2436(b))
Sec. 304	Section 406(c) of the Trade Act of 1974, as amended (19 U.S.C. § 2436(c))

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Sec. 305	Section 406(d) of the Trade Act of 1974, as amended (19 U.S.C. § 2436(d))
SUBTITLE IV	
Sec. 401	New
Sec. 402	Section 232(a) of the Trade Expansion Act of 1962, as amended (19 U.S.C. § 1862(a))
Sec. 403	Section 232(b)-(t) of the Trade Expansion Act of 1962, as amended (19 U.S.C. § 1862(b)-(0))
Sec. 404	Section 234 of the Trade Expansion Act of 1962, as amended (19 U.S.C. § 1864)
SUBTITLE V	
Sec. 501	New
Sec. 502	Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. § 1854)
Sec. 503	Section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. § 624)
SUBTITLE VI	
Sec. 601	New
Sec. 602	Sections 502(a)(4) of the Trade Act of 1974, as amended; 212(a)(1) and (b)(7) of CBERA; and 203(a)(2) and (a)(3) of the Andean Trade Preference Act (19 U.S.C. §§ 2462(a)(4), 2702(a)(1), 2702(b)(7), 3202(a)(2), and 3202(a)(3))
Sec. 611	Section 501 of the Trade Act of 1974, as amended (19 U.S.C. § 2461)

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Sec. 612	Sections 502, and 504(a) and (b) of the Trade Act of 1974, as amended (19 U.S.C. §§ 2462, 2264(a), and 2464(b))
Sec. 613	Sections 503, 504(a), (c), (d), (e), (f), and (g) of the Trade Act of 1974, as amended (19 U.S.C. §§ 2463, 2464(a), 2464(c), 2464(d), 2464(e), 2464(f), and 2464(g))
Sec. 614	Sections 504(a)(2) and (c)(2), 505(b) and (c) of the Trade Act of 1974, as amended (19 U.S.C. §§ 2464(a)(2), 2464(c)(2), 2465(b), and 2465(c))
Sec. 615	Section 506 of the Trade Act of 1974, as amended (19 U.S.C. § 2466)
Sec. 616	Section 505(a) of the Trade Act of 1974, as amended (19 U.S.C. § 2465(a))
Sec. 621	Sections 211 and 213(g) of CBERA (19 U.S.C. §§ 2701 and 2703(g))
Sec. 622	Section 212(a), (b), (c), and (e) of CBERA (19 U.S.C. §§ 2702(a), 2702(b), 2702(c), and 2702(e))
Sec. 623	Sections 212(e) and 213 (except (h)) of CBERA (19 U.S.C. §§ 2702(e) and 2703 (except (h)))
Sec. 624	Section 213(h) of CBERA (19 U.S.C. § 2703(h))
Sec. 625	Section 212(f) of CBERA (19 U.S.C. § 2702(f))
Sec. 626	Section 215 of CBERA (19 U.S.C. § 2704)
Sec. 627	Section 216 of CBERA (19 U.S.C. § 2705)

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Sec. 628	Section 218 of CBERA (19 U.S.C. § 2706)
Sec. 631	Sections 202 and 204(f) of the Andean Trade Preference Act (19 U.S.C. §§ 3201 and 3203(f))
Sec. 632	Section 203 (except (f)) of the Andean Trade Preference Act (19 U.S.C. § 3202 (except (f)))
Sec. 633	Section 204 (except (c)) of the Andean Trade Preference Act (19 U.S.C. § 3203 (except (c)))
Sec. 634	Section 204(c) of the Andean Trade Preference Act (19 U.S.C. § 3203(c))
Sec. 635	Sections 203(1) and 204(a) of the Andean Trade Preference Act (19 U.S.C. If 3202(f) and 3203(a))
Sec. 636	Section 206 of the Andean Trade Preference Act (19 U.S.C. § 3204)
Sec. 637	Section 207 of the Andean Trade Preference Act (19 U.S.C. § 3205)
Sec. 638	Section 208 of the Andean Trade Preference Act (19 U.S.C. § 3206)
SUBTITLE VII	
Sec. 701	New
Sec. 702	Sections 303, 701, and 731 of the Tariff Act of 1930, as amended (19 U.S.C. §§ 1303, 1671, and 1673)
Sec. 703	Sections 771(1)-(5), (8)-(10), (14)-(18)(A), and (18) of the Tariff Act of 1930, as amended (19 U.S.C. if 1677(1)45), (8)410), (14)-(18)(A), and (18))
Sec. 704	New

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Sec. 705	Sections 702 and 732 of the Tariff Act of 1930, as amended (19 U.S.C. §§ 1671a and 1673a)
Sec. 706	Sections 703 and 733 of the Tariff Act of 1930, as amended (19 U.S.C. §1 1671b and 1673b)
Sec. 707	Sections 705 and 735 of the Tariff Act of 1930, as amended (19 U.S.C. §§ 1671d and 1673d)
Sec. 708	Sections 771(7) and 771(11) of the Tariff Act of 1930, as amended (19 U.S.C. §f 1677(7) and 1677(11))
Sec. 709	Sections 701(d), 701(e), 703(g), 708, 771(5)(B), 771(6), 771(13), 771(18)(B), 771(19), 771A, 771B, 772, 773, 775, and 777A of the Tariff Act of 1930, as amended (19 U.S.C. §§ 1671(d), 1671(d) ¹, 1671b(g), 1671g, 1677(5)(B), 1677(6), 1677(13), 1677(18)(B), 1677(19), 1677-1, 1677-2, 1677a, 1677b, 1677d, and 1677f-1)
Sec. 710	Sections 704 and 734 of the Tariff Act of 1930, as amended (19 U.S.C. ft 1671c and 1673c)
Sec. 711	Sections 702(e), 703(e), 705(a)(2), 705(b)(4), 705(c)(3), 705(c)(4), 732(e), 733(e), 735(a)(3), 735(b)(4), 735(c)(3), and 735(c)(4) of the Tariff Act of 1930, as amended (19 U.S.C. §§ 1671a(e), 1671b(e), 1671d(a)(2), 1671d(b)(4), 1671d(c)(3), 1671d(c)(4), 1673a(e), 1673b(e), 1673d(a)(3), 1673d(b)(4), 1673d(c)(3), and 1673d(c)(4))
Sec. 712	Section 780 of the Tariff Act of 1930, as amended (19 U.S.C. § 1677i)
Sec. 713	Sections 733(b)(1)(B) and (C), and 739 of the Tariff Act of 1930, as amended (19 U.S.C. §§ 1673b(b)(1)(B) and (C), and 1673h)

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Sec. 714	Sections 774, 776, and 777 of the Tariff Act of 1930, as amended (19 U.S.C. §§ 1677c, 1677e, and 16770)
Sec. 715	Sections 706, 707, 709, 736, 737, and 738 of the Tariff Act of 1930, as amended (19 U.S.C. if 1671e, 1671f, 1671h, 1673a(a)(2), 1673e, 1673f, 1673g, 1677(12), 1677(20), 1677g, 1677h, and 1677j)
Sec. 716	Sections 751, 761, and 762 of the Tariff Act of 1930, as amended (19 U.S.C. *I 1675, 1676, and 1676a)
Sec. 717	Sections 516A and 777(f) of the Tariff Act of 1930, as amended (19 U.S.C. §§ 1516a and 1677f(f))
Sec. 718	Section 1317 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. § 1677k)

SUBTITLE VIII

Sec. 801	New
Sec. 802	Antidumping Act of 1916 (15 U.S.C. §§ 71 and 72)
Sec. 803	Antidumping Act of 1916 (15 U.S.C. §§ 73 and 74)
Sec. 804	Antidumping Act of 1916 (15 U.S.C. § 75)
Sec. 805	Antidumping Act of 1916 (15 U.S.C. I 76)
Sec. 806	Antidumping Act of 1916 (15 U.S.C. § 77)

SUBTITLE IX

Sec. 901	New
Sec. 902	Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337)

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Sec. 903	Section 603 of the Trade Act of 1974 (19 U.S.C. § 2482)
SUBTITLE X	
Sec. 1001	New
Sec. 1002	Section 181 of the Trade Act of 1974, as amended (19 U.S.C. § 2241)
Sec. 1003	Section 301(a)-(c) of the Trade Act of 1974, as amended (19 U.S.C. § 2411(a)-(c))
Sec'. 1004	Section 301(d) of the Trade Act of 1974, as amended (19 U.S.C. § 2411(d))
Sec. 1005	Section 302(a), (b)(1), and (c) of the Trade Act of 1974, as amended (19 U.S.C. § 2412(a), (b)(1), and (c))
Sec. 1006	Section 303 of the Trade Act of 1974, as amended (19 U.S.C. § 2413)
Sec. 1007	Section 304 of the Trade Act of 1974, as amended (19 U.S.C. 2414)
Sec. 1008	Section 305 of the Trade Act of 1974, as amended (19 U.S.C. § 2415)
Sec. 1009	Section 307(b) of the Trade and Tariff Act of 1984 (19 U.S.C. § 2114d)
Sec. 1010	Section 306 of the Trade Act of 1974, as amended (19 U.S.C. 2416)
Sec. 1011	Section 307 of the Trade Act of 1974 (19 U.S.C. § 2417)
Sec. 1012	Section 308 of the Trade Act of 1974 (19 U.S.C. 2418)

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Sec. 1013	Section 309 of the Trade Act of 1974 (19 U.S.C. § 2419)
Sec. 1014	Sections 182 and 302(b)(2) of the Trade Act of 1974, as amended (19 U.S.C. § 2242 and 2412(b)(2))
Sec. 1015	Section 310 of the Trade Act of 1974 (19 U.S.C. § 2420)
Sec. 1016	Section 1373 of the Omnibus Trade and Competitiveness Act of 1988 (a provision of the Telecommunications Trade Act of 1988) (19 U.S.C. § 3102)
Sec. 1017	Section 1374 of the Omnibus Trade and Competitiveness Act of 1988 (a provision of the Telecommunications Trade Act of 1988) (19 U.S.C. § 3103)
Sec. 1018	Section 1375 of the Omnibus Trade and Competitiveness Act of 1988 (a provision of the Telecommunications Trade Act of 1988) (19 U.S.C. 3104)
Sec. 1019	Section 1376 of the Omnibus Trade and Competitiveness Act of 1988 (a provision of the Telecommunications Trade Act of 1988) (19 U.S.C. § 3105)
Sec. 1020	Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 (a provision of the Telecommunications Trade Act of 1988) (19 U.S.C. § 3106)
Sec. 1021	Section 1378 of the Omnibus Trade and Competitiveness Act of 1988 (a provision of the Telecommunications Trade Act of 1988) (19 U.S.C. § 3107)

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Sec. 1022	Section 1379 of the Omnibus Trade and Competitiveness Act of 1988 (a provision of the Telecommunications Trade Act of 1988) (19 U.S.C. § 3108)
Sec. 1023	Section 1380 of the Omnibus Trade and Competitiveness Act of 1988 (a provision of the Telecommunications Trade Act of 1988) (19 U.S.C. § 3109)
Sec. 1024	Section 1381 of the Omnibus Trade and Competitiveness Act of 1988 (a provision of the Telecommunications Trade Act of 1988) (19 U.S.C. § 3110)
Sec. 1025	Section 1382 of the Omnibus Trade and Competitiveness Act of 1988 (a provision of the Telecommunications Trade Act of 1988) (19 U.S.C. § 3111)
Sec. 1026	Section 305(d)-(k) of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2515(d)-(k))
Sec. 1027	41 U.S.C.A. § 10b—Historical and Statutory Notes, Pub.L. 101-514, Title V, § 511, Nov. 5, 1990, 104 Stat. 2098, and Pub.L. 101-516, Title III, § 340, Nov. 5, 1990, 104 Stat. 2187

REVERSE CONCORDANCE

To determine where particular provisions of the United States Code appear in the draft trade relief laws title, consult the table below.

<u>Current U.S. Code cite</u>	<u>Draft trade relief title cite</u>
7 U.S.C. § 624	Sec. 503
7 U.S.C. § 1854	Sec. 502
15 U.S.C. § 71	Sec. 802
15 U.S.C. § 72	Sec. 802
15 U.S.C. § 73	Sec. 803
15 U.S.C. § 74	Sec. 803
15 U.S.C. § 75	Sec. 804
15 U.S.C. § 76	Sec. 805
15 U.S.C. § 77	Sec. 806
19 U.S.C. § 1303	Sec. 702(b)
19 U.S.C. § 1330(d)	Secs. 109(b), 111
19 U.S.C. § 1337(a)-(b)	Sec. 902(a)-(b)
19 U.S.C. § 1337(c) (first three sentences only)	Sec. 902(c)
19 U.S.C. § 1337(c) (last two sentences only)	Sec. 902(g)
19 U.S.C. § 1337(d)	Sec. 902(e)(1)(A), (e)(3)
19 U.S.C. § 1337(e)(1)	Sec. 902(0)(1)(A), (C)
19 U.S.C. § 1337(e)(2)-(3)	Sec. 902(0)(2)-(3)
19 U.S.C. § 1337(f)(1)	Sec. 902(e)(1)(B), (e)(3), (0)(1)(B) (C)
19 U.S.C. § 1337(f)(2)	Sec. 902(h)(5)
19 U.S.C. § 1337(g)(1)	Sec. 902(e)(2)(A), (e)(3)

<u>Current U.S. Code cite</u>	<u>draft trade relief title cite</u>
19 U.S.C. § 1337(g)(2)	Sec. 902(e)(2)(B)
19 U.S.C. § 1337(h)	Sec. 902(d)
19 U.S.C. § 1337(i)	Sec. 902(h)(1)-(4)
19 U.S.C. § 1337(j)	Sec. 902(i)
19 U.S.C. § 1337(k)	Sec. 902(j)
19 U.S.C. § 1337(l)	Sec. 902(k)
19 U.S.C. § 1337(m)	Sec. 902(l)
19 U.S.C. § 1337(n)	Sec. 902(m)
19 U.S.C. § 1516a	Sec. 717
19 U.S.C. § 1671	Sec. 702
19 U.S.C. § 1671(d) ¹	Sec. 709(c)(6)
19 U.S.C. § 1671a	Sec. 705
19 U.S.C. § 1671a(e)	Sec. 711(a)
19 U.S.C. § 1671b	Sec. 706
19 U.S.C. § 1671b(e)	Sec. 711(b)
19 U.S.C. § 1671b(g)	Sec. 709(c)(3)(E)
19 U.S.C. § 1671c	Sec. 710
19 U.S.C. § 1671d	Sec. 707
19 U.S.C. § 1671d(a)(2)	Sec. 711(c)(1)
19 U.S.C. § 1671d(b)(4)	Sec. 711(c)(2)
19 U.S.C. § 1671d(c)(3)-(4)	Sec. 711(d)
19 U.S.C. § 1671e	Sec. 715(a)
19 U.S.C. § 1671f	Sec. 715(b)

¹ Because there are two sections 1671(d) in the U.S. Code, the Code has designated one of them "1671(d)," relating to upstream subsidies, and the other as "1671(d)¹," relating to treatment of international consortia.

<u>Current U.S. Code cite</u>	<u>Draft trade relief title cite</u>
19 U.S.C. § 1671g	Sec. 709(c)(7)
19 U.S.C. § 1671h	Sec. 715(c)
19 U.S.C. § 1673	Sec. 702
19 U.S.C. § 1673a	Sec. 705
19 U.S.C. § 1673a(a)(2)	Sec. 715(h)
19 U.S.C. § 1673a(e)	Sec. 711(a)
19 U.S.C. § 1673b	Sec. 706
19 U.S.C. § 1673b(b)(1)(B)	Sec. 713(a)
19 U.S.C. § 1673b(b)(1)(C)	Sec. 713(c)(3)
19 U.S.C. § 1673b(e)	Sec. 711(b)
19 U.S.C. § 1673c	Sec. 710
19 U.S.C. § 1673d	Sec. 707
19 U.S.C. § 1673d(a)(3)	Sec. 711(c)(1)
19 U.S.C. § 1673d(b)(4)	Sec. 711(c)(2)
19 U.S.C. § 1673d(c)(3)-(4)	Sec. 711(d)
19 U.S.C. § 1673e	Sec. 715(a)
19 U.S.C. § 1673f	Sec. 715(b)
19 U.S.C. § 1673g	Sec. 715(c)
19 U.S.C. § 1673h	Sec. 713(b), (c), (d)
19 U.S.C. § 1675	Sec. 716(a)
19 U.S.C. § 1676	Sec. 716(b)
19 U.S.C. § 1676a	Sec. 716(c)
19 U.S.C. § 1677(1)	Soc. 703(b)
19 U.S.C. § 1677(2)	Sec. 703(c)
19 U.S.C. § 1677(3)	Sec. 703(d)

<u>Current U.S. Code cite</u>	<u>Draft trade relief title cite</u>
19 U.S.C. § 1677(4)	Sec. 703(e)
19 U.S.C. § 1677(5)(A)	Sec. 703(k)
19 U.S.C. § 1677(5)(B)	Sec. 709(c)(1)
19 U.S.C. § 1677(6)	Sec. 709(c)(2)
19 U.S.C. § 1677(7)	Sec. 708(a)-(c)
19 U.S.C. § 1677(8)	Sec. 703(a)
19 U.S.C. § 1677(9)	Sec. 703(f)
19 U.S.C. § 1677(10)	Sec. 703(g)
19 U.S.C. § 1677(11)	Sec. 708(d)
19 U.S.C. § 1677(12)	Sec. 715(e)
19 U.S.C. § 1677(13)	Sec. 709(b)(1)(C)
19 U.S.C. § 1677(14)	Sec. 703(j)
19 U.S.C. § 1677(15)	Sec. 703(i)
19 U.S.C. § 1677(16)	Sec. 703(1)
19 U.S.C. § 1677(17)	Sec. 703(n)
19 U.S.C. § 1677(18)(A)	Sec. 703(h)
19 U.S.C. § 1677(18)(B)-(E)	Sec. 709(a)(1)
19 U.S.C. § 1677(18) ²	Sec. 703(m)
19 U.S.C. § 1677(19)	Sec. 709(a)(2)
19 U.S.C. § 1677(20)	Sec. 715(i)
19 U.S.C. § 1677-1	Sec. 709(c)(3)(B)-(D)
19 U.S.C. § 1677-2	Sec. 709(c)(4)
19 U.S.C. § 1677a	Sec. 709(b)(1)

² Because there are two sections 1677(18) in the U.S. Code, the Code has designated the first as "1677(18)," relating to non-market economy country, and the second as "1677(18)³," relating to the U.S.-Canada Agreement.

<u>Current U.S. Code cite</u>	<u>Draft trade relief title cite</u>
19 U.S.C. § 1677b	Sec. 709(b)(2)
19 U.S.C. § 1677c	Sec. 714(a)
19 U.S.C. § 1677d	Sec. 709(c)(5)
19 U.S.C. § 1677e	Sec. 714(c)-(e)
19 U.S.C. § 1677f	Sec. 714(b)
19 U.S.C. § 1677f(f)	Sec. 717(0)(11)
19 U.S.C. § 1677f-1	Sec. 709(b)(3)
19 U.S.C. § 1677g	Sec. 715(0)
19 U.S.C. § 1677h	Sec. 715(g)
19 U.S.C. § 1677i	Sec. 712
19 U.S.C. § 1677j	<i>Sec.</i> 715(d)
19 U.S.C. § 1677k	Sec. 718
19 U.S.C. § 1862	Secs. 402, 403
19 U.S.C. § 1864	Sec. 404
19 U.S.C. § 2112 note	Secs. 102(d), 108(a), 109(b), 121(d), 142, 151, 202
19 U.S.C. § 2114d	Sec. 1009
19 U.S.C. § 2241	Sec. 1002
19 U.S.C. § 2242	Sec. 1014(a)-(e)
19 U.S.C. § 2251(a)	Sec. 121(a)(1)
19 U.S.C. § 2251(b)	Sec. 103(a)(7)
19 U.S.C. § 2252(a)	Secs. 103(e), 104(a), (c), 105, 110(a), 301(d)
19 U.S.C. § 2252(b)	Secs. 102(a), (c), 103(a), 106(a), 107(a), 301(c)
19 U.S.C. § 2252(c)	Secs. 103(a)-(d), 301(b)

Current U.S. Code citeDraft trade relief title cite

19 U.S.C. § 2252(d)	Secs. 102(b), 103(a), 104(b), 106(a), 108(b)-(c), 110(c), 121(b)-(c), 122(b), 125(a)
19 U.S.C. § 2252(e)	Secs. 107(b), 108(a), (d)
19 U.S.C. § 2252(f)	Secs. 106(b), 109(a)-(c)
19 U.S.C. § 2252(g)	Sec. 110(b)
19 U.S.C. § 2252(h)	Sec. 102(e)
19 U.S.C. § 2253(a)	Secs. 121(a), 122(a), 124(a), 125(a), 126
19 U.S.C. § 2253(b)	Sec. 127(a)
19 U.S.C. § 2253(c)	Sec. 127(b)
19 U.S.C. § 2253(d)	Sec. 125(b)
19 U.S.C. § 2253(e)	Sec. 108(d)(2), 123
19 U.S.C. § 2253(f)	Sec. 128
19 U.S.C. § 2253(g)	Sec. 129
19 U.S.C. § 2253 note	Sec. 302
19 U.S.C. § 2254(a)	Sec. 141(a)
19 U.S.C. § 2254(b)	Sec. 141(b)
19 U.S.C. § 2254(c)	Sec. 141(c)
19 U.S.C. § 2254(d)	Sec. 124(b)
19 U.S.C. § 2411(a)-(c)	Sec. 1003
19 U.S.C. § 2411(d)	Sec. 1004
19 U.S.C. § 2412(a), (b)(1), and (c)	Sec. 1005
19 U.S.C. § 2412(b)(2)	Sec. 1014(f)
19 U.S.C. § 2413	Sec. 1006
19 U.S.C. § 2414	Sec. 1007

Current U.S. Code citeDraft trade relief title cite

19 U.S.C. § 2415	Sec. 1008
19 U.S.C. § 2416	Sec. 1010
19 U.S.C. § 2417	Sec. 1011
19 U.S.C. § 2418	Sec. 1012
19 U.S.C. § 2419	Sec. 1013
19 U.S.C. § 2420	Sec. 1015
19 U.S.C. § 2436(a)	Sec. 302(a)-(f)
19 U.S.C. § 2436(b)	Sec. 303
19 U.S.C. § 2436(c)	Sec. 304
19 U.S.C. § 2436(d)	Sec. 305
19 U.S.C. § 2436(e)	Sec. 302(b)
19 U.S.C. § 2461	Sec. 611
19 U.S.C. § 2462(a)	Secs. 602(4), 612(a), (e)
19 U.S.C. § 2462(b)	Sec. 612(c)
19 U.S.C. § 2462(c)	Sec. 612(b)
19 U.S.C. § 2462(d)	Sec. 612(c)
19 U.S.C. § 2463(a)	Sec. 613(a)(1), (e)(1)
19 U.S.C. § 2463(b)	Sec. 613(a)(2)-(3)
19 U.S.C. § 2463(c)	Sec. 613(b)
19 U.S.C. § 2464(a)	Secs. 612(d)(1), 613(c)(1), 614(a)
19 U.S.C. § 2464(b)	Sec. 612(d)(2)
19 U.S.C. § 2464(c)	Secs. 613(c)(2), 613(d), 613(e)(2), 614(d)
19 U.S.C. § 2464(d)	Sec. 613(c)(2)(G)-(H)
19 U.S.C. § 2464(e)	Sec. 613(f)

<u>Current U.S. Code cite</u>	<u>Draft trade relief title cite</u>
19 U.S.C. § 2464(f)	Sec. 613(c)(2)(D)
19 U.S.C. § 2465(a)	Sec. 616
19 U.S.C. § 2465(b)	Sec. 614(b)
19 U.S.C. § 2465(c)	Sec. 614(c)
19 U.S.C. § 2466	Sec. 615
19 U.S.C. § 2482	Sec. 903
19 U.S.C. § 2515(d)-(k)	Sec. 1027(a)-(h)
19 U.S.C. § 2701	Sec. 621
19 U.S.C. § 2702(a)	Secs. 602(1)-(2), 622(a), (f)
19 U.S.C. § 2702(b)	Secs. 602(4), 622(b), (d)
19 U.S.C. § 2702(c)	Sec. 622(c)
19 U.S.C. § 2702(e)	Secs. 622(e), 623(c)
19 U.S.C. § 2702(f)	Sec. 625
19 U.S.C. § 2703(a)	Secs. 623(a), 623(e)
19 U.S.C. § 2703(b)	Sec. 623(b)
19 U.S.C. § 2703(c)	Sec. 623(d)(2)
19 U.S.C. § 2703(d)	Sec. 623(d)(3)
19 U.S.C. § 2703(e)	Secs. 108(a), 109(b), 623(d)(1)
19 U.S.C. § 2703(f)	Secs. 151, 623(d)(1)
19 U.S.C. § 2703(g)	Sec. 621
19 U.S.C. § 2703(h)	Sec. 624
19 U.S.C. § 2704	Sec. 626
19 U.S.C. § 2705	Sec. 627
19 U.S.C. § 2706	Sec. 628

<u>Current U.S. Code cite</u>	<u>Draft trade relief title cite</u>
19 U.S.C. § 3102	Sec. 1016
19 U.S.C. § 3103	Sec. 1017
19 U.S.C. § 3104	Sec. 1018
19 U.S.C. § 3105	Sec. 1019
19 U.S.C. § 3106	Sec. 1020
19 U.S.C. § 3107	Sec. 1021
19 U.S.C. § 3108	Sec. 1022
19 U.S.C. § 3109	Sec. 1023
19 U.S.C. § 3110	Sec. 1024
19 U.S.C. § 3111	Sec. 1025
19 U.S.C. § 3201	Sec. 631
19 U.S.C. § 3202(a)	Secs. 602(1)-(2), 632(a)
19 U.S.C. § 3202(b)	Sec. 632(b), (f)
19 U.S.C. § 3202(c)	Secs. 602(4), 632(d)
19 U.S.C. § 3202(d)	Sec. 632(c)
19 U.S.C. § 3202(e)	Secs. 632(e), 633(c)(1)-(2)
19 U.S.C. § 3202(f)	Sec. 635(a)
19 U.S.C. § 3203(a)	Secs. 633(a), 635(b)
19 U.S.C. § 3203(b)	Sec. 633(b)
19 U.S.C. § 3203(c)	Sec. 634
19 U.S.C. § 3203(d)	Secs. 108(a), 109(b), 633(c)(3)
19 U.S.C. § 3203(e)	Secs. 151, 632(c)
19 U.S.C. § 3203(f)	Sec. 631
19 U.S.C. § 3204	Sec. 636
19 U.S.C. § 3205	Sec. 637

Current U.S. Code cite

19 U.S.C. § 3206

41 U.S.C.A. § 10b--Historical and
Statutory Notes, Pub.L. 101-514,
Title V, § 511, Nov. 5, 1990,
104 Stat. 2098 and Pub.L. 101-516,
Title III, § 340
Nov. 5, 1990, 104 Stat. 218

Draft trade relief title cite

Sec. 638

Sec. 1027

APPENDIX A

Request Letter From House Committee on Ways and Means

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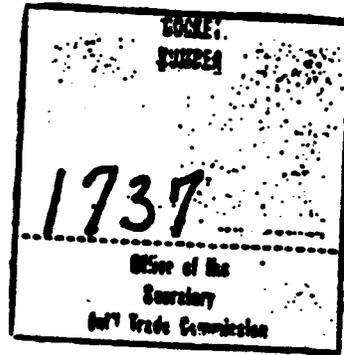
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20.11-11345

December 16, 1992

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MAP 1•111111. mom INV OP NW

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



92 DEC 21 AM 21

U.S. HOUSE OF REPRESENTATIVES

Dear Mr. Chairman:

As you know, current U.S. international trade relief law consists primarily of a series of statutes passed by Congress over the past sixty years, beginning with the Tariff Act of 1930. Although some of the legislation passed since enactment of the Tariff Act of 1930 amend that Act, some do not. This evolution of U.S. international trade relief law has resulted in a structure and organization of the law that sometimes leads to confusion and uncertainty as to how this law is to be applied.

In view of this, the Committee on Ways and Means believes it would be worthwhile for the Commission to prepare a report containing suggestions on ways to consolidate and simplify the organization of U.S. international trade relief law, without making procedural or substantive changes to such law. Accordingly, the Committee, under the authority of section 332(q) of the Tariff Act of 1930, respectfully requests that the Commission prepare such a report.

The report should contain suggested legislative proposals for consolidating and simplifying the organization of U.S. international trade relief law under which tariffs, countervailing and antidumping duties, or quantitative or other restrictions may be imposed on imports (other than the Harmonized Tariff Schedule). In particular, the Commission should seek to achieve: (1) the logical and accessible arrangement of the laws (2) the elimination of duplicative provisions; and (3) the elimination or simplification of anomalous or illogical provisions, but only to the extent this is possible without substantive or procedural changes to the existing provisions of law.

The Honorable Don E. Nevquist
December 16, 1992
Page 2

We leave it to the Commission's discretion which specific statutes to cover in the report, as long it covers all those laws under which tariffs, countervailing and antidumping duties, or quantitative or other restrictions may be imposed on goods imported into the United States.

As some of the provisions of law which will be covered by the report are administered by other agencies, such as the Department of Commerce and the Custom Service, we expect you to consult with those agencies and trust that you will receive their full cooperation.

We request that the Commission submit this report to the Committee by no later than January 1, 1994. Thank you for your cooperation on this important project.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Dan Rostenkowski". The signature is fluid and cursive, with a large initial "D" and "R".

Dan Rostenkowski
Chairman

DR/bwc

APPENDIX B

Notices Published in the Federal Register

Ines & Itivery 21.1e01.
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Commission has mashed en WW1
detewournon from the presiding officer
in the above copiloted investigation
terminating the following responsdow
on the bade of a settlement agreement
Lunsetsch. Ltd.:Kock Supplies. loc.:
and Carl Jorgensen Company.

euenesimirNre **PROMIATION** This
investiption is being conducted
pursuant to section 337 tithe Tariff Act
of 1930 (19 U.S.C. 1337). Threw the
Commission's nabs, the
officer's initial detarmination, ^{Prasi} **ti**
become the determined= tithe
Commission thirty (30) days saw the
data rifts service upon the parties,
unless the Commission orders review of
the initial determination. The initial
determined= in this wetter was served
upon parties on February 19, 1993.

Copies of the initial detamination.
the settlement agreement, and other
nonconfidential dornat filed in
connection with this investiption me
available Srinspection during official
burliness hours (11:45 a.m. to 5:15 p.m.)
in the 00ao of the Seastmy, U.S.
International Trade Commission, 300
Street, SW., Washington, DC 204311,
telephone (2.02) 205-2000.
if
impaired individuals are edy= that
information on this matter an be
obtained by contacting the
Commission's TOD terminal an (202)
205-1810.

rrteDUI **CONNORS:** Interested
may fits written comments with the
Commission concerning termination of
the dorementioned repondents. The
original and 14 copies of an such
documents must be filed with the
Secretary to the Commission, 500 fi
Street SW., Washington, DC 20430, no
liter than 10 days after publication of
this notice in the Federal =Lay
person desiring to submit •
(or portions thereof) to the Commission
in confidence must request confidential
treatment. Such requests should be —

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to Tanninate a Respondent

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AMMO Notice.

111/111NOV: Notice is hereby given that
the U.S. International Trade
Commission has determined not to
review the presiding a **we law**
Judge's (Ala initial deterwhatios (ID)
(Order No. 0) in the shoveawdoseel
investigation amending the notice of
inwedgetion to terminate orbit
Underground. d/b/a Orbit Sprinklers, as
a respondent

POR PUNTION INPONNIMON coma:
Robin L. Tuner. lin. Office of the
Genesal Counsel. U.S. hdomational
Trade Commission. SOO S Street, SW.,
Washington, DC 20430., telephone 2--
2054103.

SUPLIONSIORt INFORMATIONe OD
January 25, 1993, the ALI Issued an ID
a motion by complsinimts
industries. Inc. Dowel Inc., and
Duane Robotism to amend the
complaint and notice of inveadipeties to
terminate orbit Underground. d/b/s/
Orbit Sprinklers, as a respondent in the
investigation. Orbit is an
unincorporated division Proidak
Inc. No petitions kr review or
government *agency* moments were

This action is taken under the
authority of section 337 of the Tariff Act
of 1930, as amended (19 U.S.C. 1337),
and S 210.53(h) of the Commission's
Interim Rules of Practice and Procedure
(19 OrR 210.53(b)).

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Proposed Reonpednetion of U.S.
miser boner Trade Relief Lion
WM= Intometionel Trade
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=WPM: Following receipt an
December 10, 1002. of esequst from
the Committee on Ways and Moms,
U.S. House of Reppresotadves, the
Commission iastituted investiption No.
332,441. **Proposed Iltorgardsetioa of**
U.S. Interoatorsol node *iketjef Lairs,*
under section 332(g) of the Tariff Act of
1930 (19 U.S.C. 1322(0)).

OSUMI OA= Februaey 22, 1997.
POR PON01111 INPOISIONIN CONTACT:
For further infonnetiou. content P. N.
Smithey or William Cearbmt. Office of
the Gansul Counsel, U.S. International
Trade Conanesioo. telephone 203-305-
3051. Heerintimpaired individuals can
obtain further information by contacting
the Commission's TOD terminal at 202-
205-1010.

IPUPPLINAINTANY RIPOINIATIOte The
Committee's letter requested that the
Commission conduct a study and
promo areport conoreing the
proposed reolgennadon of U.S. trade
relief laws ender which tariffs
(including countswelling and
antidumping duties) or quandenws or
other import restrictions may be
imposed (other than thsHermonixed
Tariff Sthedule of the United Stain).
The Committee's letter also Winded
that the Commission's proposals should
seek to achieve the =**objectives:**
(1) The logical and
arrangement of the limn (2) sir
elimination of duplicative provision%
and (3) the elimination or simplicadon

of anomalous or MOW provisions, to the 011103 that this is possible without substantive or procedural changes to the existing provisions of Jew.

Most of the trade relief laws are currently set forth in this 19 of the United States Code. The Committee has indicated that the Commission's study is not to include the customs laws administered by the U.S. Customs Service or the laws governing the administration of the Commission err the Office dills thdted thaw Trade Representative. which are also set forth in title 19.

Some of the trade relief provisions that will be covered by the Commission's report are administered by other agencies. such as the U.S. Department of Commerce and the U.S. Customs Service. The Quondam, accordingly has directed the Commission to consult with those agencies in the mimetic= of the

The C ket report that will be issued at the conclusion of the study will have two parts. Part I will outline a Commission prepaid for reorganizing the relevant laws into 'moped import relief chapter for poodbb inclusion in title 19 the United States Cods. The text of the proposed chapter will be provided as well. Part II of the report will consist of a section-by-section analysis of the proposed import relief chapter.

Before preparing the report for submission to the Committee, the Commiedon will come& with the appropriate agencies and prepare a theft of the proposed Preto dampest The Cosomission expects to have the draft ready by late June of 1993 and will publish notice of its availability and opportunity for comment at that time. No public bradmg is scheduled in connecti&g this investigation.

rebrumy 22.1913.

By ardor al the Commission.

Paul L lades.

Acting &crafty.

In Doc. 9341118 Filed 3-3-43: :45 Gal mums 0001 formion

**RITERSTATE COMMERCE
COWAISSION**

Memo Desna No 322403

**Bradford Industrial Rail, inc.—
Acquisition and Opeation
Examption—Consondeted Rail
Corporation; Notice of Exemption**

Bradford industrial Reit. Inc. (Bin a noncarrier. has filed a verified notice under 49 CFR 1150 subpart D--Gtrept

Transactions to exempt its acquisition and operation of about 3.73 miles line owned by Consolidated Rail of mile Corporation (Conrail) milepost 11.5. at Rest bleated. BA. and milepost 13.33. at Bradford. PA. Is addition. Conrail will assign to ant its incidestel ar rights oar 15.11 miles at mil line owned by Buffalo & Mishmash Mated. between" milepost 107.9. Salmence, and milepost 121.3. new Bradford. The exemption beans effective February 4. 1993.¹

Genesee & Wyoming Weenies Inc.. has filed a petition for exemptlesin Mime Dou:ket 32241 to cm3tinue to control BRI an its beon ta !mist. Any comments must ba Led with the Commission and servedim: Cherie. D. Cramtan. of Herter. Secret & Emery, 700 Midtown Tower. Roctirsar.NY 14604.

If the verified notice contains false or misleading information, the exemption is void oh Milo. MMus to nook: the exemption under 49 U.S.C. 10505(d) may be filed at any dme. The Wing of a psalm) to woes %Motet automatically stay the toussection.

Decided: Vslevary 25. 19113.
By the Commissio. David ht. Yeardmils. Dime: Moe at Pmesediess.
Sidney L. ittridliMmi. Jr., ssawary.
IPR Doc. 93-4445 Filed 3-1-93; us sal
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**Cost ROWAN, Pereentege and Review
of lee General Purpose Costing
SPA =**

**MOM Interstate Commerce
Commission.**

ACDom: Adoption of individual carrier "make-whole" adjustments for use in rail costing.

messenr: The Commission has adopted. the ass of the so celled individual curler "make -whole" adjustments as ma& of the annual daddies of the (01P) and for inciusionlante URCTs phase ID costing program. The use of the individual carrier "make-whole" adjustments in CRP costing is suprited by both railroad and shipp interests party to these proasedinp. Comndesion

I mend* is die wield mak* id pp 3). ti* pseposed learclisas van Is Ion bius ameromisd sr hisury 4. 1013. [REDACTED] die lamplisald 00011.0 dole [REDACTED] added). Slaw dr "WIW aim ma did foram 1101. old ampliss did met Wm. slialive odd 7 days lbsimilir. at 701inissy a. dr lemselian mid ma love MR ammereried beim dim

believes that the Wed= of individual carrier Nmeke•whole" adjustments in the ORM Phase ID program will permit 1111110 dist do Dot barn actual dots to better estimate the higher costs of Angie car shipments.

SeRtsest uati Mile 19 MS.
FOR MANUS 1111'0111141RIN CONTACT: Thomas A. &Waits, (202) 927-5720. Jeff Warm, (202) 927-4242 (TED for hewing imparted: (202) 927-6721). SUPPLIWINTARY INPOINIA110111 Additional information is contained in the Commission's decision. To p scheme a copy of tlw full decision with to or cell, or pfd: up in person boom Dynamic Concepts. Inc.. room 2220. Intentate Commis. Cormehaion Washington. DC 20423, attUne (202) 200435714359. (Amiga= he the hemla&mpaired is mashie

services = 917.41721.) di M'hadieu will ine affect either the quality of the hums. environment Kemp coossivatiOo.

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lax Perm Ne.347(31111-410.2)1

**Rent Guidelines; Non.Cosi
Pressman.**

In • Notice of Proposed Guidelines ("NM") served November 10. 1992,157 FR 54252. November 17, 1992) we requested comments on three methods of evaluating the reasonableness of railroad fetes an nietivelylow-volume or infrequent sidpolents. Tibbs in the appendix of the NPG conedned the remits of celcukdoos used in developing two of the The shies on pages 8. falligitothe appso&bt have been revised to locorponite 1991 data and to correct 1113101.

Wst•awls that our NPG used both and individual carrier make. adjustments In developing costs. In a decision March 1. 1993 in Ex Parte No. 399. Cost Recovery Reuses.. a carrier sped& make-whole adjustment was adopted for all waybill costing exorcism As a midi ', this decision. all refuel= to and use of. regional make-whole adjustments in the NPG should

For further information contact: Thames A. Schmitz (202) 927-5720 or

Ily *ardor* et the Caneetheien.
Drama B. *Mils.* -
thaesthy.
OIt Doc. 13-10275 Flied 5-10-13; \$:45 sod
OWNS MORE 11111▶4111.

Ilevessligsslen No. 332-3411

**Proposed Reorganisation of U.S.
Internationd Trade Relief Laws**

aminvcv: international Trade
Commission.

MINN: Request for comments hom
other Federal epodes and interested
members of the public.

onmenr: The Commission hes
ff=daft of reorganized trade
possible inclusion in the
United States Cods. The draft consists of
existing trade relief laws, reorganized
and consolidated into • single title.
prepared pursuant to a mom* from the
U.S. House of IsmiuntMvas,
Committee on Ways and Means.

OA= Comments on the draft trade
relief laws title will be considered if
received on or before October 12, 1993.

moons= Copies of the daft trade
relief laws title may be obtained by
contacting the Once of the Secretary,
Docket Section, U.S. International Trade
Commission, 500 S Street SW., zoom
112, Washington, DC 20436. tthone
202-205-2000. A and 14
copies of each sat el comments on the
draft bade relief laws title should be
submitted to Donna it Unlinks,
Secretary, U.S. hdernational Tads
Commission, NO 8 Street SW., room
112, Washington, DC 20431.

FON WINN INFONIA11011 Cretracr: The
draft bade relief laws tide is divided
Into ten subtitles. OM indicated below.
Questions concerning subtitles I-VI
should be directed to Williams Combat
at 203-205-3091. Questions
subtitles YR and VW should : 1Z ==
to Ankdi Singh at 203-205-3117.
Questions cosorning subtitles IX and X
should be directed to P.N. Smithy it
202-205-3061. Heming-impaired •
individuals cm obtain information by
contacting the Commission's TDD
terminal at 202-205-1810.

911PPLINIIMINV INFONNA11011: The
subject investigation is being conducted
under section 332(g) of the Tariff Act of
1930 (19 U.S.C. 1332(0) to develop
legislative proposals consolidating
end simplifying the omissisn of U.S.
intonations' trade relief laws under
which tariffs or quantitative or other
poet nut:intims may be imposed
(other than the Harmonised Tariff
Schedule of the United States). The
.investiption was instituted at the

request of the U.S. Houseof
Committee an Ways
tilksients (the Committee). See 58 FR
12233 (bier. 3,199.3).

The report that the Commission will
forward to the Committee at the
conclusion of this investiption will •
conk& (1) a Commission proposal foe
reorganising trade relief laws into a
proposed trade relief laws title for
possible inclusion in the United States
Code. (2) the text of the proposed bade
relief laws title. and (3) a sectioniby-
peptic, analysis of the test.

The Commission has prepaid a drift
of the pror bade Mall on title doe
comment intimated members of the
public and other Fedmal agencies
and departments. The Committee gave
the Commission dimities to determine
which statutes to cover in the report and
the proposed trade relief laws title. Set
forth below is a list of the Mendes t hat
we incorporated, in whole or partvinto
sash subtitle of the draft trade relief
laws title.

Subtitle I--Positive Adjustment *
Industries Injured Byimports
I of Title II (sections 201-204)

a2tre Trade Act of 1974, as
amended (19 U.S.C. 2251-2254).

Section 330(d) of the Tariff Act of
1930, as amended (19 U.S.C.
1330(d))

Section 302(b) of thoU.S.-Cenecla
Free Trade Agreement
implementation Act (19 U.S.C. 2112
note)

Sections 403 and 404 of the Trade and
Tariff Act of 1964 (19 U.S.C. 2112
note)

Section 213 of the Caribbean Basis
Economic Raceway Act (19 U.S.O
270³)

Secdon 204 of the Andean Trade
Prumal Act (19 U.S.C. 3203)

Subtitle 11-BilateralActions

Section 302(a) of the U.S.-amide Free
Trade Armament implementation
-Act (19 U.S.C. 2112 note)

Subtitle DI-Relief Prom Imports Prom
Communist Counties

Section 406 of the Trade Act of 1974,
as amended (19 U.S.C. 2436)

Subtitths N-National Security Import
Restrictions

Section 232 of the Trade
Act of 1962, as amended = - C -
1892, 1964)

Subtitle V-Provisions

Apiculture! and Itit'eZucts
Section 204 of the Apiculture' Act of
1958 (7 U.S.C. 1854)

Section 22 of the Agriodnuat
AdiuMment Act of 1933, as
mended (7 U.S.C. 624)

Subtitle VI-Trade Pteferences for
Countrthes

Tire ;1⁴2P osse 501;4011) of the

TradoAc•of 1974, as amended (19
U.S.C.'2461-2466)

Sections 211-211 of the Caribbean
Basin-Economic Raceway Act (19
U.S.C. 2701-2706)

Sections 202-208 of the Aruba
Trade Paine= Act (19
3201-3206)

Subtitle VII•Antidumping and
DutJse

Section 302 of the Tariff Act of 1930,
as amended (19 U.S.C. 1303)

Subtitle A. of Title VII (section 701-
709) of the Tariff Act of 1930, as
amended (19 U.S.C..101 at seq.)

Subtitle 8 of litle VII (sections 731-
739) of the Tariff Actof 1930, as
mounded (19 U.S.C. 1673 et seq.)

Subtitle C of ?kb VII (sections 751.
-761 and 762) of the Tariff Act of

1930, as amended (19 U.S.C. 1675
st seq.)

Subtitle D of T u VII (sections 771-
781) of the Tariff Act of 1930, as
amended•(19 U.S.O 1677 et seq.)

Section 1317 of the Omnibus Traci*
and Competitiveness Ad of 1988
(19 U.S.O 1677k)

Section 516A of the Tariff Act of 1930
•(19 U.S.C. 1516a)

Subtitle VIM-Antidumping Ad 011116
Antidumping Act of 1916 (15 U.S.C.
71 et

&shads ID-Relief From Unfair
Practices in Import Trade

Section 337 of the TIM Act of 1930,
as amended (19 U.S.C. 1337)

Section 603 of the Trade Act of 1974
(19 U.S.C. 2492) •

Subtitle X--Enforcement of United
States Rights Under runde-
Agmements..Response to Certain
Foreign Dade Practices. and Other
Platters

•Section 181 of the Trade Act of 1974,
as amended (19 U.S.C. 2241)

Title m.Chapter 1 (sections 301-310)
of the 'bade Act of 1974, as
amended (19 U.S.C. 2411-2420)

Section 307(b) of the Trade end Tariff
AO of 1994 (19 U.S.C. 2114d)

Section 182 of the 'Dade-Act of 1974
(19 U.S.C. 2242) •

Secdans 1373-1382 of the Omnibus
Trade and Competitiveness Act of
1988 (provisions of the

Telecommunications Trade Act of
1988) (19 U.S.C. 3102-3111)

Section 305(d)(k) of the Trade
Agreements Ad of 1979, as
amended (19 U.S.C. 2515(d)-(k))

41 U.S.C.A. 10b-Historical and
Statutory Notes, Public Law 101-

514, tftb 511, Nov. 5, 1990, 104
Stat. 2096 and Public Law 16.

Title M. 340 Nov. 5, 1990, 104 stat.
2187

The Committer instructed the
Coimmission to seek to achieve the

following objectives in the proposed reecombtion of dos ablest trade relief lawn (2) logical and accessible mmegareent of the law; (2) the eliminstion of duplicative peovissionn and (3) the elimination sr simplilostion of anomalous or illogical provisions, but only to the wont that ~~ed:=-ible~~ without substantive or chops to the existing provinces of law.

Each subtitle of the *daft* trade relief laws Mb accordingly reflects some or or all of*. following: 11) reensapment of existing statutory provisiao sublect mitts; (2) the doled= of alms= to obsolete lawn (3) the addition of short deadpan heading or subbsedinp to various sections or subsection; (4) the inaction tibia(proandotical descriptions behind aossieferances to various provisions: the the lateleherhill of section; (9) the deletionef excess voridep and duplicative porvisioet (7) the eighth* fenninology to conform to amine law and 01) the widen of amorainences to pasticider statuti toconerpsod to the mosgenbatimi and renumbeeing of those statutes in the theft trade relief laws tide. The Commission sedeavored to make no =batmen or procedural changes in editing statutory provisions that wale reorganised in that meaner.

lased: August 5.1913.

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INTERSTATE COMMERCE COMMON

of lbwreninental Asesements

Pureusot to 42 U.S.C. 4332. the Coninamiou has prepared and made available envinimentslesessmments for the listed below. Dates an aseateemnts are mashie wo Hated below for esch individual PProceeding.

Tobtain copies of these envircoumenta asesements aided Ms. Johnnie Davis or Ms. Towson Glover-Sandals, interstate Commerce Commission. Section of ftmarld _ Environment. room 3219. W DC 20423. (202) 227-5750 ecT20271724-6212.

Comments on the esseement are due 1\$ days the date of availability.

AB-55 (Sub.No. 45117Q, CSX Transpadation. hoc. Abandonment in

Fannin County. Georgia. EA aveilehls/ at9L

Comments on the seeseneent are dus 30 days the date of availability.

AB-55 (Sublio. 459), CSX Trumpartation. hara--Abendoninnt Between South Bard revue and North Sevens& in Jasper County. SC end Chatham County. GA. EA available lit3/93.

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PR Doe. 93-19256 Plied 9-10-1113; 11:46mai NUM ease 1111164841

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acc Tiaosporistios, lac. (CSXT) has Sled a nodes of exemption under CPR 1152 Subpart F--Enempt 49 Abandonments to abandon Its approximately 1.511-mile line of raikoeed between milepost CO-12.73 and 03-14.31 near Could. in Laces County, OH.

CSXT has certified that (1) No local trams has reeved over the Sae far at best years; (2) thme is no overhead traffic on the lint (2) no fewel complaint Sled bars user of red novice on the line (er a Stets or local pvammen acting on bah& of suchnw) cessionet of service over the line either priding with the Commission or with any U.S. District Court or hes been deMed in beer of the complehiont within the 2-year mied: and (4) the requirements at 49 CPR 1105.7(b) (service of andronmestal report an egoncies). 49 CFR 2105.11 (service DIMON& mod as State Historic Preservation Mar), 49 CFR 1105.12 and 49 CFR 1152.501

and 49 CFR 1152.501 ~~and~~ verified notice on govemosntal agendas) have boss soot.

Asa condition to use of this exemption. any employee affected by the abandonment shell be protected under Oregon Short Line R. Co.— Abendooment-TGoshen, 310 LC.C. 91 (1979). To address whether this condition adequately protects affected

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employees. • punkt= for mond= under 49 U.S.O 10505(d) must be filed.

Provided no hood expordnon of intent to fib an offer of financial assistance (CPA) has been received. this nienapdon will be effective oci Serambor 10. 1993. unless stayed peading recoosidmation. Petitions to stay thst do nm involve mei:cements' Immo fouled expiessions of intent to file an OM under 49 CPR

113227(4(2). and trail awing blab* natemnote under 49 Cra num must be filed by August 23.1393.4 "Widow to reopen or requests for puldic use conditions under 49 CPR 1152.21 meet be filed by August 31. 1103. with: Mike piths Secretary, Coes Control Branch. interatiste Commerce Comodssion. liteeldniton. DC 20.23.

A copy deny petition filed with the Commission idaould be sent to applicant's Charles M. Roesntrages. Tomeportation.bm. 500 Water Street, MO, lockeonville. 32202.

lithe Dodos of exemption cantai ■ e fain or tobleading informsdam. ow el the exemption is void

Applicant has Sled an eaviromminal report which Weems. the abesdeomr. elects. Haw. en the eavisumestal or historic sesoinam..111* 34diss ind ilsvinimat (3111101,111 pavn aneavkanessoml aseornment (SA) by Aupast 2/1. 21193. intoredsted person' may obtains copy of the EA. by writing to =boom 3219. tolosente Canimas Commission. Washington. DC 20423) ashy callhig Mass batiase. Chid. =Bat (M) 527-535\$ Co mots as 4111111111111111151 and hineric pesespradee nation must be Sled wields 25 days atm the Elk becomes available to the public.

lhovironmentd. historic public use. or trail usehail 111114 cooditiows will be imposed. where apprepieter ins subsequeet decides.

Decided: Mope 3.1103.

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APPENDIX C

**Comments on Draft Text
Received From U.S. Government Agencies
and from the Public**



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ENF,

October 8, 1993

Donna R. Koehnke
 Secretary
 U.S. International Trade Commission
 Washington, D.C. 20436

Dear Ms. Koehnke:

I am pleased to provide the comments of the U.S. Department of Commerce regarding the draft reorganization of the trade relief laws. At the outset, I should note that the individuals responsible for preparing the draft should be congratulated, because, with the exception of the few comments noted below, they have managed to reorganize the trade relief laws in a more logical manner without affecting the substance of the relevant provisions.

As for the specifics of the draft, our comments are as follows:

1. In proposed section 301, subsections (e) and (f) perhaps should be reversed. Subsection (e) refers to what must be included in a report to the President, the requirement of which does not occur until subsection (f).
2. Proposed section 302 sets out language imported from two statutes as they existed immediately before enactment of the Omnibus Trade and Competitiveness Act of 1988, as per current law. We favor this approach as being the least cumbersome among various drafting alternatives.
3. In proposed section 303, subsection (a) repeats a phrase, "referred to in subsection (b)", that makes sense in the current statute but would not in the new formulation. This reference needs to be reexamined.

Subtitle VII: Antidumping and Countervailing Duties

- I. In proposed section 706(b)(2)(B) (dealing with the time period for preliminary countervailing duty determinations by Commerce), the reference should be to subparagraph (b)(2)(A) rather than paragraph (b)(2).
2. In proposed section 714(c)(2)(A) (dealing with conditional payment of antidumping or countervailing duties), the word "proceedings" should be used instead of "investigations."
3. In proposed section 714(c)(2) (dealing with conditional payment of antidumping or countervailing duties), existing

section 738(b) (3) of the Tariff Act (dealing with statements under oath to Customs officials) appears to have been deleted.

4. Existing section 701(e) of the Tariff Act (dealing with upstream subsidies) appears to have been deleted. Although the drafters may have believed that this provision merely duplicated other provisions in the current statute dealing with upstream subsidies, the Department has construed this provision as *establishing an* initiation standard for upstream subsidies which is higher than the standard for normal subsidies. Therefore, we believe that the language of section 701(e) should be retained.

As a drafting matter, we suggest that clauses (i)-(iv) of section 708(b) (3) (C) of the draft be renumbered as clauses (ii)-(v), and that the language of current section 701(e) be inserted as a new clause (i).

5. We are a bit troubled by the repeated use in the draft of variations on the formula "antidumping duty, countervailing duty, or both." Our concern is that notwithstanding the disclaimer in section 701 of the draft, someone might attempt to argue that a single proceeding can encompass both antidumping and countervailing duty claims. On the other hand, we appreciate why the drafters chose this formula, and we think that a review of the entire draft establishes that antidumping and countervailing duty proceedings remain separate proceedings. Nevertheless, to nail this point down and preclude any possibility of litigation, we suggest that any legislative history accompanying the reorganization state that the use of this particular drafting formula is not meant to suggest that antidumping and countervailing duty matters can be considered in a single, unified proceeding.

Subtitle IX: Relief from Unfair Practices in Import Trade

1. In proposed section 901, the words "the United States international import trade" should be changed to read "United States import trade".

2. In proposed section 902:

a. ", United States Code" should be added at the end of subsection (a) (1) (B) (iii).

b. In subsection (e) (3), the second "or" should be "and".

c. In subsection (f) (1) (C), the second "or" should be "and".

d. In subsection (1), "headnote" should be "note".

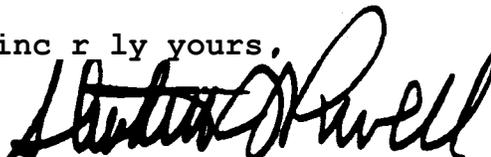
3. In proposed section 903, the phrase "scope of manner" should read "scope and manner".

Subtitle X: Enforcement of United States Rights Under Trade
Agreements. Response to Certain Foreign Trade Practices. and
Other Matters

1. Proposed section 1002(b)(2)(A) should be followed by "; and".
2. In proposed section 1003(a)(1), a comma is needed following the word "section" in the seventh-to-last full line.

we appreciate the opportunity to comment on the draft reorganization, and we hope that you will find our comments helpful.

Sincerely yours,



Stephen J. Powell
Chief Counsel
for Import Administration

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OCT i Z

The Honorable Don E. Newquist --
 Chairman
 United States International Trade Commission
 Washington, D.C. 20436

Dear Chairman Newquist:

352 341

This is in response to your request for our comments on the draft reorganization of the trade relief laws that the Commission has prepared under section 332(g) of the Tariff Act of 1930.

The Department of Labor proposes that subtitle I of the Commission's draft reorganization of the trade relief laws be revised to include the provisions related to adjustment assistance for workers contained in title II of the Trade Act of 1974, 19 U.S.C. 2251, et seq.

The Commission prepared the draft reorganization of trade relief laws in response to a request from the House Ways and Means Committee, which stipulated only that the reorganization include all those trade relief laws under which tariffs, Countervailing and antidumping duties, or quantitative or other restrictions may be imposed on goods imported into the United States. However, the Committee specifically gave the Commission discretion regarding whether to include other statutes in the reorganization.

We recommend that the TAA provisions of the Trade Act of 1974 be included in subtitle I of the draft reorganization notwithstanding the fact that the TAA program does not result in import restrictive measures. The TAA worker relief provisions were originally codified in proximity to the industry relief provisions because they were considered to be an integral part of the Federal import relief program. This reason for proximity has not changed. The TAA program was recently reauthorized for an additional five years, and there are no current proposals to repeal the TAA provisions.

We have no other comments on the draft reorganization of trade relief laws. Thank you for giving us this opportunity to present our views on this important project.

Sincerely, _

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Zahn D. Donahue



United States DepernsantoftStaan

Waskingsea, D.C. 20520

OCT 18 1993

Dear Ms. Koehnke:

This letter responds to your August 17, 1993 correspondence requesting that the State Department review the ITC's Proposed Reorganization of U.S. International Trade Relief Laws.

The State Department has carefully reviewed the draft document and finds the ITC's proposal for consolidating and simplifying U.S. international trade relief laws to be both clear and helpful. Logically arranging the law and eliminating or simplifying anomalous or illogical provisions makes applying U.S. trade relief measures a simpler, more efficient, more transparent process.

The State Department appreciated the opportunity to review and comment on the proposed reorganization and we look forward to providing such input and assistance in the future.

Sincerely,

A handwritten signature in cursive script that reads "Joanna R. Shelton".

Joanna R. Shelton
Dusky Assistant Secretary
for Trade and Commercial Affairs

Ms. Donna R. Koehnke,
Secretary,
United States International Trade Commission,
Washington, D.C.

cc: Ms. Lynn Schlitt
General Counsel
U.S. International Trade Commission



DEPARTMENT OF THE TREASURY
WASHINGTON

OCT 15 1993

**The Honorable Donna R. Koehnke
Secretary of the International
Trade Commission
Washington, D.C. 20436**

Dear Madam Secretary:

In response to your letter of August 16, 1993, the Department of the Treasury has reviewed the draft reorganization of the trade relief laws prepared by the Commission under Investigation Number 332-341, under section 332(g) of the Tariff Act of 1930.

In our view, the ITC has done an excellent job in consolidating and simplifying the organization of U.S. international trade relief laws, without substantive or procedural changes to the existing provisions of law. The Department has no substantive comments on the draft.

Sincerely,

**/14—aeiviete
Russell L Munk
Assistant General Counsel
(International Affairs)**

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November 2, 1993

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209618 SFR

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

Dear Mr. Chairman:

This letter responds to your request regarding Investigation No. 322-341, Proposed Reorganization of U.S. International Trade Relief Laws.

Enclosed are comments generated after analysis of the draft submitted to Customs for review. The comments on draft Subtitle VI (Trade Preferences for Developing Countries) and Subtitle IX (Relief from Unfair Practices in Import Trade) were prepared by the Office of Regulations and Rulings which administers the provisions contained in those subtitles.

Questions regarding Subtitle VI may be directed to the Special Classification Branch (202) 482-6980. Questions regarding Subtitle IX may be directed to the Intellectual Property Rights Branch (202) 482-6960.

Sincerely,

George J. Weise
Commissioner

Enclosure

C-10

UNITED STATES GOVERNMENT
Memorandum

DEPARTMENT OF THE TREASURY
 UNITED STATES CUSTOMS SERVICE



DATE: AV 2 1 112

FILE: CLA-2 CO:R:C:S
557566 MLR

70 : Chief, intellectual Property Rights Branch

FROM : Chief, Special Classification Branch

SUBJECT: Proposed Reorganization of U.S. International Trade
Relief Laws - Subtitle VI -- Trade Preferences for
Developing Countries

This is in reference to the proposed reorganization of U.S. International Trade Relief Laws. It is proposed to organize the Generalized System of Preferences (GSP) (19 U.S.C. 2461-2466), the Caribbean Basin Economic Recovery Act (CBERA) (19 U.S.C. 2701-2706), and the Andean Trade Preference Act (ATPA) (19 U.S.C. 3201-3206), as Subtitle VI, entitled "Trade Preferences for Developing Countries."

The changes that are made basically involve: the creation of two new sections that define terms applicable to the GSP, CBERA, and ATPA: the reorganization of certain sections so that the provisions are more logically tied together; the rewording of certain sentences; and the relocation of those **provisions that** pertain to the actions of the United States Trade Commission to Subtitle I.

Most of the same changes were made to the GSP, CBERA, and ATPA statutes. For example, the definition of a beneficiary country and the requirement that the President notify the House of Representatives and Senate of his intention to designate a country as a beneficiary country are separated into two different sections. The provisions that pertain to those countries that are eligible for designation as beneficiary countries and those that are ineligible for designation are now separated. The sections that address the suspension of a **country** as a Beneficiary country and the suspension of an article from receiving duty-free treatment are divided. The provisions that refer to the suspension of an article from duty-free treatment now follow the sections that discuss which articles are eligible for duty-free treatment. The provisions that pertain to which articles are eligible for duty-free treatment are also reorganized to, first, list the requirements necessary to receive duty-free treatment, such as the direct costs of processing, followed by what those direct costs include, rather than stating which operations are not sufficient. The special provisions

c-11

- 2 -

pertaining to Puerto Rico are also separated from the provisions that address which articles that are eligible for duty-free treatment. Those provisions that pertain to the termination of duty-free treatment because the domestic industry is injured remain under subtitle VI; however, the actions conducted by the United States International Trade Commission are now found under Chapter 2 of subtitle I, or under Subtitle IV. Overall, the reorganization confines each subsection to one topic area and allows the provisions to flow in a more coherent manner. Except as noted below, we have no objection to the draft reorganization as set forth in Subtitle

The following errors were found:

- (17) In Section 611, the word "articles" should be replaced by "article."
- (2) Section 612(a)(1) defines "beneficiary country" not "beneficiary developing country" as used in 19 U.S.C. 2462(a)(1); however, the new GSP sections make reference to beneficiary developing countries. we suggest that section 612(a)(1) refer to both "beneficiary country" and "beneficiary developing country."
- (3) Section 613 refers to the President as "he": this should probably be changed in light of the fact that many statutes are being altered to be gender-neutral.
- (4) Section 623(e)(1), pertaining to Puerto Rico, states that it refers to 19 U.S.C. 2703(a)(3) *when* it actually should refer to 19 U.S.C. 27C3(a)(4); furthermore, section 623(e)(2) should state that it refers to 19 U.S.C. 2703(a)(5), not 19 U.S.C. 2703(a)(4).
- (5) The definition of "??TS" in section 602(2) should also include a reference to "19 U.S.C. 1202", as in 19 U.S.C. 2702(a);1, (C;.

For your information, a list of the exact changes that were made are attacnea.

/41) Sandra .ethers

Attachment

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I. New Sections

Section 601 and 602 apply to the entire subtitle.

Section 601 is a new provision describing the purpose of the subtitle.

Section 602 contains definitions that apply to the subtitle. Section 602(1) defines "entered", referenced in the CEERA and ATPA; however, the GSP refers to "entry."

Section 602(2) defines "HTS", which was not defined in the original GSP statutes. The definition also does not include "(19 U.S.C. 1202)", present in the CBERA but not in the ATPA.

Section 602(3) defines "Commission", which was repeatedly defined in numerous sections of the original format; those are now omitted.

II. Generalized System of Preferences - Chapter 1

In 19 U.S.C. 2461, it only says "article" not "articles", as proposed in Section 611.

In 19 U.S.C. 2462(a)(1), "beneficiary developing country" is defined. Section 612(a)(1) now only defines "beneficiary country"; however, the new GSP sections also make reference to beneficiary developing countries. Section 612(a)(1) also only refers to the "President of the United States" in 19 U.S.C. 2462(a)(1), as "President."

The last sentence of 19 U.S.C. 2462(a)(1), pertaining to the notification requirements of the President, is now section 612(e)(1).

The sections of 19 U.S.C. 2462, which generally pertains to the designation of beneficiary countries, are rearranged: 19 U.S.C. 2462(a)(2), pertaining to the notification requirements of the President, now becomes section 612(e)(2); 19 U.S.C. 2462(a)(4), pertaining to worker rights, is now a part of the definitions in section 602; and the order of 19 U.S.C. 2462(b) and 2462(c) is switched (the factors affecting country designation are listed before stating which countries are ineligible).

19 U.S.C. 2462(b) (found in section 612(c)) is renumbered. The words "in addition" which were after the list of countries in 19 U.S.C. 2462(b) are omitted. 19 U.S.C. 2462(d)(1) and (2) are inserted as part of the last sentence of 19 U.S.C. 2462(b)(2), because 19 U.S.C. 2462(d) referred to 19 U.S.C. 2462(b). Section 612(c)(2)(G) also adds the words "as defined in section 602(4) of this subtitle" after the term "worker rights".

Section 612(d) skips 19 U.S.C. 2463, pertaining to eligible

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articles, and continues with 19 U.S.C. 2464(a) (1) (which pertains to the suspension of a country and suspension of an article), except the reference to the suspension of an article is omitted and follows the section that addresses eligible articles.

Section 613(a) inserts the last sentence of 19 U.S.C. 2463(a), pertaining to the designation of articles by the President. The procedures the President shall follow addressed in 19 U.S.C. 2463(a) now becomes section 613(e) (1) which section 613(a) makes reference to.

Section 613(c) repeats 19 U.S.C. 2464(a) (1), which addresses the suspension of articles and countries, but this time only makes reference to "any article" and not "any country" as addressed in section 612(d).

Section 613(c) (2) (A) reorganizes the sentence structure of 19 U.S.C. 2464(c) (1). Section 613 makes reference to the President as "e". Section 613(c) (2) (B) inserts 19 U.S.C. 2464(c) (7). The sentence structure of Section 613(c) (2) (C) is also reorganized by combining 19 U.S.C. 2464(c) (2) (B) (i) and 19 U.S.C. 2464(c) (2) (B) (ii) into one sentence.

Section 613(c) (2) (D) then skips to 19 U.S.C. 2464(f) and deletes the words "determined under subparagraph (B) for the determination year", and states what subparagraph (B) says.

Section 613(c) (2) (E) returns to 19 U.S.C. 2464(c) (5) and inserts the words "For purposes of subparagraph (A)".

Section 613(c) (2) (F) only references 19 U.S.C. 2464(c) (6) (A) and not (B).

In Section 613(d) (1) (A), the word order in 19 U.S.C. 2464(c) (3) (A) is switched, and under section 613(d) (1) (A) (i) the words "under section 1332 of title 19" are added to explain the advice of the Commission.

In Section 613(d) (1) (B) (ii) minor grammatical changes are made (i.e., the word "to" is eliminated twice).

Section 613(d) (2) skips to 19 U.S.C. 2464(c) (4) and adds the words "regarding a relative degree of competitiveness" to explain subsection (c) (2) (C).

Section 613(d) (3) (A) returns to 19 U.S.C. 2464(c) (3) (C).

Section 613(e) is reworded to first provide the purpose of the section and then how the President shall do this.

Section 613(e) (2) pertains to 19 U.S.C. 2464(c) (6) (8) and adds the words "based on the considerations described in sections 611

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and 612(b)" to make reference to those sections. Also, 19 U.S.c. 2464(c)(6)(i) and (ii) are omitted and explained in one paragraph.

III. Caribbean Basin Economic Recovery Act - Chapter 2

Section 621 joins 19 U.S.C. 2701 and 2703(g) and adds the words "regarding restrictions on imports that interfere with programs administered by the Department of Agriculture" to explain what section 502 of subtitle V is about.

Section 622(a) defines "beneficiary country" taken from 19 U.S.C. 2702(a)(1)(A), and omits (a)(1)(B) and (C), the definitions of which are in section 602. The last sentence of 19 U.S.C. 2702(a)(1)(A) is omitted, and instead is part of section 622(f).

Section 622(b) only lists the countries that are eligible, and omits the rest of 19 U.S.C. 2702(b) which pertains to the countries that shall not be designated as beneficiary countries (this is part of section 622(d)).

Section 622(e) refers to 19 U.S.C. 2702(e)(1)(A), but omits 19 U.S.C. 2702(e)(1)(B) which is a part of section 623(c).

Section 622(f) includes the last sentence of 19 U.S.C. 2702(a)(1) and includes 19 U.S.C. 2702(a)(2).

Section 623(a) reorganizes 19 U.S.C. 2703(a) by referring to 2703(a)(1), then 2703(a)(3), then 19 U.S.C. 2703(a)(2), and omits 1703(a)(4) and 2703(d)(5).

Section 623(c) returns to 19 U.S.C. 2702(e)(1)(B) which pertains to the duty-free treatment of an article, and repeats 19 U.S.C. 2702(e)(2)(A) and (B), that were mentioned in section 622(e) but in regard to suspension of any country as a beneficiary country.

Section 623(d)(2)(A)(i) refers to 19 U.S.C. 2703(d)(1)(A) and states what 19 U.S.C., '.. 2464(c)(1) relates to (i.e., GSP competitive need limitation).

Section 623(e)(1), pertaining to Puerto Rico, states that it refers to 19 U.S.C. 2703(a)(3) when it actually refers to 19 U.S.C. 2703(a)(4): furthermore, section 623(e)(2) should state .hat it refers t3 17 U.L.C. _ 703(a)(5), not 19 > .S.C. 2703(a)(4).

Section 623(d) makes a general reference to cases of action under Chapter 2 of Subtitle I, or under Subtitle IV. Section 623(d)(1)(C) makes reference to 19 U.S.C. 2703(f)(3) and 19 U.S.C. 2703(c)(2) and states "Stable Food Production Plan" instead of "plan".

19 U.S.C. 2702(d) which pertains to the amendment of Tariff

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Schedules General Headnote is omitted.

IV. Apdean Trade Preference Act - Chapter 3.

Section 631 combines 19 U.S.C. 3201 and 19 U.S.C. 3203(f), and explains what section 624 of Title 7 (new reference called section 502 of subtitle V) is about.

Section 632(a) contains the definition of "beneficiary country" taken from 19 U.S.C. 3202(a)(1), but omits the definition of "entered" and "HTS" in 19 U.S.C. 3202(a)(2) and (3) which are in section 602.

Section 632(b) refers to 19 U.S.C. 3202(b)(1), but does not include 19 U.S.C. 3202(b)(2) which is now in section 632(f).

Section 632(e)(1) refers to 19 U.S.C. 3202(e)(I)(A) pertaining to suspending the designation of any country as a beneficiary country, but omits 19 U.S.C. 3202(e)(1)(3) which refers to suspending duty-free treatment to any article, which is in section 633(c).

Section 633 switches the order of 19 U.S.C. 3203(a)(2) and (3), and omits (4) which is section 635(b).

Section 633(c) refers to 19 U.S.C. 3202(e), except this time, pertaining to articles, and duplicates 19 U.S.C. 3202(e)(2)(A) and (81).

Section 633(c)(:)(A) and (8) refer to 19 U.S.C. 3203(d)(1), and (d)(5)(A) and (8). Section 633(c)(3) indicates that the procedures for the suspension of duty-free treatment are found under Chapter 2 of Subtitle I, or under Subtitle IV.

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UNITED STATES GOVERNMENT
*Memorandum*DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICEFile: CO:R:IT:I
456615 STW

Date: OCT 5 1991

TO: Director, Office of Regulations and Rulings

FROM: Director, International Trade Compliance Division

RE: Proposed Reorganization of U.S. International Trade Relief Laws - Subtitle IX - Relief from Unfair Practices in Import Trade (19 U.S.C. 1337 and 2482)

The Intellectual Property Rights Branch has reviewed the proposed changes to the text of Title 19, United States Code, Sections 1337 and 2482. After careful analysis of the proposed text and discussion of the changes with the Office of the General Counsel, International Trade Commission, we conclude that this "remodeling" effects no substantive or **procedural** changes in the **reorganized provisions**. The new text reflects the rearrangement of existing provisions by **subject matter**, deletion of excess verbiage and duplicate provisions, renumbering of the subsections, addition of descriptive headings to **various** subsections, deletion of references to obsolete **laws**, **updating** of terminology, and revision of cross-references to correspond with the reorganization and renumbering of the subsections. The proposed changes clarify the affected sections. The changes **do not** alter customs enforcement **responsibilities**.

A handwritten signature in cursive script that reads "Stuart P. Seidel".

Stuart P. Seidel



ITC TRIAL LAWYERS ASSOCIATION

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PRESIDENT
- ARTHUR VHESUMG
PRESIDENT-ELECT
- RALPH A MITTELSEMGER
VICE PRESIDENT
- SCOTT F PARTRIDGE
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.ENNIFER • TEGFELDT
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October 15, 1993

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BY HAND

Honorable Donna R. Koehnke
Secretary
United States International
Trade Commission
500 E Street, S.W.
Washington, D.C. 20436

Re: Proposed Reorganization of U.S. International

Dear Ms. Koehnke:

Enclosed are the original and fifteen (15) copies of the Comments of the ITC Trial Lawyers Association With Respect to the ITC's Draft Reorganization of the Trade Relief Laws.

Please file the original and fourteen (14) copies of the above-described document in Investigation No. 332-341 and return one file-stamped copy with our messenger.

Thank you for your assistance.

Very truly yours,

ITC TRIAL LAWYERS ASSOCIATION

Step n L. Sulzer
For t e Executive Committee

cc: Phyllis N. Smithey, Esq. w/enclosure

COMMENTS OF THE ITC TRIAL LAWYERS ASSOCIATION WITH RESPECT
TO THE ITC'S DRAFT REORGANIZATION OF THE TRADE RELIEF LAWS

INTRODUCTION

The ITC Trial Lawyers Association ("the ITCTLA" or "the Association") hereby submits its comments with respect to the ITC's draft reorganization of the trade relief laws.' The Association has paid particular attention to the draft revisions to Section 337, and therefore has limited these comments to Subtitle IX of the draft trade relief laws. The ITCTLA generally supports the ITC's proposed revisions set forth in draft Subtitle IX, with the qualifications and suggestions set forth below.

SECTION 901

The Association supports the addition of new Section 901 regarding the applicability of Section 337 remedies. New Section 901 would make the substantive provisions of Section 902 generally more accessible without affecting the substance of the statute.

The ITCTLA consists of more than 200 persons having an interest in Section 337. Members include attorneys who practice before the ITC in Section 337 proceedings and represent complainants and respondents, attorneys who work for the ITC, attorneys and other persons employed by companies having an interest in the ITC, academics, and others. Because the ITCTLA's members have extensive experience in Section 337 investigations, resulting from their involvement in all aspects of Section 337 proceedings, the Association believes that it has an informed perspective about Section 337. The ITCTLA's members also have an ongoing interest in the improvement of Section 337 as a trade relief statute, and the Association is pleased to have been asked to comment on the Commission's draft revisions to the statute.

SECTION 902

The Association supports the consolidation of subsections 337(a) (1) (A)-(D) into subsections 902(a) (1) (A) and (B) (i)-(13) (iii). These revisions would eliminate duplicative wording and simplify the statute, without altering the substantive protection provided by Section 337. The Association suggests that in Section 902(a) (1) (B) (i), the ITC delete "the Trademark Act of 1946" and substitute therefor "chapter 22 of title 15 of the United States Code." This change would conform the citation of the trademark statute to those for the patent, copyright, and mask work statutes. It would not make any substantive change in the law.

The re-arrangement of subsections 337(b)-(h) into subsections 902(b)-(f) makes these provisions more accessible and eliminates duplicative wording, such as repeated recitations of the public interest factors. The ITCTLA supports these changes, because they improve the statute's overall organization, and, except as noted below, do not appear to alter its substance.

In Section 902(c), the Commission has re-worded existing Section 337(c) to make clear that an opportunity for a hearing is to be provided in all cases, regardless of whether the complainant is seeking an exclusion order, a cease and desist order, or both. This is a substantive change in the statute, but is consistent with existing Commission practice. The ITCTLA supports this revision.

Section 902(f) (2) would make clear that the Commission can require a temporary relief bond from a complainant regardless

of whether the complainant is seeking a temporary exclusion order, a temporary cease and desist order, or both. This is a substantive change in existing Sections 337(e) (2) and (f), but also appears to be consistent with existing Commission practice. The ITCTLA supports this change as well.

The ITCTLA notes, however, that in proposed Section 902(f) (2), the word "case" appears to have been inadvertently omitted at the end of the penultimate sentence.

In Section 902(f) (3), the ITC omits its existing authorization (now set forth in corresponding Section 337(e) (3)) to enter temporary restraining orders ~~as~~ ex parte on the basis of affidavits. The Commission is proposing to limit its statutory authority to grant temporary relief so that it can only proceed as the federal courts would in issuing preliminary injunctions. This proposed revision would conform Section 902(f) (3) to other parts of Section 337 and to existing Commission practice.

Section 337(c), the pertinent portion of which would not be substantively altered by the Commission's draft revisions, currently requires that any determination in temporary relief proceedings be made after an opportunity for a hearing in conformity with the Administrative Procedure Act. In addition, Rule 210.24(e) (13) of the Commission's Interim Rules of Practice and Procedure expressly provides an opportunity for a hearing prior to issuance of temporary relief. Thus, the proposed revision to Section 337(e) (3) in new Section 902(f) (3) appears to be consistent

with other parts of the statute (i.e., Section 337(c)) and the Commission's existing practice and procedure. In light of Section 337(c) and the Commission's existing Interim Rules of Practice and Procedure, the ITCTLA does not object to this proposed change.

Suaaested Chanoes to Draft Cross-References

The ITCTLA suggests changes to the following cross-references in Section 902:

1. In proposed Section 902(h)(1)(B), the cross-reference to "an order issued under subsection (d)" should be a cross-reference to "an order issued under subsection (e)(1)(A)."

2. Two cross-references should be changed in draft Section 902(j):

(a) The first sentence in subsection 902(j)(1) states: "Except as provided in subsections (d), (e), and (i), . . ." We believe that this phrase should be changed to state: "Except as provided in subsections (e), (f), and (i), . . ."; and

(b) The first sentence in subsection 902(j)(2) states:

If any person who has previously been found by the Commission to be in violation of this section .petitions the Commission for a deterMination that the petitioner is no longer in violation of this section or for a modification or rescission of an exclusion from entry or order under subsection (d), (e), or (q)

We believe that the cross reference to subsections (d), (e), or (q) in this provision should be changed to subsection (e), (f), or (h).

3. A cross-reference should be changed in Section 902(k). The first sentence of this provision begins: "Any exclusion from entry or order under subsection (d), (e), or (h) . . . " We believe that the cross-reference to subsections (0), (e), or (h) should be changed to subsections (e), (f), or M.

SECTION 903

The reference in Section 903 to Section 603 proceedings will improve the accessibility of Section 603 to those unfamiliar with the full scope of remedies available at the Commission.

CONCLUSION

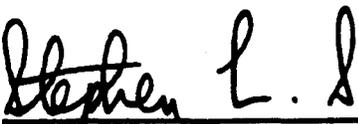
The ITCTLA believes that the ITC's proposed revisions to Subtitle IX of the trade relief laws, with the suggestions noted herein, will accomplish the objectives set forth in the ITC's request for comments and will improve Section 337 as a trade relief statute.

Dated: October 15, 1993

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Respectfully submitted,

ITC Trial Lawyers Association

By 
Stephen L. Sulzer

For the Executive Committee

